



EUROPEAN COMPANY LAW

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COUNCIL REGULATION (EC)
N. 2157/2001
OF 8 OCTOBER 2001
ON THE STATUTE FOR A EUROPEAN
COMPANY (SE)

THE PURPOSES

- The “European Company” – also named with its Latin name “Societas Europea”, or SE – is a type of company governed by identical rules in each of the member states as laid down in Regulation 2157/2001/EC and only on a secondary basis by the laws of the State where it has its seat. The project actually dates back to the early 1970s and took several years to come to fruition.
- Under normal circumstances, if an entrepreneur of a member state that sets up a company governed by the national law of that state and afterwards decides to relocate to another member state, the laws applicable to the company will change completely.
- This implies that any entrepreneur willing to relocate has to be confident and understand how the laws in that other member state actually work. This gives rise to legal and psychological difficulties, which may prevent the companies from executing cross-border transactions.
- On the other hand, the establishment of an SE may allow the company to move its legal seat to any other member state since it is governed by the same rules, overcoming these legal and psychological obstacles.

THE PURPOSES

- Of course, if an SE aims to relocate from one state to another, it must ask first shareholders for permission and take some procedural steps (as provided for by the regulation); in any case, once the shareholders have voted at the general meeting on the transfer and the procedure has been followed, the company will not change the applicable law, which will remain the “supranational” one set forth by the regulation. The law of the new state will only apply to the issues that have not been addressed by the regulation.
- The SE legislation represented a milestone in both the field of EU company law and in the European regulations on employee involvement, above all as a consequence of the related Directive on the participation of workers in companies: directive 2001/86/CE.

GENERAL PROVISIONS

MAIN FEATURES

ARTICLE 1

1. A company may be set up within the territory of the Community in the form of a **European public limited-liability company** (Societas Europaea or SE) on the conditions and in the manner laid down in this Regulation.
2. The **capital of an SE shall be divided into shares. No shareholder shall be liable for more than the amount he has subscribed** (only the company is liable for the corporate obligations with its assets).
3. An SE shall have **legal personality**.
4. **Employee involvement** in an SE shall be governed by the provisions of Directive 2001/86/EC.

APPLICABLE PROVISIONS

ARTICLE 9

An SE shall be governed:

(a) by this Regulation,

(b) where expressly authorised by this Regulation, by the provisions of its statutes

or

(c) in the case of matters not regulated by this Regulation or, where matters are partly regulated by it, of those aspects not covered by it, by:

(i) the provisions of laws adopted by Member States in implementation of Community measures relating specifically to SEs;

(ii) the provisions of Member States' laws which would apply to a public limited-liability company formed in accordance with the law of the Member State in which the SE has its registered office;

(iii) the provisions of its statutes, in the same way as for a public limited-liability company formed in accordance with the law of the Member State in which the SE has its registered office.

Finally, article 10 states that «Subject to this Regulation, an SE shall be treated in every Member State as if it were a public limited-liability company formed in accordance with the law of the Member State in which it has its registered office».

FORMATION

FORMATION

An SE can be formed through:

- A merger
- Formation of a holding SE
- A subsidiary
- A transformation

MERGER

Public limited-liability companies such as referred to in Annex I, formed under the law of a Member State, with registered offices and head offices within the Community **may form an SE by means of a merger provided that at least two of them are governed by the law of different Member States.**

MERGER

Article 17

1. An SE may be formed by means of a merger in accordance with Article 2(1).
2. Such a merger may be carried out in accordance with:
 - (a) the procedure for **merger by acquisition** laid down in Article 3(1) of the third Council Directive (78/855/EEC) of 9 October 1978 based on Article 54(3)(g) of the Treaty concerning mergers of public limited-liability companies (7) or
 - (b) the procedure for **merger by the formation of a new company** laid down in Article 4(1) of the said Directive.

In the case of a merger by acquisition, the acquiring company shall take the form of an SE when the merger takes place. In the case of a merger by the formation of a new company, the SE shall be the newly formed company.

MERGER

The procedure provided by the Regulation:

1. The management or administrative organs of merging companies shall draw up draft terms of merger. The draft terms of merger shall include a list of information.
2. Expert report.
3. The general meeting of each of the merging companies shall approve the draft terms of merger.
4. The legality of a merger shall be scrutinised, as regards the part of the procedure concerning each merging company, in accordance with the law on mergers of public limited-liability companies of the Member State to which the merging company is subject.
5. In each Member State concerned the court, notary or other competent authority shall issue a certificate conclusively attesting to the completion of the pre-merger acts and formalities.
6. A merger and the simultaneous formation of an SE shall take effect on the date on which the SE is registered.

MERGER

A **merger by acquisition** shall have the following **consequences *ipso jure* and simultaneously**:

(a) All the assets and liabilities of each company being acquired are transferred to the acquiring company;

(b) the shareholders of the company being acquired become shareholders of the acquiring company;

(c) the company being acquired ceases to exist;

(d) the acquiring company adopts the form of an SE.

A **merger by the formation of a new company** shall have the following **consequences *ipso jure* and simultaneously**:

(a) all the assets and liabilities of the merging companies are transferred to the SE;

(b) the shareholders of the merging companies become shareholders of the SE;

(c) the merging companies cease to exist.

FORMATION OF A HOLDING SE

Public and private limited-liability companies such as referred to in Annex II, formed under the law of a Member State, with registered offices and head offices within the Community may promote **the formation of a holding SE provided that each of at least two of them:**

(a) **is governed by the law of a different Member State, or**

(b) **has for at least two years had a subsidiary company governed by the law of another Member State or a branch situated in another Member State.**

FORMATION OF A HOLDING SE

- A company promoting the formation of a holding SE shall continue to exist.
- The management or administrative organs of the companies which promote such an operation shall draw up draft terms for the formation of the holding SE.
- Independent experts shall examine the draft terms of formation drawn up.
- The general meeting of each company promoting the operation shall approve the draft terms of formation of the holding SE.

SUBSIDIARY SE

Two hypothesis:

1. Companies and firms within the meaning of the second paragraph of Article 48 of the Treaty and other legal bodies governed by public or private law, formed under the law of a Member State, with registered offices and head offices within the Community **may form a subsidiary SE by subscribing for its shares, provided that each of at least two of them:**

(a) **is governed by the law of a different Member State, or**

(b) **has for at least two years had a subsidiary company governed by the law of another Member State or a branch situated in another Member State.**

2. An SE may itself set up one or more subsidiaries in the form of SEs.

SUBSIDIARY SE

- Companies, firms and other legal entities participating in such an operation shall be subject to the provisions governing their participation in the formation of a subsidiary in the form of a public limited-liability company under national law.

TRANSFORMATION

A public limited-liability company, formed under the law of a Member State, which has its registered office and head office within the Community **may be transformed into an SE if for at least two years it has had a subsidiary company governed by the law of another Member State.**

TRANSFORMATON

- Conversion of an existing public limited-liability company into an SE shall not result in the winding up of the company or in the creation of a new legal person.
- The management or administrative organ of the company in question shall draw up draft terms of conversion and a report explaining and justifying the legal and economic aspects of the conversion and indicating the implications.
- Independent experts report.
- The general meeting of the company in question shall approve the draft terms of conversion together with the statutes of the SE.

REGISTRATION

- Every SE shall be registered in the Member State in which it has its registered office in a register designated by the law of that Member State.
- An SE may not be registered unless an agreement on arrangements for employee involvement pursuant to Article 4 of Directive 2001/86/EC has been concluded, or a decision pursuant to Article 3(6) of the Directive has been taken, or the period for negotiations pursuant to Article 5 of the Directive has expired without an agreement having been concluded.

REGISTERED OFFICE

Article 7

The **registered office** of an SE shall be located within the Community, in **the same Member State as its head office**.

TRANSFER OF THE REGISTERED OFFICE

Article 8 provide a special procedure to transfer the SE's registered office

1. The registered office of an SE may be transferred to another Member State in accordance with paragraphs 2 to 13. Such a transfer shall not result in the winding up of the SE or in the creation of a new legal person.

2. The management or administrative organ shall draw up a transfer proposal and publicise it, without prejudice to any additional forms of publication provided for by the Member State of the registered office.

(The procedure involve a transfer proposal and a report by the managerial organ, the approval by the general meeting, and a verification step)

COMPANY NAME

- The **name** of an SE shall be preceded or followed by the abbreviation SE.
- Only SEs may include the abbreviation SE in their name.

SHARE CAPITAL AND FINANCIAL STRUCTURE

Article 4

1. The capital of an SE shall be expressed in euro.
2. The subscribed capital shall not be less than EUR 120.000.
3. The laws of a Member State requiring a greater subscribed capital for companies carrying on certain types of activity shall apply to SEs with registered offices in that Member State.

Article 5

Subject to Article 4(1) and (2), the capital of an SE, its maintenance and changes thereto, together with its shares, bonds and other similar securities shall be governed by the provisions which would apply to a public limited-liability company with a registered office in the Member State in which the SE is registered.

CORPORATE GOVERNANCE OF THE SE

Article 38

Under the conditions laid down by this Regulation an SE shall comprise:

- (a) a general meeting of shareholders and
- (b) either a supervisory organ and a management organ (two-tier system) or an administrative organ (one-tier system) depending on the form adopted in the statutes.

CORPORATE GOVERNANCE OF THE SE

The general meeting of shareholders

- Article 52 stipulates that the general meeting shall decide on matters for which it has specific competence under the SE regulation and on matters for which competence is assigned to the general meeting of a public company by the law of the member state in which the SE has its registered office or by the articles of association in accordance with that law.
- The organisation and conduct of general meetings together with voting procedures shall be governed by the law applicable to public limited-liability companies in the Member State in which the SE's registered office is situated.

CORPORATE GOVERNANCE OF THE SE

The general meeting of shareholders

- An SE shall hold a general meeting at least once each calendar year, within six months of the end of its financial year.
- General meetings may be convened at any time by the management organ, the administrative organ, the supervisory organ or any other organ or competent authority in accordance with the national law applicable to public limited-liability companies in the Member State in which the SE's registered office is situated

CORPORATE GOVERNANCE OF THE SE

The general meeting of shareholders

- Save where this Regulation or, failing that, the law applicable to public limited-liability companies in the Member State in which an SE's registered office is situated requires a larger majority, **the general meeting's decisions shall be taken by a majority of the votes validly cast.**
- **Amendment of an SE's statutes shall require a decision by the general meeting taken by a majority which may not be less than two thirds of the votes cast**, unless the law applicable to public limited-liability companies in the Member State in which an SE's registered office is situated requires or permits a larger majority (a Member State may, however, provide that where at least half of an SE's subscribed capital is represented, a simple majority of the votes shall suffice).

CORPORATE GOVERNANCE OF THE SE

The general meeting of shareholders – Shareholders' rights

- One or more shareholders who together hold at least 10 % of an SE's subscribed capital may request the SE to convene a general meeting and draw up the agenda therefor.
- One or more shareholders who together hold at least 10 % of an SE's subscribed capital may request that one or more additional items be put on the agenda of any general meeting.

CORPORATE GOVERNANCE OF THE SE

The two-tier system

- The management organ shall be responsible for managing the SE.
- The member or members of the management organ shall be appointed and removed by the supervisory organ.
- A Member State may, however, require or permit the statutes to provide that the member or members of the management organ shall be appointed and removed by the general meeting under the same conditions as for public limited-liability companies that have registered offices within its territory.
- No person may at the same time be a member of both the management organ and the supervisory organ of the same SE.

CORPORATE GOVERNANCE OF THE SE

The two-tier system

- The supervisory organ shall supervise the work of the management organ. It may not itself exercise the power to manage the SE.
- The members of the supervisory organ shall be appointed by the general meeting. The members of the first supervisory organ may, however, be appointed by the statutes.
- The supervisory organ shall elect a chairman from among its members.

CORPORATE GOVERNANCE OF THE SE

The two-tier system

- The management organ shall report to the supervisory organ at least once every three months on the progress and foreseeable development of the SE's business.
- In addition to these regular information, the management organ shall promptly pass the supervisory organ any information on events likely to have an appreciable effect on the SE.
- The supervisory organ may require the management organ to provide information of any kind which it needs to exercise supervision.
- The supervisory organ may undertake or arrange for any investigations necessary for the performance of its duties.
- Each member of the supervisory organ shall be entitled to examine all information submitted to it.

CORPORATE GOVERNANCE OF THE SE

The one-tier system

- The administrative organ shall manage the SE. A Member State may provide that a managing director or managing directors shall be responsible for the day-to-day management (thus differentiating between executive and non-executive directors).
- The member or members of the administrative organ shall be appointed by the general meeting. The members of the first administrative organ may, however, be appointed by the statutes.
- The administrative organ shall meet at least once every three months at intervals laid down by the statutes to discuss the progress and foreseeable development of the SE's business.

CORPORATE GOVERNANCE OF THE SE

Rules common to the one-tier and two-tier systems

- Members of company organs shall be appointed for a period laid down in the statutes not exceeding six years (and may be reappointed).
- No person may be a member of any SE organ who:
 - (a) is disqualified, under the law of the Member State in which the SE's registered office is situated, from serving on the corresponding organ of a public limited-liability company governed by the law of that Member State, or
 - (b) is disqualified from serving on the corresponding organ of a public limited-liability company governed by the law of a Member State owing to a judicial or administrative decision delivered in a Member State.

CORPORATE GOVERNANCE OF THE SE

Rules common to the one-tier and two-tier systems

The internal rules relating to quorums and decision-taking in SE organs shall be as follows:

- (a) quorum: at least half of the members must be present or represented;
- (b) decision-taking: a majority of the members present or represented.

CORPORATE GOVERNANCE OF THE SE

Rules common to the one-tier and two-tier systems

Members of an SE's management, supervisory and administrative organs shall be liable, in accordance with the provisions applicable to public limited-liability companies in the Member State in which the SE's registered office is situated, for loss or damage sustained by the SE following any breach on their part of the legal, statutory or other obligations inherent in their duties.

ANNUAL ACCOUNTS AND CONSOLIDATED ACCOUNTS

Article 61

Subject to Article 62 an SE shall be governed by the rules applicable to public limited-liability companies under the law of the Member State in which its registered office is situated as regards the preparation of its annual and, where appropriate, consolidated accounts including the accompanying annual report and the auditing and publication of those accounts.

WINDING UP, LIQUIDATION, INSOLVENCY AND CESSATION OF PAYMENTS

Article 63

As regards winding up, liquidation, insolvency, cessation of payments and similar procedures, an SE shall be governed by the legal provisions which would apply to a public limited-liability company formed in accordance with the law of the Member State in which its registered office is situated, including provisions relating to decision-making by the general meeting.

- The regulation provides for a special case of dissolution of the SE: the case in which an SE no longer complies with the requirement laid down in Article 7 (see art. 64).