

## Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE)

### TITLE I

#### GENERAL PROVISIONS

##### *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.

3 An SE shall have legal personality.

4 Employee involvement in an SE shall be governed by the provisions of Directive 2001/86/EC.

##### *Article 2*

1 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.

2 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.

3 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.

4 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.

5 A Member State may provide that a company the head office of which is not in the Community may participate in the formation of an SE provided that company is formed under the law of a Member State, has its registered office in that Member State and has a real and continuous link with a Member State's economy.

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*Status: Point in time view as at 31/12/2020.*

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### Article 3

1 For the purposes of Article 2(1), (2) and (3), an SE shall be regarded as a public limited-liability company governed by the law of the Member State in which it has its registered office.

2 An SE may itself set up one or more subsidiaries in the form of SEs. The provisions of the law of the Member State in which a subsidiary SE has its registered office that require a public limited-liability company to have more than one shareholder shall not apply in the case of the subsidiary SE. The provisions of national law implementing the twelfth Council Company Law Directive (89/667/EEC) of 21 December 1989 on single-member private limited-liability companies<sup>(1)</sup> shall apply to SEs *mutatis mutandis*.

### 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.

### Article 6

For the purposes of this Regulation, ‘the statutes of the SE’ shall mean both the instrument of incorporation and, where they are the subject of a separate document, the statutes of the SE.

### Article 7

The registered office of an SE shall be located within the Community, in the same Member State as its head office. A Member State may in addition impose on SEs registered in its territory the obligation of locating their head office and their registered office in the same place.

### Article 8

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 in accordance with Article 13, without prejudice to any additional forms of publication provided for by the Member State of the registered office. That proposal shall state the current name, registered office and number of the SE and shall cover:

- a the proposed registered office of the SE;
- b the proposed statutes of the SE including, where appropriate, its new name;
- c any implication the transfer may have on employees' involvement;
- d the proposed transfer timetable;
- e any rights provided for the protection of shareholders and/or creditors.

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3 The management or administrative organ shall draw up a report explaining and justifying the legal and economic aspects of the transfer and explaining the implications of the transfer for shareholders, creditors and employees.

4 An SE's shareholders and creditors shall be entitled, at least one month before the general meeting called upon to decide on the transfer, to examine at the SE's registered office the transfer proposal and the report drawn up pursuant to paragraph 3 and, on request, to obtain copies of those documents free of charge.

5 A Member State may, in the case of SEs registered within its territory, adopt provisions designed to ensure appropriate protection for minority shareholders who oppose a transfer.

6 No decision to transfer may be taken for two months after publication of the proposal. Such a decision shall be taken as laid down in Article 59.

7 Before the competent authority issues the certificate mentioned in paragraph 8, the SE shall satisfy it that, in respect of any liabilities arising prior to the publication of the transfer proposal, the interests of creditors and holders of other rights in respect of the SE (including those of public bodies) have been adequately protected in accordance with requirements laid down by the Member State where the SE has its registered office prior to the transfer.

A Member State may extend the application of the first subparagraph to liabilities that arise (or may arise) prior to the transfer.

The first and second subparagraphs shall be without prejudice to the application to SEs of the national legislation of Member States concerning the satisfaction or securing of payments to public bodies.

8 In the Member State in which an SE has its registered office the court, notary or other competent authority shall issue a certificate attesting to the completion of the acts and formalities to be accomplished before the transfer.

9 The new registration may not be effected until the certificate referred to in paragraph 8 has been submitted, and evidence produced that the formalities required for registration in the country of the new registered office have been completed.

10 The transfer of an SE's registered office and the consequent amendment of its statutes shall take effect on the date on which the SE is registered, in accordance with Article 12, in the register for its new registered office.

11 When the SE's new registration has been effected, the registry for its new registration shall notify the registry for its old registration. Deletion of the old registration shall be effected on receipt of that notification, but not before.

12 The new registration and the deletion of the old registration shall be publicised in the Member States concerned in accordance with Article 13.

13 On publication of an SE's new registration, the new registered office may be relied on as against third parties. However, as long as the deletion of the SE's registration from the register for its previous registered office has not been publicised, third parties may continue to rely on the previous registered office unless the SE proves that such third parties were aware of the new registered office.

14 The laws of a Member State may provide that, as regards SEs registered in that Member State, the transfer of a registered office which would result in a change of the law applicable shall not take effect if any of that Member State's competent authorities opposes it

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within the two-month period referred to in paragraph 6. Such opposition may be based only on grounds of public interest.

Where an SE is supervised by a national financial supervisory authority according to Community directives the right to oppose the change of registered office applies to this authority as well.

Review by a judicial authority shall be possible.

15 An SE may not transfer its registered office if proceedings for winding up, liquidation, insolvency or suspension of payments or other similar proceedings have been brought against it.

16 An SE which has transferred its registered office to another Member State shall be considered, in respect of any cause of action arising prior to the transfer as determined in paragraph 10, as having its registered office in the Member States where the SE was registered prior to the transfer, even if the SE is sued after the transfer.

#### *Article 9*

1 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.

2 The provisions of laws adopted by Member States specifically for the SE must be in accordance with Directives applicable to public limited-liability companies referred to in Annex I.

3 If the nature of the business carried out by an SE is regulated by specific provisions of national laws, those laws shall apply in full to the SE.

#### *Article 10*

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.

#### *Article 11*

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

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3 Nevertheless, companies, firms and other legal entities registered in a Member State before the date of entry into force of this Regulation in the names of which the abbreviation SE appears shall not be required to alter their names.

#### *Article 12*

1 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 in accordance with Article 3 of the first Council Directive (68/151/EEC) of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community<sup>(2)</sup>.

2 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.

3 In order for an SE to be registered in a Member State which has made use of the option referred to in Article 7(3) of Directive 2001/86/EC, either an agreement pursuant to Article 4 of the Directive must have been concluded on the arrangements for employee involvement, including participation, or none of the participating companies must have been governed by participation rules prior to the registration of the SE.

4 The statutes of the SE must not conflict at any time with the arrangements for employee involvement which have been so determined. Where new such arrangements determined pursuant to the Directive conflict with the existing statutes, the statutes shall to the extent necessary be amended.

In this case, a Member State may provide that the management organ or the administrative organ of the SE shall be entitled to proceed to amend the statutes without any further decision from the general shareholders meeting.

#### *Article 13*

Publication of the documents and particulars concerning an SE which must be publicised under this Regulation shall be effected in the manner laid down in the laws of the Member State in which the SE has its registered office in accordance with Directive 68/151/EEC.

#### *Article 14*

1 Notice of an SE's registration and of the deletion of such a registration shall be published for information purposes in the *Official Journal of the European Communities* after publication in accordance with Article 13. That notice shall state the name, number, date and place of registration of the SE, the date and place of publication and the title of publication, the registered office of the SE and its sector of activity.

2 Where the registered office of an SE is transferred in accordance with Article 8, notice shall be published giving the information provided for in paragraph 1, together with that relating to the new registration.

3 The particulars referred to in paragraph 1 shall be forwarded to the Office for Official Publications of the European Communities within one month of the publication referred to in Article 13.

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- (1) [OJ L 395, 30.12.1989, p. 40](#). Directive as last amended by the 1994 Act of Accession.
- (2) [OJ L 65, 14.3.1968, p. 8](#). Directive as last amended by the 1994 Act of Accession.

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