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

TITLE II U.K.

FORMATION

Section 2 U.K.

Formation by merger

Article 17 U.K.

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[(1)] 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.

Article 18 U.K.

For matters not covered by this section or, where a matter is partly covered by it, for aspects not covered by it, each company involved in the formation of an SE by merger shall be governed by the provisions of the law of the Member State to which it is subject that apply to mergers of public limited-liability companies in accordance with Directive 78/855/EEC.

Article 19 U.K.

The laws of a Member State may provide that a company governed by the law of that Member State may not take part in the formation of an SE by merger if any of that Member State's competent authorities opposes it before the issue of the certificate referred to in Article 25(2).

Such opposition may be based only on grounds of public interest. Review by a judicial authority shall be possible.

Article 20 U.K.

1 The management or administrative organs of merging companies shall draw up draft terms of merger. The draft terms of merger shall include the following particulars:

a the name and registered office of each of the merging companies together with those proposed for the SE;

b the share-exchange ratio and the amount of any compensation;

c the terms for the allotment of shares in the SE;

d the date from which the holding of shares in the SE will entitle the holders to share in profits and any special conditions affecting that entitlement;

e the date from which the transactions of the merging companies will be treated for accounting purposes as being those of the SE;

f the rights conferred by the SE on the holders of shares to which special rights are attached and on the holders of securities other than shares, or the measures proposed concerning them;

g any special advantage granted to the experts who examine the draft terms of merger or to members of the administrative, management, supervisory or controlling organs of the merging companies;

h the statutes of the SE;

i information on the procedures by which arrangements for employee involvement are determined pursuant to Directive 2001/86/EC.

2 The merging companies may include further items in the draft terms of merger.

Article 21 U.K.

For each of the merging companies and subject to the additional requirements imposed by the Member State to which the company concerned is subject, the following particulars shall be published in the national gazette of that Member State:

(a) the type, name and registered office of every merging company;

(b) the register in which the documents referred to in Article 3(2) of Directive 68/151/EEC are filed in respect of each merging company, and the number of the entry in that register;

(c) an indication of the arrangements made in accordance with Article 24 for the exercise of the rights of the creditors of the company in question and the address at which complete information on those arrangements may be obtained free of charge;

(d) an indication of the arrangements made in accordance with Article 24 for the exercise of the rights of minority shareholders of the company in question and the address at which complete information on those arrangements may be obtained free of charge;

(e) the name and registered office proposed for the SE.

Article 22 U.K.

As an alternative to experts operating on behalf of each of the merging companies, one or more independent experts as defined in Article 10 of Directive 78/855/EEC, appointed for those purposes at the joint request of the companies by a judicial or administrative authority in the Member State of one of the merging companies or of the proposed SE, may examine the draft terms of merger and draw up a single report to all the shareholders.

The experts shall have the right to request from each of the merging companies any information they consider necessary to enable them to complete their function.

Article 23 U.K.

1 The general meeting of each of the merging companies shall approve the draft terms of merger.

2 Employee involvement in the SE shall be decided pursuant to Directive 2001/86/EC. The general meetings of each of the merging companies may reserve the right to make registration of the SE conditional upon its express ratification of the arrangements so decided.

Article 24 U.K.

1 The law of the Member State governing each merging company shall apply as in the case of a merger of public limited-liability companies, taking into account the cross-border nature of the merger, with regard to the protection of the interests of:

a creditors of the merging companies;

b holders of bonds of the merging companies;

c holders of securities, other than shares, which carry special rights in the merging companies.

2 A Member State may, in the case of the merging companies governed by its law, adopt provisions designed to ensure appropriate protection for minority shareholders who have opposed the merger.

Article 25 U.K.

1 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.

2 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.

3 If the law of a Member State to which a merging company is subject provides for a procedure to scrutinise and amend the share-exchange ratio, or a procedure to compensate minority shareholders, without preventing the registration of the merger, such procedures shall only apply if the other merging companies situated in Member States which do not provide for such procedure explicitly accept, when approving the draft terms of the merger in accordance with Article 23(1), the possibility for the shareholders of that merging company to have recourse to such procedure. In such cases, the court, notary or other competent authorities may issue the certificate referred to in paragraph 2 even if such a procedure has been commenced. The certificate must, however, indicate that the procedure is pending. The decision in the procedure shall be binding on the acquiring company and all its shareholders.

Article 26 U.K.

1 The legality of a merger shall be scrutinised, as regards the part of the procedure concerning the completion of the merger and the formation of the SE, by the court, notary or other authority competent in the Member State of the proposed registered office of the SE to scrutinise that aspect of the legality of mergers of public limited-liability companies.

2 To that end each merging company shall submit to the competent authority the certificate referred to in Article 25(2) within six months of its issue together with a copy of the draft terms of merger approved by that company.

3 The authority referred to in paragraph 1 shall in particular ensure that the merging companies have approved draft terms of merger in the same terms and that arrangements for employee involvement have been determined pursuant to Directive 2001/86/EC.

4 That authority shall also satisfy itself that the SE has been formed in accordance with the requirements of the law of the Member State in which it has its registered office in accordance with Article 15.

Article 27 U.K.

1 A merger and the simultaneous formation of an SE shall take effect on the date on which the SE is registered in accordance with Article 12.

2 The SE may not be registered until the formalities provided for in Articles 25 and 26 have been completed.

Article 28 U.K.

For each of the merging companies the completion of the merger shall be publicised as laid down by the law of each Member State in accordance with Article 3 of Directive 68/151/EEC.

Article 29 U.K.

1 A merger carried out as laid down in Article 17(2)(a) 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.

2 A merger carried out as laid down in Article 17(2)(b) 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.

3 Where, in the case of a merger of public limited-liability companies, the law of a Member State requires the completion of any special formalities before the transfer of certain assets, rights and obligations by the merging companies becomes effective against third parties, those formalities shall apply and shall be carried out either by the merging companies or by the SE following its registration.

4 The rights and obligations of the participating companies on terms and conditions of employment arising from national law, practice and individual employment contracts or employment relationships and existing at the date of the registration shall, by reason of such registration be transferred to the SE upon its registration.

Article 30 U.K.

A merger as provided for in Article 2(1) may not be declared null and void once the SE has been registered.

The absence of scrutiny of the legality of the merger pursuant to Articles 25 and 26 may be included among the grounds for the winding-up of the SE.

Article 31 U.K.

1 Where a merger within the meaning of Article 17(2)(a) is carried out by a company which holds all the shares and other securities conferring the right to vote at general meetings of another company, neither Article 20(1)(b), (c) and (d), Article 29(1)(b) nor Article 22 shall

apply. National law governing each merging company and mergers of public limited-liability companies in accordance with Article 24 of Directive 78/855/EEC shall nevertheless apply.

2 Where a merger by acquisition is carried out by a company which holds 90 % or more but not all of the shares and other securities conferring the right to vote at general meetings of another company, reports by the management or administrative body, reports by an independent expert or experts and the documents necessary for scrutiny shall be required only to the extent that the national law governing either the acquiring company or the company being acquired so requires.

Member States may, however, provide that this paragraph may apply where a company holds shares conferring 90 % or more but not all of the voting rights.

(**1**) OJ L 295, 20.10.1978, p. 36. Directive as last amended by the 1994 Act of Accession.

Changes to legislation:
There are outstanding changes not yet made to Council Regulation (EC) No 2157/2001. Any changes that have already been made to the legislation appear in the content and are referenced with annotations.
View outstanding changes

Changes and effects yet to be applied to the whole legislation item and associated provisions

- Title 3 heading words substituted by S.I. 2018/1298 reg. 110
- Signature words omitted by S.I. 2018/1298 reg. 138
- Art. AA1(1) words substituted in earlier amending provision S.I. 2018/1298, reg. 97 by S.I. 2020/523 reg. 4(a)(ii)(aa)
- Art. AA1(2) words substituted in earlier amending provision S.I. 2018/1298, reg. 97 by S.I. 2020/523 reg. 4(a)(ii)(bb)
- Art. AA1(5) words substituted in earlier amending provision S.I. 2018/1298, reg. 97 by S.I. 2020/523 reg. 4(a)(ii)(cc)
- Art. A1 words substituted in earlier amending provision S.I. 2018/1298, reg. 97 by S.I. 2020/523 reg. 4(a)(i)
- Art. 000A1-AAA1 inserted by S.I. 2018/1298 reg. 97
- Annex 1 omitted by S.I. 2018/1298 reg. 139
- Annex 2 omitted by S.I. 2018/1298 reg. 139
- Art. 9(1)(c)(i) substituted by S.I. 2018/1298 reg. 104(a)(ii)
- Art. 9(1)(c)(iii) words omitted by S.I. 2018/1298 reg. 104(a)(iv)
- Art. 9(1)(c)(ii) words omitted by S.I. 2018/1298 reg. 104(a)(iii)(bb)
- Art. 9(1)(c)(ii) words substituted by S.I. 2018/1298 reg. 104(a)(iii)(aa)
- Art. 40(2)(a)-(c) Art. 40(2)(a)-(c) substituted for words by S.I. 2018/1298 reg. 113(b)
- Art. 43(2)(a)(b) Art. 43(2)(a)(b) substituted for words by S.I. 2018/1298 reg. 115(b)(iv)
- Art. 43(3)(a)-(c) Art. 43(3)(a)(b) substituted for words by S.I. 2018/1298 reg. 115(c)
- Art. 47(2)(a) words omitted by S.I. 2018/1298 reg. 117(b)(ii)(bb)
- Art. 47(2)(a) words substituted by S.I. 2018/1298 reg. 117(b)(ii)(aa)
- Art. 47(2)(b) words omitted by S.I. 2018/1298 reg. 117(b)(iii)(aa)
- Art. 47(2)(b) words omitted by S.I. 2018/1298 reg. 117(b)(iii)(bb)
- Art. 52(b) substituted by S.I. 2018/1298 reg. 122(a)