

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

TITLE III

STRUCTURE 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.

Section 1

Two-tier system

Article 39

1 The management organ shall be responsible for managing the SE. A Member State may provide that a managing director or managing directors shall be responsible for the current management under the same conditions as for public limited-liability companies that have registered offices within that Member State's territory.

2 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.

3 No person may at the same time be a member of both the management organ and the supervisory organ of the same SE. The supervisory organ may, however, nominate one of its members to act as a member of the management organ in the event of a vacancy. During such a period the functions of the person concerned as a member of the supervisory organ shall be suspended. A Member State may impose a time limit on such a period.

4 The number of members of the management organ or the rules for determining it shall be laid down in the SE's statutes. A Member State may, however, fix a minimum and/or a maximum number.

5 Where no provision is made for a two-tier system in relation to public limited-liability companies with registered offices within its territory, a Member State may adopt the appropriate measures in relation to SEs.

Article 40

1 The supervisory organ shall supervise the work of the management organ. It may not itself exercise the power to manage the SE.

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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. (See end of Document for details)

2 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. This shall apply without prejudice to Article 47(4) or to any employee participation arrangements determined pursuant to Directive 2001/86/EC.

3 The number of members of the supervisory organ or the rules for determining it shall be laid down in the statutes. A Member State may, however, stipulate the number of members of the supervisory organ for SEs registered within its territory or a minimum and/or a maximum number.

Article 41

1 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.

2 In addition to the regular information referred to in paragraph 1, the management organ shall promptly pass the supervisory organ any information on events likely to have an appreciable effect on the SE.

3 The supervisory organ may require the management organ to provide information of any kind which it needs to exercise supervision in accordance with Article 40(1). A Member State may provide that each member of the supervisory organ also be entitled to this facility.

4 The supervisory organ may undertake or arrange for any investigations necessary for the performance of its duties.

5 Each member of the supervisory organ shall be entitled to examine all information submitted to it.

Article 42

The supervisory organ shall elect a chairman from among its members. If half of the members are appointed by employees, only a member appointed by the general meeting of shareholders may be elected chairman.

Section 2

The one-tier system

Article 43

1 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 under the same conditions as for public limited-liability companies that have registered offices within that Member State's territory.

2 The number of members of the administrative organ or the rules for determining it shall be laid down in the SE's statutes. A Member State may, however, set a minimum and, where necessary, a maximum number of members.

The administrative organ shall, however, consist of at least three members where employee participation is regulated in accordance with Directive 2001/86/EC.

3 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

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statutes. This shall apply without prejudice to Article 47(4) or to any employee participation arrangements determined pursuant to Directive 2001/86/EC.

4 Where no provision is made for a one-tier system in relation to public limited-liability companies with registered offices within its territory, a Member State may adopt the appropriate measures in relation to SEs.

Article 44

1 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.

2 Each member of the administrative organ shall be entitled to examine all information submitted to it.

Article 45

The administrative organ shall elect a chairman from among its members. If half of the members are appointed by employees, only a member appointed by the general meeting of shareholders may be elected chairman.

Section 3

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

Article 46

1 Members of company organs shall be appointed for a period laid down in the statutes not exceeding six years.

2 Subject to any restrictions laid down in the statutes, members may be reappointed once or more than once for the period determined in accordance with paragraph 1.

Article 47

1 An SE's statutes may permit a company or other legal entity to be a member of one of its organs, provided that the law applicable to public limited-liability companies in the Member State in which the SE's registered office is situated does not provide otherwise.

That company or other legal entity shall designate a natural person to exercise its functions on the organ in question.

2 No person may be a member of any SE organ or a representative of a member within the meaning of paragraph 1 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.

3 An SE's statutes may, in accordance with the law applicable to public limited-liability companies in the Member State in which the SE's registered office is situated, lay down special conditions of eligibility for members representing the shareholders.

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4 This Regulation shall not affect national law permitting a minority of shareholders or other persons or authorities to appoint some of the members of a company organ.

Article 48

1 An SE's statutes shall list the categories of transactions which require authorisation of the management organ by the supervisory organ in the two-tier system or an express decision by the administrative organ in the one-tier system.

A Member State may, however, provide that in the two-tier system the supervisory organ may itself make certain categories of transactions subject to authorisation.

2 A Member State may determine the categories of transactions which must at least be indicated in the statutes of SEs registered within its territory.

Article 49

The members of an SE's organs shall be under a duty, even after they have ceased to hold office, not to divulge any information which they have concerning the SE the disclosure of which might be prejudicial to the company's interests, except where such disclosure is required or permitted under national law provisions applicable to public limited-liability companies or is in the public interest.

Article 50

1 Unless otherwise provided by this Regulation or the statutes, 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.

2 Where there is no relevant provision in the statutes, the chairman of each organ shall have a casting vote in the event of a tie. There shall be no provision to the contrary in the statutes, however, where half of the supervisory organ consists of employees' representatives.

3 Where employee participation is provided for in accordance with Directive 2001/86/EC, a Member State may provide that the supervisory organ's quorum and decision-making shall, by way of derogation from the provisions referred to in paragraphs 1 and 2, be subject to the rules applicable, under the same conditions, to public limited-liability companies governed by the law of the Member State concerned.

Article 51

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.

Section 4

General meeting

Article 52

The general meeting shall decide on matters for which it is given sole responsibility by:

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- (a) this Regulation or
- (b) the legislation of the Member State in which the SE's registered office is situated adopted in implementation of Directive 2001/86/EC.

Furthermore, the general meeting shall decide on matters for which responsibility is given to the general meeting of a public limited-liability company governed by the law of the Member State in which the SE's registered office is situated, either by the law of that Member State or by the SE's statutes in accordance with that law.

Article 53

Without prejudice to the rules laid down in this section, 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.

Article 54

1 An SE shall hold a general meeting at least once each calendar year, within six months of the end of its financial year, unless the law of the Member State in which the SE's registered office is situated applicable to public limited-liability companies carrying on the same type of activity as the SE provides for more frequent meetings. A Member State may, however, provide that the first general meeting may be held at any time in the 18 months following an SE's incorporation.

2 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.

Article 55

1 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; the SE's statutes or national legislation may provide for a smaller proportion under the same conditions as those applicable to public limited-liability companies.

2 The request that a general meeting be convened shall state the items to be put on the agenda.

3 If, following a request made under paragraph 1, a general meeting is not held in due time and, in any event, within two months, the competent judicial or administrative authority within the jurisdiction of which the SE's registered office is situated may order that a general meeting be convened within a given period or authorise either the shareholders who have requested it or their representatives to convene a general meeting. This shall be without prejudice to any national provisions which allow the shareholders themselves to convene general meetings.

Article 56

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. The procedures and time limits applicable to such requests shall be laid down by the national law of the Member State in which the SE's registered office is situated or, failing that, by the SE's statutes. The above proportion may be reduced by the statutes

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or by the law of the Member State in which the SE's registered office is situated under the same conditions as are applicable to public limited-liability companies.

Article 57

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.

Article 58

The votes cast shall not include votes attaching to shares in respect of which the shareholder has not taken part in the vote or has abstained or has returned a blank or spoilt ballot paper.

Article 59

1 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.

2 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 referred to in paragraph 1 shall suffice.

3 Amendments to an SE's statutes shall be publicised in accordance with Article 13.

Article 60

1 Where an SE has two or more classes of shares, every decision by the general meeting shall be subject to a separate vote by each class of shareholders whose class rights are affected thereby.

2 Where a decision by the general meeting requires the majority of votes specified in Article 59(1) or (2), that majority shall also be required for the separate vote by each class of shareholders whose class rights are affected by the decision.

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