European company statute (SE)

Regulation on the European company statute and the directive on employee involvement (of 08.10.2001/ Transposition 3 years)

Overview of the European company statute

Types of formation
Basic construction bodies
Implication of workers
European company statute (SE)

Ways of forming an SE

**Merger**
Public limited companies from **two** Member States can form an SE by merger

**Holding**
Public and private limited companies from **two** Member States can form a Holding

**Subsidiary**
Any legal entities governed by public or private law from **two** Member States (or SE itself) form a subsidiary-SE

**Conversion**
A public limited company can transform into SE, if it has had a subsidiary in another Member State since **2 years**
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Construction

Choice of system

Two-tier system
Management Organ
Supervisory Organ (Board)

Fixed in the statutes at the time of formation: the draft terms are approved by the g.m., which may reserve ratification of the agreement

Single-tier system
Board = Administrative Organ

Member States can enact additional provisions in national company law concerning choice of system related to SE
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- Formation, registration and negotiations (I)

General provisions:

- Registration of the SE is generally linked to negotiations on employee involvement (Art. 12 of the Regulation):
- Statutes must never be in contradiction with the negotiated agreement

The management or administrative organ draws up draft terms for the formation including in detail:
see art. 20 on mergers, art. 32 on the holding, art. 36 on subsidiaries and art. 37 on conversion

The general meeting approves the draft but may reserve the right to approve the agreement on employee participation

The legality of the formation shall be scrutinised by the authority in the member state of the proposed registered office (which shall control the question of arrangements for employee involvement).
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- Formation, registration and negotiations (III)

Specials of the various formation-processes

**Mergers**
The plan has only to contain information relative to the agreement procedure Art. 20. Transfer workers and related rights with registration (Art. 29 sec. 4 regulation - but Art. 13 sec. 4 directive: option for member states to continuance the worker representation structures)

**Holding**
Here, the effects on workers must be indicated in the formation plan, option for member states for provisions relative to employee protection (Regulation Art. 34).

**Subsidiary company**
The regulation refers only to national provisions for forming a public limited company (Art. 36). Art. 3 sec. 1 of the directive stipulates that the formation must be planned and the necessary steps be taken to start negotiations.

**Conversion**
The registered office may not be transferred at the time of the conversion. The agreement must at least maintain the “acquis” of all aspects of employee involvement. (option for member states: the quorum in the superv. board for decision can be set higher)
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• Structure of the SE and negotiations (I)

Two-tier system:

• The supervisory board appoints the management board, but the MS can provide for the statutes to grant these rights to the GA, if so for national public limited companies.
• The statutes must fix the number of members of the management board (MS: fix the minimum and/or maximum number)
• Members of the supervisory board are nominated by GA (the agreement on participation remains unchanged); number or fixing: see management board
• Quarterly reporting and regular information on events that can have concrete effect on the company's business
• Request for information by supervisory board; optional for member states: for each member; all members to be kept informed
• The Chairman is elected from among members of the supervisory board; in the case of 50% workers: only a shareholder rep eligible
European company statute (SE)

• Formation of the SE and negotiations (II)

Single-tier system

• Number of members of Adm. Board fixed in rules or statutes, the MS fix the minimum or maximum number; in case of participation: at least three members

• Nominated by Gen. Assembly (the agreement remains unchanged)

• Meets at least every three months; every member is entitled to all information

• The Chairman is elected from among the members; in the event of 50% workers, only shareholder rep eligible

Common provisions

• The statutes establish which areas require approval by the supervisory or administrative board
  - the MS can provide for the supervisory board to decide itself or stipulate in the statutes what should be

• Decision-making; the Chairman has the casting vote

• Non-dissemination of information, if that could affect the company’s interests
European company statute (SE)

- Employee participation

Special negotiating body
representing workers of companies and subsidiaries

Acts as:
Representative body responsible for information and consultation of the employees of the SE, subsidiaries and companies Seats on the supervisory or administrative board

Two thirds reject the negotiation:
the standard rules are not applied, only the European WC pursuant to the law in force

Does not apply in the case of conversion if a form of participation already exists

unless
European company statute (SE)

• Employee involvement

Negotiations on involvement when creation
SE prepared

• Member States can provide for the participation of union representatives (non-employees) to the SNB

• The SNB can call upon the assistance of experts (it can also be assisted by a union organisation at Community level)

Willingness to achieve an agreement

• Area of application

• Composition of representative body, information and consultation

• Participation (places in the body, voting procedure, rights)

→ Duration of negotiations: up to 6 months (or if agreed up to 1 year)
European company statute (SE)

- Employee participation

Details on negotiations on participation (I):

- **Stage 1**: 2/3 of the votes
  - representing at least 2/3 of the workers
  - and workers from at least two States
  - decision: not to start or to cancel negotiations

  Zero option = only EWC

- **Stage 2**: regulation according to art. 4 Dir/SE

- **Stage 3**: at least standard rules
  - if no agreement between the parties
  - if no agreement reached before the deadline fixed and the governing bodies of the companies approve the continuation of the procedure
  - no decision by a 2/3 majority within the SNB
European company statute (SE)

- Employee involvement

Details on negotiations on participation (II)

- The standard rules only apply:
  - in the case of **conversion**, where participation rights already exist
  - in the case of **mergers**:
    - where a participation right already existed, extending to at least 25% of the workers
    - where a participation right already existed, covering less than 25% of the workers **and** if the SNB makes a decision on this subject, unless member-states use opting out
  - in the case of the creation of an SE by way of a **holding** or a **subsidiary**
    - where a participation right already existed, extending to at least 25% of the workers
    - where a participation right already existed, covering less than 25% of the workers **and** if the SNB makes a decision on this subject
European company statute (SE)

Employee involvement

Standard rules pursuant to art. 7 of the directive

Representative body
Consisting of employees of the SE, its subsidiaries or establishments
Elected or appointed in accordance with the national legislation and / or practices in the Member State
In proportion to the number of employees employed in each Member State

Information and consultation
Questions which concern the SE itself and any of its subsidiaries or establishments situated in another member state or which exceed the powers of the decision-making organs in a single Member State
Regular reports, meet at least once a year, agenda for meetings of the administrative, or the management and supervisory organ.
Special information in the case of exceptional circumstances

Participation
Employees or their Representative body shall have the right to elect... a number of members of the administrative or supervisory body
The number shall be equal to the highest proportion in force in the participating companies / The Representative body shall decide on the allocation of seats