



The European Company Statute



Business Support on Your Doorstep

Enterprise Europe Network London

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What is the European Company Statute?

It is a legal instrument that gives companies that have operations in more than one country the option of forming a public limited-liability company, the European Company, i.e. being established as one company under Community law. The European Company Statute is applicable throughout the European Economic Area (EEA), i.e. the 25 EU Member States, Iceland, Liechtenstein and Norway. This means that European Companies will be able to operate throughout the EEA with one set of rules rather than having to comply with the legislation of each of the countries where they have an operation. A European Company is known formally by the Latin term 'Societas Europaeae' or SE and has a legal personality, i.e. it can sue others or it can be sued.

What are the advantages of becoming an SE?

Becoming an SE can reduce administrative and legal costs significantly, as it allows companies established in more than one country within the EEA to merge or form a holding company or joint subsidiary; thereby operating throughout the EEA on the basis of a single set of rules and a unified management and reporting system. Hence, the legal and practical constraints arising from the existence of 28 different legal systems can be avoided. Companies will be able to expand and restructure their cross-border operations without having to set up a network of subsidiaries governed by different national laws.

What is the legal basis of the European Company Statute?

The legal basis of the European Company Statute consists of two pieces of legislation:

- Council Regulation (EC) No [2157/2001](#) of 8 October 2001 on the Statute for a European Company (directly applicable).
- Council Directive No [2001/86/EC](#) of 8 October 2001 complementing the Statute for a European Company with regard to the involvement of employees in the European Company (has to be implemented into national law).

The European Company Statute came into effect on 8 October 2004.

Where matters arise that are not covered by the European Company Statute, e.g. taxation, competition and intellectual property, the national legislation of the country where the SE is registered shall apply. Winding-up, liquidation, insolvency and suspension of payments are also mainly governed by national law.

How can an SE be formed?

A European Company can be set up in four different ways:

- Merger (only for public limited companies from different countries).
- Formation of a holding company (for public or private limited companies with registered offices in more than one country).
- Formation of a joint subsidiary (for legal entities from more than one country).
- Conversion into an SE of a public limited company previously formed under national law and which has had at least one subsidiary in another country for at least two years.

What is the minimum capital required to set up an SE?

An SE must have a minimum capital of 120,000 euro and more if it is registered in a country that requires a larger capital for certain companies. The capital of an SE is divided into shares. A European Company does not necessarily need to be quoted but, if it is quoted, it must be treated in the same way as public companies established under national law.

Where does an SE need to register?

There is no central register of European Companies. The registered office of an SE must be the place where it has its central administration. SEs are registered on the same register as companies established under national law, e.g. SEs with UK headquarters must be registered with Companies House. Registration and liquidation of SEs must be published in the Official Journal of the European Union.

What are the provisions regarding the statutes of an SE?

The governing bodies of an SE must be the general meeting of shareholders and either a management board and a supervisory board (two-tier system) or an administrative board (single-tier system). The authorisation of the supervisory board or the deliberation of the administrative board is needed for certain decisions, e.g. investment projects requiring more than the percentage of subscribed capital or the raising or granting of loans where the money value is more than the percentage of subscribed capital.

Where is an SE taxed?

The European Company Statute does not contain any tax arrangements. For tax purposes, an SE is therefore treated as any other multinational company under the fiscal legislation applicable in the countries where the SE operates. European Companies are subject to taxes in all the countries where they have an operation.

What rules for employee involvement apply in European Companies?

Under Directive 2001/86/EC, the European Company Statute contains provisions to involve the employees by enabling their representatives to take part in the supervision and strategic development of the company but not in the day-to-day operation, as this is the responsibility of the management.

The formation of an SE requires the participating companies to try to reach a voluntary agreement with the representatives of the companies' employees on the involvement of employees in the future SE. The employees' representatives can decide to rely on the rules on information and consultation of employees in force in the countries where the SE has an operation.

If the two parties fail to reach an agreement on the participation of employees, a set of standards laid down by the Directive and implemented into national law will apply. In the case of an SE established by merger, these standard rules only apply if 25% or more of the employees had the right to participate in decisions before the SE was registered and in the case of an SE created as a holding company or joint-venture, only if 50% of the employees had this right.

What are the provisions for employment contracts and pensions?

These are not covered by the European Company Statute but are subject to the national law of the countries in which the SE operates.

How has the European Company Statute been implemented in the UK?

Regulation (EC) 2157/2001 applies directly in the UK. The Department of Trade and Industry has issued secondary legislation to facilitate the implementation of the Statute in areas such as the details of the registration or the winding-up of an SE where the Regulation is silent. The European Public Limited-Liability Company Regulations 2004 (Statutory instrument No. [2326/2004](#)) implements both Regulation 2157/2001 and Directive 2001/86/EC.

As tax is not explicitly covered by the European Company Statute, HM Revenue and Customs has issued a [technical note](#) covering the provisions which are necessary to accommodate mergers to form SEs in UK tax law.

FURTHER SOURCES OF INFORMATION/USEFUL ADDRESSES

The Department of Trade and Industry

Corporate Law and Governance Team, European Legislation
1 Victoria Street, London, SW1H 0ET

Tel: 020 7215 0231. Email: Michael.Edbury@dti.gsi.gov.uk

Website: www.dti.gov.uk

Companies House

Crown Way, Maindy, Cardiff, CF14 3UZ

Tel: 0870 3333 636. Email: enquiries@companies-house.gov.uk

Website: www.companies-house.gov.uk

HM Revenue and Customs

National Advice Service

The addresses of the local offices are available from the website.

Tel: 0845 010 9000.

Website: www.hmrc.gov.uk

Regulatory Impact Assessment for European Company Statute

www.hmrc.gov.uk/ria/ecs.pdf

Implementation of the European Company Statute

www.hmrc.gov.uk/drafts/ecs.htm

Overview of the European Company Statute

<http://europa.eu.int/scadplus/leg/en/lvb/l26016.htm>



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