

# The European Company Statute

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*Presentation of Company Law Acquis*

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# The European Company Statute

- Council Regulation (EC) N° 2157/2001 on the Statute for a European Company (SE, or *Societas Europaea*) adopted on 8 October 2001
- Supplemented by Council Directive 2001/86/EC regarding the involvement of employees
- Entry into force 8 October 2004

# How to set up a European Company (SE) ?

## Four ways:

- (1) **merger** between two or more existing public limited companies from at least two Member States,
- (2) formation of a **holding** promoted by public and private limited-liability companies from at least two Member States,
- (3) formation of a **subsidiary** of companies and firms from at least two Member States, or
- (4) **transformation** of a public-limited company which has, for at least 2 years, had a subsidiary in another Member State.

# *Which companies can create an SE ?*

Distinction based on the ways of setting up an SE:

<i>Means of setting up an SE</i>	<i>Companies entitled to participate</i>
Merger	Public limited-liability companies
Holding	Public and private limited-liability companies
Subsidiary	Companies, firms and other legal bodies governed by public or private law
Transformation	Public limited-liability companies



# *Is the SE accessible to SMEs?*

- Common minimum capital requirement of 120 000 euros.
- Statute allows the imposition of national legislative provisions requiring a greater subscribed capital for certain activities.
- Conclusion: SE designed for medium-sized or big companies.

# ***Can non-EU companies participate in the formation of an SE?***

- Principle: companies formed under the law of a Member State, with registered office and head office within the Community  
=> Non-EU companies cannot create SEs
- European subsidiaries of foreign companies can establish an SE provided they comply with the legal conditions imposed by the Statute.

# ***What is a European Company?***

- Public limited-liability company with share capital
- Registered in the Member State in which it has its registered office
- Equal treatment with public limited-liability company in the Member State of establishment

# ***What is the law governing an SE ?***

- No single set of rules
- Scope of Regulation covers limited issues
- All other issues regarding the operation of an SE (e.g. tax, responsibility) governed:
  - in first instance, by its statute
  - for matters not covered by the statute, by national legislation.



# Employee participation in the SE Statute

- Arrangement between all participating companies concluded before the incorporation
- Negotiation between a special negotiating body representative of the employee's representation and the competent organs of the participating companies
- Arrangement covers employees' representation, information, consultation and possibly employees participation
- In case of failure, application of standard principles in certain circumstances

# Advantages of the SE Statute

- Mobility: cross-border mergers, transfer of seat
- Simplification of the legal structure,
- Reduction of administrative and legal costs,
- Reduction of operational risk,
- Enhancement of capital efficiency
- Possibility to improve credit rating
- Stronger European image

# Weaknesses of SE Statute

- Absence of unified legal regime: each SE is governed, for those matters which are not regulated by the Statute, by the legislation of the Member State in which it has its registered office
- No provisions on tax issues: each SE will be subject to tax in all countries where it has a permanent establishment  
=> SE is not a tax saving vehicle