

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

TITLE II

**FORMATION**

Section 1

**General**

*Article 15*

1 Subject to this Regulation, the formation of an SE shall be governed by the law applicable to public limited-liability companies in the Member State in which the SE establishes its registered office.

2 The registration of an SE shall be publicised in accordance with Article 13.

*Article 16*

1 An SE shall acquire legal personality on the date on which it is registered in the register referred to in Article 12.

2 If acts have been performed in an SE's name before its registration in accordance with Article 12 and the SE does not assume the obligations arising out of such acts after its registration, the natural persons, companies, firms or other legal entities which performed those acts shall be jointly and severally liable therefor, without limit, in the absence of agreement to the contrary.

Section 2

**Formation by merger**

*Article 17*

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<sup>(1)</sup> 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.

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### Article 18

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

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

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

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;

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- (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*

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*

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*

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*

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

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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

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

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

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

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;

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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*

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*

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.

### Section 3

#### **Formation of a holding SE**

#### *Article 32*

1 A holding SE may be formed in accordance with Article 2(2).

A company promoting the formation of a holding SE in accordance with Article 2(2) shall continue to exist.

2 The management or administrative organs of the companies which promote such an operation shall draw up, in the same terms, draft terms for the formation of the holding SE. The draft terms shall include a report explaining and justifying the legal and economic aspects of the formation and indicating the implications for the shareholders and for the employees of the adoption of the form of a holding SE. The draft terms shall also set out the particulars provided for in Article 20(1)(a), (b), (c), (f), (g), (h) and (i) and shall fix the minimum proportion of the

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shares in each of the companies promoting the operation which the shareholders must contribute to the formation of the holding SE. That proportion shall be shares conferring more than 50 % of the permanent voting rights.

3 For each of the companies promoting the operation, the draft terms for the formation of the holding SE shall be publicised in the manner laid down in each Member State's national law in accordance with Article 3 of Directive 68/151/EEC at least one month before the date of the general meeting called to decide thereon.

4 One or more experts independent of the companies promoting the operation, appointed or approved by a judicial or administrative authority in the Member State to which each company is subject in accordance with national provisions adopted in implementation of Directive 78/855/EEC, shall examine the draft terms of formation drawn up in accordance with paragraph 2 and draw up a written report for the shareholders of each company. By agreement between the companies promoting the operation, a single written report may be drawn up for the shareholders of all the companies by one or more independent experts, appointed or approved by a judicial or administrative authority in the Member State to which one of the companies promoting the operation or the proposed SE is subject in accordance with national provisions adopted in implementation of Directive 78/855/EEC.

5 The report shall indicate any particular difficulties of valuation and state whether the proposed share-exchange ratio is fair and reasonable, indicating the methods used to arrive at it and whether such methods are adequate in the case in question.

6 The general meeting of each company promoting the operation shall approve the draft terms of formation of the holding SE.

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

7 These provisions shall apply *mutatis mutandis* to private limited-liability companies.

### Article 33

1 The shareholders of the companies promoting such an operation shall have a period of three months in which to inform the promoting companies whether they intend to contribute their shares to the formation of the holding SE. That period shall begin on the date upon which the terms for the formation of the holding SE have been finally determined in accordance with Article 32.

2 The holding SE shall be formed only if, within the period referred to in paragraph 1, the shareholders of the companies promoting the operation have assigned the minimum proportion of shares in each company in accordance with the draft terms of formation and if all the other conditions are fulfilled.

3 If the conditions for the formation of the holding SE are all fulfilled in accordance with paragraph 2, that fact shall, in respect of each of the promoting companies, be publicised in the manner laid down in the national law governing each of those companies adopted in implementation of Article 3 of Directive 68/151/EEC.

Shareholders of the companies promoting the operation who have not indicated whether they intend to make their shares available to the promoting companies for the purpose of forming the holding SE within the period referred to in paragraph 1 shall have a further month in which to do so.

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4 Shareholders who have contributed their securities to the formation of the SE shall receive shares in the holding SE.

5 The holding SE may not be registered until it is shown that the formalities referred to in Article 32 have been completed and that the conditions referred to in paragraph 2 have been fulfilled.

#### *Article 34*

A Member State may, in the case of companies promoting such an operation, adopt provisions designed to ensure protection for minority shareholders who oppose the operation, creditors and employees.

### Section 4

#### **Formation of a subsidiary SE**

#### *Article 35*

An SE may be formed in accordance with Article 2(3).

#### *Article 36*

Companies, firms and other legal entities participating in such an operation shall be subject to the provisions governing their participation in the formation of a subsidiary in the form of a public limited-liability company under national law.

### Section 5

#### **Conversion of an existing public limited-liability company into an SE**

#### *Article 37*

1 An SE may be formed in accordance with Article 2(4).

2 Without prejudice to Article 12 the conversion of a public limited-liability company into an SE shall not result in the winding up of the company or in the creation of a new legal person.

3 The registered office may not be transferred from one Member State to another pursuant to Article 8 at the same time as the conversion is effected.

4 The management or administrative organ of the company in question shall draw up draft terms of conversion and a report explaining and justifying the legal and economic aspects of the conversion and indicating the implications for the shareholders and for the employees of the adoption of the form of an SE.

5 The draft terms of conversion shall be publicised in the manner laid down in each Member State's law in accordance with Article 3 of Directive 68/151/EEC at least one month before the general meeting called upon to decide thereon.

6 Before the general meeting referred to in paragraph 7 one or more independent experts appointed or approved, in accordance with the national provisions adopted in implementation of Article 10 of Directive 78/855/EEC, by a judicial or administrative authority in the Member State to which the company being converted into an SE is subject shall certify in compliance

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with Directive 77/91/EEC<sup>(2)</sup> *mutatis mutandis* that the company has net assets at least equivalent to its capital plus those reserves which must not be distributed under the law or the Statutes.

7 The general meeting of the company in question shall approve the draft terms of conversion together with the statutes of the SE. The decision of the general meeting shall be passed as laid down in the provisions of national law adopted in implementation of Article 7 of Directive 78/855/EEC.

8 Member States may condition a conversion to a favourable vote of a qualified majority or unanimity in the organ of the company to be converted within which employee participation is organised.

9 The rights and obligations of the company to be converted 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.



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- (1) [OJ L 295, 20.10.1978, p. 36](#). Directive as last amended by the 1994 Act of Accession.
- (2) Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent ([OJ L 26, 31.1.1977, p. 1](#)). Directive as last amended by the 1994 Act of Accession.

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