

The European Company – Frequently Asked Questions

1. What is the European Company Statute?

It is a legal instrument based on European Community law that gives companies the **option** of forming a European Company – known formally by its Latin name of ‘Societas Europaeae’ (SE). An SE can operate on a European-wide basis and be governed by Community law directly applicable in all Member States. The European Company Statute is established by two pieces of legislation, namely a Regulation (directly applicable in Member States) establishing the company law rules and a Directive (which will have to be implemented in national law in all Member States) on worker involvement.

2. How can a European Company be set up?

In one of four ways:

- By the merger of two or more existing public limited companies from at least two different EU Member States;
- By the formation of a holding company promoted by public or private limited companies from at least two different Member States;
- By the formation of a subsidiary of companies from at least two different Member States;
- By the transformation of a public limited company which has, for at least two years, had a subsidiary in another Member State.

3. What are the advantages of setting up a European Company?

The creation of the European Company Statute will mean in practice, that companies established in more than one Member State will be able to merge and operate throughout the EU on the basis of a single set of rules and a unified management and reporting system. They will therefore avoid the need to set up a financially costly and administratively time-consuming complex network of subsidiaries governed by different national laws. In particular, there will be advantages in terms of significant reductions in administrative and legal costs, a single legal structure and unified management and reporting systems. The potential savings in terms of administrative costs were estimated to be up to €30 billion per

year by the Competitiveness Advisory Group of industrialists convened in 1995 by the Heads of State and Government and chaired by Carlo Ciampi.

By setting up as a European Company a business can restructure fast and easily to take the best possible advantage of the trading opportunities offered by the Internal Market. European Companies with commercial interests in more than one Member State will be able to move across borders easily as the need arises in response to the changing needs of their business.

This is because the Statute will allow an SE registered in Member State A to move its registered office to Member State B without, as is the case now, having to wind up the company in Member State A and re-register it in Member State B. For pan-European projects, for example Trans-European Network projects in the transport or energy sectors (the upgrading of railway lines/road networks) a single European Company could attract private venture capital more easily than a series of national companies all operating under national rules.

4. Are companies obliged to become European Companies?

No. But if they wish to operate in a series of different Member States without establishing themselves as an SE they will have to respect a series of national laws governing company start-ups, often at considerable legal and administrative cost.

5. Will there be a central register of European Companies?

No. Each SE will be registered in a Member State on the same register as companies established under national law. However, the registration of each SE will be published in the EC's Official Journal

6. Can a European Company be registered in any Member State in which it operates (e.g. where it has a mailbox) or must it be registered where it has its operational headquarters?

The European Company must be registered in the Member State where it has its administrative head office. This is the only system that allows effective supervision of the whole SE, so as to avoid the SE being used for doubtful practices such as tax fraud or money laundering.

7. Where will a European Company be taxed?

Despite Commission proposals to this effect, the SE statute does not contain any tax arrangements. An SE will therefore, for tax purposes, be treated as any other multinational company according to the national fiscal legislation applicable at company level or branch level.

All EU Directives in the tax field either do or will, shortly, apply to the EU company. The Council has already adopted a Directive (for details of proposal see [IP/03/1214](#)) which extends to European Companies the benefit of the Parent-Subsidiary Company which eliminates tax obstacles for groups of companies in the EU by abolishing withholding taxes on payments of dividends between associated companies of different Member States and preventing double taxation of parent companies on the profits of their subsidiaries.

Once the Council has adopted the Commission's proposals for modifications of the Mergers Directive (see [IP/03/1418](#)) and the Interest and Royalties Directive (2003/49/EC), it will be the case that the creation and the running of an European Company will be subject to the same tax rules as that of any other Plc, SA, AG, SpA etc. under national law. The same principle applies with respect to VAT.

In one aspect the European Company will even be better off: Currently from a company law perspective only the European Company can transfer its seat from one Member State to another without winding up and re-creating itself. The proposal to amend the Mergers Directive to apply it to European Companies will ensure that this transaction will - subject to some conditions - not trigger any tax charges.

Finally, the Commission has launched the idea of testing the common consolidated EU company tax base with a European Company pilot scheme. There are pros and cons for this idea and we will need to deepen the discussion when we make progress with the work on the tax base. In any event, any possible discrimination would need to be avoided. Concluding, the Commission has done its utmost to see that the European Company at the very least has the same company tax treatment as any other company.

8. What are the provisions for worker involvement in European Companies?

Under the Directive on worker involvement, the creation of a European Company requires negotiations on the involvement of employees with a body representing all employees of the companies concerned. If it proved impossible to negotiate a mutually-satisfactory

arrangement then a set of standard principles, laid down in an annexe to the Directive would apply. Essentially these principles oblige SE managers to provide regular reports on the basis of which there must be regular consultation of and information to a body representing the companies' employees. These reports must detail the companies' current and future business plans, production and sales levels, implications of these for the workforce, management changes, mergers, divestments, potential closures and layoffs.

In certain circumstances, where managers and employee representatives were unable to negotiate a mutually-satisfactory agreement and where the companies involved in the creation of an SE were previously covered by participation rules, a European Company would be obliged to apply standard principles on participation of its workers. This would be the case of a European Company created as a holding company or joint-venture when a majority of the employees had the right, prior to the creation of the SE, to participate in company decisions.

In the case of a European Company created by a merger, the standard principles on participation of its workers would have to be applied when at least 25 % of employees had the right to participate before the merger. It is on this element that agreement on the Directive had, until the Nice Summit in December 2000, not proved possible. The compromise struck by Heads of State and Government was to authorise a Member State not to implement the Directive on participation in the case of SEs created by merger, but in that case the SE could be registered in that Member State only if an agreement was concluded or when no employees were covered by participation rules before the SE was created.

In the case of a transformation of a national company into an SE, the arrangements for worker participation applied by this national company prior to its transformation as a European Company would have to continue to apply.

9. Must European Companies be publicly quoted?

No – private companies and medium sized companies may also opt to become European Companies. If an SE's shares are quoted, it must be treated in the same way as public companies established under national law.

The minimum capital requirement has been set at 120,000 euros so as to enable medium-sized companies from different Member States to create an SE.

10. Why has it taken more than 30 years to put in place this measure?

Partly because the European Company, in order to be based on Community law valid in each Member State, has to be established by a Regulation (directly applicable in all Member States) as opposed to a Directive (implemented through national law). Agreement therefore required consensus amongst all Member States on aspects of company law where there are still widely varying rules in national law. Moreover, it has required finding common ground between those Member States with a tradition of worker involvement (anxious that European Companies should not be used as a means to avoid national worker involvement requirements) and those Member States where worker involvement is not imposed (anxious that European Companies should not be used to introduce worker involvement obligations). In the end, it required a compromise at the EU's highest political level, the European Council (at Nice).

11. Does the European Company Statute include provisions on employment contracts and pensions?

No. Employment contracts and pensions are not covered by the Regulation. They would be subject to national law in the Member States where the headquarters and branches operated.

As regards company pension schemes, European Companies would stand to benefit from the provisions of the proposal for a Directive on occupational retirement provision presented by the Commission in October 2000 (see [IP/00/1141](#)), notably as regards the possibility for a company to set up a single pension fund for all employees throughout the EU.

Brussels, 8th October 2004

Company law: European Company Statute in force, but national delays stop companies using it

The European Company Statute in theory became available for use on 8 October 2004, over thirty years after it was first proposed by the Commission. A related Directive concerning worker involvement in European Companies entered into force at the same time. However, only six of the 28 EU and EEA Member States have implemented the regulations at national level necessary to allow European Companies to be set up on their territory. Until the rest do so, many companies operating in more than one Member State will be denied the option of being established as a single company under Community law and thus of being able to operate throughout the EU with one set of rules and a unified management and reporting system.

Internal Market Commissioner Frits Bolkestein said: "The European Company Statute makes it easier and cheaper for companies to expand and to manage cross-border operations without the red tape of having to set up a network of subsidiaries. Not only will that encourage more companies to exploit cross-border opportunities, the reduced costs should ultimately lead to downward pressure on prices and boost Europe's overall competitiveness. But this is pie in the sky unless Member States live up to their commitments and put the framework in place to allow European companies to be set up. Until they do that, they are holding their own businesses and the European economy back. That is unacceptable."

Only Belgium, Austria, Denmark, Sweden, Finland and Iceland have so far taken the necessary measures to allow European Companies to be founded on their territory, despite the fact that the European Company Statute was adopted at EU level in 2001 (see [IP/01/1376](#) and [MEMO/00/119](#)).

Under the European Company Statute, a European Company can be set up by the creation of a holding company or a joint subsidiary or by the merger of companies located in at least two Member States or by the conversion of an existing company set up under national law.

Under the accompanying Directive on employee involvement, the creation of a European Company requires negotiations on the involvement of employees with a body representing all employees of the companies concerned. If it proves impossible to negotiate a mutually-satisfactory arrangement then a set of standard principles applies, the exact nature of which depends on the format for worker participation in the companies concerned before the European Company was set up.

For the full texts of the Regulation on the European Company Statute and of the accompanying Directive on employee involvement, see: http://www.europa.eu.int/comm/internal_market/en/company/company/official/index.htm