



# Procedure file

Basic information		
CNS - Consultation procedure Regulation	1989/0218(CNS)	Procedure completed
Statute for a European Company (SE)		
See also <a href="#">2020/0073(APP)</a>		
Subject 3.45.01 Company law		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>JURI</b> Legal Affairs and Internal Market		29/02/2000
		PPE-DE <a href="#">MAYER Hans-Peter</a>	
	Committee for opinion	Rapporteur for opinion	Appointed
	<b>ECON</b> Economic and Monetary Affairs	The committee decided not to give an opinion.	
	<b>EMPL</b> Employment and Social Affairs		15/02/2001
		ELDR <a href="#">MANDERS Antonius</a>	
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Employment, Social Policy, Health and Consumer Affairs2373</a>		08/10/2001
	<a href="#">Employment, Social Policy, Health and Consumer Affairs2323</a>		20/12/2000
	Social Affairs	<a href="#">2226</a>	29/11/1999
	Social Affairs	<a href="#">2182</a>	25/05/1999
	Social Affairs	<a href="#">2164</a>	09/03/1999
	Social Affairs	<a href="#">2145</a>	01/12/1998
	Social Affairs	<a href="#">2127</a>	27/10/1998
	Social Affairs	<a href="#">2102</a>	04/06/1998
	<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a>	<a href="#">2094</a>	18/05/1998
	Social Affairs	<a href="#">2081</a>	07/04/1998
	<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a>	<a href="#">2079</a>	30/03/1998
	<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a>	<a href="#">2051</a>	27/11/1997
	<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a>	<a href="#">1929</a>	28/05/1996

Key events			
25/08/1989	Legislative proposal published	COM(1989)0268	Summary

09/10/1989	Committee referral announced in Parliament		
18/12/1990	Vote in committee		
18/12/1990	Committee report tabled for plenary, 1st reading/single reading	A3-0373/1990	
22/01/1991	Debate in Parliament		
24/01/1991	Decision by Parliament	T3-0014/1991	Summary
06/05/1991	Modified legislative proposal published	COM(1991)0174	Summary
23/11/1993	Vote in committee		
23/11/1993	Committee report tabled for plenary confirming Parliament's position	A3-0364/1993	
02/12/1993	Decision by Parliament	T3-0681/1993	Summary
28/05/1996	Debate in Council	<a href="#">1929</a>	Summary
27/11/1997	Debate in Council	<a href="#">2051</a>	
30/03/1998	Debate in Council	<a href="#">2079</a>	
07/04/1998	Debate in Council	<a href="#">2081</a>	
18/05/1998	Debate in Council	<a href="#">2094</a>	
04/06/1998	Debate in Council	<a href="#">2102</a>	
27/10/1998	Debate in Council	<a href="#">2127</a>	
01/12/1998	Debate in Council	<a href="#">2145</a>	
09/03/1999	Debate in Council	<a href="#">2164</a>	
25/05/1999	Debate in Council	<a href="#">2182</a>	
29/11/1999	Debate in Council	<a href="#">2226</a>	
30/11/2000	Debate in Council		
01/02/2001	Amended legislative proposal for reconsultation published	<a href="#">14886/2000</a>	Summary
09/03/2001	Formal reconsultation of Parliament		
26/06/2001	Vote in committee		Summary
26/06/2001	Committee report tabled for plenary, reconsultation	<a href="#">A5-0243/2001</a>	
03/09/2001	Debate in Parliament		
04/09/2001	Decision by Parliament	<a href="#">T5-0416/2001</a>	Summary
08/10/2001	Act adopted by Council after consultation of Parliament		
08/10/2001	End of procedure in Parliament		
10/11/2001	Final act published in Official Journal		

Technical information	
Procedure reference	1989/0218(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Regulation
	See also <a href="#">2020/0073(APP)</a>
Legal basis	EC Treaty (after Amsterdam) EC 308
Stage reached in procedure	Procedure completed

Documentation gateway					
Legislative proposal		COM(1989)0268	25/08/1989	EC	Summary
Economic and Social Committee: opinion, report		<a href="#">CES0379/1990</a> <a href="#">OJ C 124 21.05.1990, p. 0034</a>	28/03/1990	ESC	Summary
Committee report tabled for plenary, 1st reading/single reading		A3-0373/1990 <a href="#">OJ C 048 25.02.1991, p. 0005</a>	18/12/1990	EP	
Text adopted by Parliament, 1st reading/single reading		T3-0014/1991 <a href="#">OJ C 048 25.02.1991, p. 0054-0099</a>	24/01/1991	EP	Summary
Modified legislative proposal		COM(1991)0174	06/05/1991	EC	Summary
Reconsultation		COM(1993)0570	10/11/1993	EC	
Committee final report tabled for plenary, 1st reading/single reading		A3-0364/1993 <a href="#">OJ C 342 20.12.1993, p. 0002</a>	23/11/1993	EP	
Text adopted by Parliament confirming position adopted at 1st reading		T3-0681/1993 <a href="#">OJ C 342 20.12.1993, p. 0015-0030</a>	02/12/1993	EP	Summary
Amended legislative proposal for reconsultation		<a href="#">14886/2000</a>	01/02/2001	CSL	Summary
Committee final report tabled for plenary, reconsultation		<a href="#">A5-0243/2001</a>	26/06/2001	EP	
Text adopted by Parliament after reconsultation		<a href="#">T5-0416/2001</a> OJ C 072 21.03.2002, p. 0033-0059 E	04/09/2001	EP	Summary
Follow-up document		<a href="#">COM(2010)0676</a>	17/11/2010	EC	Summary
Follow-up document		<a href="#">SEC(2010)1391</a>	17/11/2010	EC	Summary

Additional information	
European Commission	<a href="#">EUR-Lex</a>

Final act
<a href="#">Regulation 2001/2157</a> <a href="#">OJ L 294 10.11.2001, p. 0001</a> Summary

**PURPOSE:** to create a European Company with its own legal framework in order to avoid the legal and practical constraints that result from twelve different legal regimes. **CONTENT:** This proposal for a Regulation defines the rules relating to the European Company (Societas Europaea = SE). The SE may be formed as a result of a merger, the formation of holding company, the formation of a joint subsidiary, or the conversion of a public limited company previously formed under national law. A draft constitution is required to be drawn up, to be published in the necessary official channels, to be examined by independent experts who will prepare a detailed report, and be approved by the General Meeting of shareholders. The SE is required to have a minimum capital of 100 000 euros, allocated in shares, the increase or reduction of which is subject to rules (in particular, the preferential right of shareholders and the protection of creditors). The rights and obligations with respect to shares are specified. The subscription to and acquisition of shares in the SE by the SE are generally prohibited. The SE has as governing bodies the General meeting of shareholders and either a management board and a supervisory board (two-tier system) or an administrative board (one-tier system). The appointment and the rights and obligations of the members, and the roles and operation of these bodies are defined. The SE must draw up annual accounts comprising the balance sheet, the profit and loss account, and an annual report giving a fair view of the company's business and of its position; consolidated accounts may also be required. The proposal also includes detailed rules concerning the winding up and liquidation of the company (including the role of liquidators).?

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## Statute for a European Company (SE)

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## Statute for a European Company (SE)

The Commission's amended proposal takes into account a number of the Parliament's amendments, and includes the following main changes: the commercial form of the company is removed. Private limited companies have access to the Statute. A public limited company may convert itself into an SE in conjunction with a subsidiary based in another Member State. Special provisions govern the transfer of the headquarters of the SE. The field of application of the Regulation is expanded. The establishment of an SE may be governed by the national legislation relating to plcs. The company is accorded its legal personality on the day of its registration. A system to monitor the legality of mergers is provided for. The merger and simultaneous constitution of the SE take effect on the date on which the SE is registered. The merger may take place according to simplified procedures. The provisions relating to the creation of a holding SE are more detailed. A variety of processes of creation of an SE while preserving the SE's transnational and Community nature is allowed for. The provisions relating to the increase and reduction in capital are simplified and in line with Directive 77/91/EEC. The SE can have access to all forms of finance open to national plcs. The functions of the management and supervisory bodies are laid down in greater detail. The reasons for the liquidation of the SE are clarified. There are extensive references to the national law of the Member State in which the SE has been established for questions in relation to liquidation rules, insolvency and the ceasing of payments.

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## Statute for a European Company (SE)

The presidency took note of the interest shown by the Council in continuing to examine appropriate solutions for introducing a Statute for a European Company, which remained an important objective in the process of completing the internal market. A large majority of the delegations hoped that solutions would be found to this and other problems, in light of the communication from the Commission on procedures for informing and consulting the workforce, and demonstrated their willingness to continue with this work while at the same time taking into consideration the guidelines that the Social Affairs Committee was to produce on the subject of the said communication.

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## Statute for a European Company (SE)

On 30 June 1970, the European Commission presented its first proposal for a regulation concerning a European Company. This proposal was modified in 1975. On 25 August 1989, the Commission presented new proposals concerning the Statute for a European Company and an associated directive regarding the involvement of employees, which were modified in 1991. The European Parliament gave its opinions on the proposals but the Council subsequently decided that the correct legal base for the proposals was Article 308 of the EC Treaty. In December 2000, the Council agreed unanimously on guidelines for political agreement on two acts concerning the European Company (SE): the Regulation on the Statute for a European Company and second, the Directive supplementing the Statute for a European Company with regard to the involvement of employees. The Council decided to consult the European Parliament again following legal/linguistic finalisation of the texts, given the substantial changes introduced since Parliament was last consulted, including the change in legal basis. Against this background, the Regulation is intended to create a uniform legal framework within which companies from different Member States will be able to plan and carry through the reorganisation of their activities at Community level. Several options will be available to companies operating for the "Societas Europaea" model some 30 years after it was first proposed. The proposed regulation lists the options opting for the SE model. For example, an SE must, inter alia, take the form of a company with share capital. To ensure that such companies are of a reasonable size, a minimum amount of capital has been set. The subscribed capital must be at least EUR 120 000. ?

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## Statute for a European Company (SE)

The committee adopted the report by Hans-Peter MAYER (EPP-ED, D) amending the proposal under the consultation procedure. It sought in fact to change the legal base so that the proposal would be brought under the codecision procedure, thereby enabling Parliament to have a decisive say in the regulation. If Council did not agree, the committee wanted Parliament to reserve the right, if it so chose after the legislative process had been concluded, to challenge the legal base before the Court in Luxembourg. In addition, the committee adopted several amendments aimed at securing the existing rights of workers, in particular in the event of the transfer of an SE or the merger of two SEs. Finally, MEPs wanted the Commission to submit a report on the application of this regulation at the latest three years after its entry into force

rather than five as proposed by the Commission. This report would examine in particular whether fiscal rules applicable to SEs should be harmonised to solve any problems resulting from differing systems of taxation.?

## Statute for a European Company (SE)

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By adopting the resolution by Mr Hans-Peter MAYER (EPP-ED, D) approving a regulation on the statute for a European Company, Parliament welcomes in principle the agreement finally reached by the European Council at its Summit in Nice. (Please refer to the previous text). It should be noted that the Parliament adopted a series of amendments tabled by the Liberal group which mainly seek to simplify and improve the Commission's proposal in areas such as taxation, formation, registration, conversion and internal organisation of a SE. The purpose of these amendments is to secure a higher degree of legal certainty, to reduce the administrative burden for the SEs and to ensure a more uniform treatment of companies. ?

## Statute for a European Company (SE)

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AIM: To pave the way for the creation of a statute for a European company. COMMUNITY MEASURE: Regulation (EC) No 2157/2001 on the Statute for a European company (SE). CONTENT: The Council has completed the adoption of the two legislative instruments required for the creation of a European company, namely the Regulation on the Statute for a European company and the Directive supplementing the Statute for a European company with regard to the involvement of employees (see COD/1989/0268), the two instruments being indissolubly linked. After examining the amendments proposed by the European Parliament, the Council endorsed the instruments in the form in which they had been approved at the meeting of the Employment and Social Policy Council on 20 December 2000. The European company is regarded as one of the key elements in the process of completing the internal market. The statute of the European company will provide enterprises with a new optional instrument that will make cross-border business management more flexible and less bureaucratic, which should help to enhance the competitiveness of European business. It will make it possible for a company to be set up within the territory of the Community in the form of a public limited company, with the Latin designation *Societas Europaea* (SE). The SE statute will allow enterprises to operate throughout the Community while being subject to the Community legislation that is directly applicable in all Member States. Several options are open to enterprises that are based in at least two Member States and wish to opt for the SE model: they can merge, create a holding company, create joint subsidiaries or convert themselves into an SE. The statute will allow a public limited company which has its registered office and head office within the Community to transform itself into an SE without going into liquidation. The SE will be entered in a register in the Member State where its registered office is located. Every registration of an SE will be recorded in the Official Journal of the European Communities. An SE must take the form of a company with share capital. To ensure that such companies are of a reasonable size, EUR 120 000 is prescribed as the minimum amount of subscribed capital for an SE. The rules relating to employee involvement in an SE are laid down in Directive 2001/86/EC, the provisions of which are designed to guarantee that the creation of an SE does not entail the disappearance or erosion of systems of employee involvement that exist within the companies participating in the establishment of an SE. Given the diversity of rules and practices in the Member States as regards the manner in which employees' representatives are involved in decision-making within companies, the Directive is not intended to establish a single European model. Nevertheless, it lays down that SEs must have procedures for informing and consulting their workforce on a supranational level. When rights of worker participation exist within one or more of the companies forming an SE, those rights will be preserved through their transfer to the SE on its establishment, unless the parties involved, acting through the special negotiating body representing the employees of all the companies involved in the SE, decide otherwise. ENTRY INTO FORCE OF THE REGULATION: 8 October 2001 ENTRY INTO FORCE OF THE DIRECTIVE ON EMPLOYEE INVOLVEMENT (NATIONAL TRANSPOSITION): 8 October 2004. ?

## Statute for a European Company (SE)

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The Commission presents a report on the application of Council Regulation 2157/2001/EC on the Statute for a European Company (SE), following an external study. It notes that as of June 2010, 595 SEs were registered in the EU/EEA Member States. The number of SEs increased in an exponential way from 2004 to 2008. In 2009 fewer new SEs were created than in 2008, but in 2010 the trend was again an increased number of new SEs created. SEs were registered in 21 out of the 30 EU/EEA Member States, with the vast majority (around 70%) in the Czech Republic or Germany. Very few SEs were registered in Southern European Member States, with the exception of Cyprus.

Positive and negative drivers for setting up an SE: positive drivers include the European image of an SE, and its supra-national character. The possibility of transferring the registered office to another Member State is considered an essential driver and a real comparative advantage of the SE compared to national companies. A number of respondents to the public consultation mentioned the SE's potential for reorganisation and simplification of the group structure as a positive driver.

The set-up costs, time-consuming and complex procedures, and legal uncertainty together with the lack of hindsight and practical experience of the advisors and competent public authorities are reported as the most important negative drivers when establishing an SE. Some consider the rules on employee involvement as a negative driver as, in their view, they are complex and time-consuming, especially in Member States where the national legislation does not provide for a system of worker participation. Stakeholders also mention a heavy cross-border requirement (in particular the requirement for companies forming an SE to have had a subsidiary or a branch in another Member State for at least two years before the SE creation), limited methods of creation of an SE and a high minimum capital requirement as considerable obstacles.

Trends on the distribution of SEs: it is reported that the size of national companies is likely to have an effect on the distribution of SEs. It is argued that the increased cost (especially the high minimum capital requirement) and complexity of setting up an SE as compared to a public limited-liability company constitutes more of a hurdle in Member States where the national companies tend to be SMEs. Poland, Spain, Portugal, Greece and Italy are mentioned as examples of countries where this could partially explain the small number of SEs. The knowledge and awareness in the legal and business community about the SE form also seems to have an impact.

As regards the correlation between the distribution of SEs in different Member States and the national rules on employee participation stakeholders' views vary. While the external study and the vast majority of respondents to the public consultation agree that such trend, in

general, exists, worker organisations and researchers working in the field of labour law disagree with this view.

Respondents to the public consultation mentioned also other possible explanations for the distribution of SEs in the EU/EEA, in particular: (i) the flexibility of certain aspects of the SE form compared to national legal forms; (ii) the different value of the European label; (iii) differing set-up costs and transaction costs of an SE; (iv) tax systems of Member States.

The high number of shelf SEs in certain Member States, in particular the Czech Republic and Germany, also contribute to the explanation of the high number of SEs in these two Member States.

The report notes that the SE Regulation imposes administrative burdens of EUR 5.2 million annually. This represents 0.04% of the EUR 12.1bn administrative burden measured in the annual account/company law area in February 2009. However, it should be noted that administrative costs include all information obligations regardless of whether or not these obligations are necessary to protect legitimate stakeholder interests. The High Level Group of Independent Stakeholders on Administrative Burdens (HLG) underlines that any future reform of the SE Statute should take into account the need to reduce administrative burdens.

The external study concludes that the original objectives of the SE Statute have been achieved to some extent, but the situation could still be improved. The European Company has made it possible for companies with a European dimension to transfer the registered seat cross-border, to reorganise better and to choose between different board structures, while maintaining the rights of employees to involvement and protecting the interests of minority shareholders and third parties. The European image and supra-national character of the SE are other positive aspects of the SE.

However, six years of experience with the SE Regulation have shown that the application of the Statute poses a number of problems in practice. The SE Statute does not provide for a uniform SE form across the EU, but 27 different types of SEs. The Statute contains many references to national law and there is uncertainty about the legal effect of directly applicable law and its interface with national law. Furthermore, the uneven distribution of SEs across the EU shows that the Statute is not adapted to the situation of companies in all Member States.

Any amendments to the SE Statute to tackle the practical problems identified by various stakeholders will have to take into account that the SE Statute is a result of a delicate compromise following lengthy negotiations. The Commission is currently reflecting on potential amendments to the SE Statute, with a view to making proposals in 2012, if appropriate. Any such amendments would need to be carried out in parallel with any possible revision of the SE Directive, which would be subject to consultation of social partners, as well as to an impact assessment.

## Statute for a European Company (SE)

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The Commission presents a Staff Working Document which accompanies its report on the application of Council Regulation 2157/2001/EC on the Statute for a European Company (SE). The report provides a description of the inventory of SEs and the implementation of the options for Member States contained in the SE Regulation, as well as a more detailed description of the practical problems encountered in the course of setting up or running an SE.