



## EUROPEAN SOCIETY. A CHALLENGE FOR THE DEVELOPMENT OF INTERNATIONAL TRADE

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### Abstract

Member States of the European Union decided to create a new form of European company, officially designated by the Latin name 'Societas Europaea'. This European company was meant as a tool for cross-border cooperation between companies needed to adapt production and trade structures of the Community dimension. These companies were primarily aimed scale reorganization of their community. Regulation on the European Company Statute provides, primarily, a way of avoiding national laws demanding the creation of companies and secondly, organizing a legal framework that allows participation of workers in decisions within the company.

### Keywords

European Company,  
Societas Europaea,  
Internal market

### 1. Introduction

EU internal market is a single market, on which the free movement of goods, services, capital and people and territory that European citizens are free to live, work, study and do business. Since its creation in 1993, the single market has become more open competitive environment has created new jobs and lowered many barriers to trade.

In this context, the creation of an internal market, where predominantly the area of freedom, was necessary to create legislation and on the freedom of an undertaking to move your business, within the internal market, in a place where it can capitalize more work better. This idea applies to the freedom of establishment if a company based in the Netherlands believes it could seize a part of the French if I were allowed to establish there a business, then it should not be prevented do so by French law which discriminate on grounds of nationality. The same can be exemplified in relation to the free movement of workers. Work is one of the factors of production and can be better utilized in some areas than in others. This happens, for example, where there is a surplus of supply over demand for labor in southern Italy and an excess of demand over supply in some parts of Germany. In this case, the work is worth more in Germany than in Italy. The amount of work throughout the Community is maximized; therefore if workers can move to the area where they work it is better used.

The same idea is also mentioned in the preamble of Regulation (EC) Nr. 2157/2001 of 8 October 2001 on the European Company Statute (SE): "Completing the internal market and the improvement it brings economic

and social situation in the Community requires not only the removal of barriers to trade, but also an adaptation of production structures of the Community dimension. To this end, it is essential that those companies whose activity is not limited to satisfying purely local needs should be able to plan and carry out the reorganization of their business on a Community scale. "

### 2. The legal regime applicable European Society

Member States of the European Union decided, after more than 40 years of preparatory work, to give life to a new form of European company, officially designated by the Latin name of "Societas Europaea", which was intended to be an instrument for cooperation border between companies. The two major objectives pursued for the creation of the European Society were: on the one hand, forming shapes society that have its own legal framework, different from the one governed by the laws of Member States in order to allow companies incorporated in those states to merge to form a holding company or joint subsidiary, thereby avoiding, through a legal way, legal and practical restrictions resulting from the possible application of different national laws; on the other hand, organizing the necessary legal framework to regulate employee participation in company decisions, recognizing their place and role in the enterprise.

European Society applicable legal regime is regulated, both at Community and national level, a number of legal acts. Community plan, the provisions applicable are: Regulation (EC) Nr. 2157/2001 of 8 October 2001 on the European Company Statute (SE); Directive 2001/86 /EC of 8 October 2001 supplementing the Statute for a

European company with regard to the involvement of workers. Nationally, relevant provisions are: the Companies Law Nr. 31/1990, Title VII - European Society, introduced by Ordinance No. title. 52/2008, Government Decision no. 187/2007 on procedures for information, consultation and other ways of involving employees in the work of European society.

Regulation Nr. 2157/2001 does not contain a definition of European society. For this reason, returned doctrine task to formulate a definition: "The European Company is an associative, the type of company stock, as to the holding of a commercial activity involving companies governed by different national laws."

However, this is not the only definition made in doctrine, "European society is the kind of joint stock company having legal personality, with a minimum capital of 120,000 euro, created in the territory of a Member State to associated legal entities (companies or other legal bodies governed by public or private) whose national status is governed by the laws of at least two different Member States, a company that has a purpose and object of activity beyond local interests or national whose legal status is governed by provisions of Regulation (EC) Nr. 2157/2001".

### 3. European Society Creation

The premise is the creation of a European society of overcoming situations relevant national framework. This dimension involves multinational company within at least two different EU national jurisdictions.

According to art. 1 of Regulation Nr. 2157/2001, the European Union can create form a limited liability company in European conditions and in the manner prescribed by regulation, a company whose capital is divided into shares with legal personality. No shareholder in this company is not responsible for different amount subscribed and employee involvement is a requirement in the Directive 2001/86/EC. According to paragraph 13 of the Preamble to Regulation Nr. 2157/2001, a European company should create a company with share capital, it being the form best, both in terms of finance and management, requirements of companies operating activities at European level. The minimum share capital paid up at the establishment must not be lower than the amount of 120,000 Euro. The capital will be expressed in euro unless the Member State where it is established is not part of the third stage of Economic and Monetary Union when it will express in national currency. Whatever the situation, an SE may express its capital in euro. However, the law of a Member State requiring a greater subscribed capital for companies carrying on certain types of activity shall apply and European companies with headquarters in the Member State concerned. According to Article 5 of Regulation Nr. 2157/2001,

change of share shares, bonds and other securities of European society are governed by the provisions applicable to a limited liability company with registered office in the Member State concerned is registered European society. As regards headquarters, the Regulation provides that it is located within the European Union, in the same Member State as its head office. In addition, any Member State may impose a European company registered in its territory the obligation of locating the head office and central administration in one place. According to article 8 of the Regulation, the European company's registered office may be transferred to another Member State without the need to dissolve the European society in that country and without the need to create a new legal entity. New registration can not take place until after the certificate attesting to the completion of the acts and formalities required prior to the transfer and proof that the necessary registration formalities have been completed in the country where the new registered office.

Name European Society is governed by art. 11 of the Regulations, it states that the company name is preceded or followed by the abbreviation "SE", adding that only European companies may include the abbreviation in the name. European Society Registration will be in the Member State where it has its registered office in the register specified by the law of the Member State concerned. Regulation adds that European society can not be registered until the conclusion of an agreement on arrangements for employee involvement pursuant to Directive 2001/86 / EC. Register in which European companies are registered in the register is the same as registered societies under national law. It criticized this decision, the absence of a European Central Register in which European companies are registered will be a disadvantage. Registration of European companies and erasure are published for information in the Official Journal of the European Communities.

European company will acquire legal personality from the day of its registration in the register of the Member State concerned. Regulation Nr. 2157/2001 provides for different ways of setting up a company according to Art. 2, these are:

- establishment of a European holding companies,
- merger,
- creation of a subsidiary,
- transformation in a joint stock company European society.

Formation by merger: a European company may be on the way to the merger by absorption or the merger. It is required that participants in the merger to be joint stock companies with registered office in the European Union and at least two of them are governed by different

national laws. Following the merger, the acquiring company or the company resulting from the amalgamation will be a European company.

**Establishment of a holding company:** a European company may be established by a group of companies - Holding - which can be joint stock companies and limited liability companies. It requires that they be located across the Union and at least two of them are governed by the laws of two different states or at least two of them had at least two years had a subsidiary incorporated under the law of another Member State or a branch in another Member State.

**Formation by setting up subsidiaries:** one subsidiary type European company may be established by companies and others in public or private, with headquarters and administrative center in the Union and operating according to the law of a Member State, through the subscription of shares thereof. It requires that at least two of the following entities are governed by the laws of two different states or at least two years had a subsidiary established under the law of another Member State or a branch situated in another Member State.

**Transforming a joint stock company into a European company:** a limited liability company having its registered office in the Union can be converted into a European company. It requires that at least the two previous years this company has had a subsidiary governed by the law of another Member State.

Regulation allows a Member State to allow a company whose central government is not on the European Union to participate in the establishment of a European society, provided that company is formed under the law of a Member State has its registered office in that Member State and have a real and constant liaison with the economy of a Member State. Issues covered and Preamble Regulation "should allow a company the head office outside the Community to participate in the formation of an SE provided that company to be incorporated under the law of a Member State to have a real and continuous link with economy of a Member State in accordance with the principles established in the 1962 general Programme for the abolition of restrictions on freedom of establishment. Such a link exists in particular if a company has a functional unit in the Member State concerned".

European society is governed by the procedural rules applicable to the joint stock company established by the Member State in which the company establishes its European headquarters. European company with registered office in Romania will be in accordance with Law no. 31/1990. According to art. 5 of Law 31/1990, a joint stock company are established by contract and statute necessary elements defined in article 8 of the law.

The European company headquartered in Romania shall acquire legal personality from the date of registration in the Commercial Register, subject to the conclusion, previously an agreement on employee involvement in the company's activity, as determined by GD no.187 / 2007. According to art. 2702b) of Law 31/1990, within 30 days of registration, the National Trade Register Office shall communicate to the Official Journal of the European Union a notice of registration of the company. The notice will include information required by Article 14 of Regulation Nr.2157 / 2001. Regarding the operation of the European company, it is always a limited company; therefore, the general meeting of the company will operate under the rules governing the law applicable to its headquarters, the company stock.

Deliberation and decision making body is the general meeting of shareholders and the company's management will be done according to the system adopted by shareholders either a supervisory organ and a management (dual system) or an administrative organ (one-tier system). European society is terminated by dissolution, liquidation, or insolvency transformation. In addition to general or specific causes of dissolution governed by Member State legislation governing the legal regime of the European Society, they will dissolve and do not comply with the requirement to have both registered office and central administration in the same Member State. Procedures for dissolution, liquidation and insolvency of the Company are set by European legislation Member State where it has its registered.

From a tax perspective, any European company with registered office in Romania will be included in the category of persons liable to corporation tax. Under article 14 from fiscal code, Corporation tax is applied: a) Romanian legal persons, foreign legal persons having the place to exercise effective leadership in Romania, and legal persons with headquarters in Romania, according to established EU law, the taxable profit obtained from any source, both from Romania and abroad.

#### **4. Advantages and disadvantages of forming a European Society**

Under Article 69 of Regulation No. 2157/2001 on the European Company Statute, the Commission will submit to the Council and European Parliament on the application of the Regulation and proposals for amendments, no later than 5 years from the date of entry into force. For this reason, the Commission has drafted this report on 17 November 2010. The first advantage is the creation of a European society "European image". It is very important for those companies wishing to highlight their membership in European and in order to enter the markets of other

member states of the European Union. In connection with the "European picture" European companies have advantages in terms of financing from banks, with a much better position to request and obtain financial support from them. "Supranational" of a European Company would represent a potential advantage in achieving cross-border mergers or structural changes in a group (eg transforming national subsidiaries into branches of the parent). The second advantage of setting up a European society consists of the fact that Member States are obliged to ensure that the provisions applicable to European companies under Regulation do not result either in discrimination arising from an unjustified differentiated treatment between European companies compared with public limited-be disproportionate restrictions on the establishment of a European company or on transfer its statutory seat. Non-discrimination European companies are provided by art. 10 of Regulation 2157/2001 which provides: "Subject to this Regulation, an SE is treated in every Member State as such as a limited company incorporated under the law of the Member State where it has its registered office."

"The economy in costs" generated by the operation of such entities is also important as a uniform legal form saves administration costs. The most important advantage of European society is created "the possibility of transferring its registered office in any other Member State without the need for winding prior." European society is the only form of company that can transfer its registered office without prior liquidation. The history of law is to be found in the Court of Justice of the European Union. A first case key was developed in 1987 in Case C-81/87 - Daily Mail, the Court of Justice expressed vehement that the Treaty does not confer any right of companies to be able to transfer the head office of a Member State to another Member State, the court arguing that the EC Treaty only recognizes the right of establishment as secondary (ex creation of subsidiaries, branches etc). Ten years later, the Court of Justice of the European Union decides in Case C-212/97 - Centros, stating that it is contrary to EU legislation of a Member State's refusal to register a branch of a company which was incorporated into headquarters another Member State, even if the branch is established in order to exercise effective leadership of society, thus avoiding the need to form a company in that country. Although the Court did not rule on the transfer of real seat from one state to another, as it was called to do in the decision "Daily Mail", the facts and outcome of supporting transfer of the registered real possibility of a Member State into another Member State. By Case C-208/00 - Überseering, the ECJ pointed out that it is a restriction on freedom of establishment thus a violation of the EC Treaty by the

conduct of a State not to recognize the subject as a company that was legal established in another Member State. Another reason given by the ECJ, case C-167/01 - Inspire Art, pointed out that a Member State may not impose other conditions excessive to create a branch, even if the branch is created in order to exercise effective management of the company as and to avoid creating procedures of a company in that Member State. In 2006, the Court of Justice of the European Union in a case C-210/06 - Cartesio to pronounce expressly on the possibility of transfer of their seat from one Member State to another Member State. The Court held that European Union law now stands, Articles 43 EC (now 49 TFEU) and Article. 48 EC (now 54 TFEU) must be interpreted as not precluding legislation of a Member State which prohibits a company incorporated under national law of that Member State to transfer its seat to another Member State, keeping still as a company subject to national law of the Member State under whose legislation was constituted.

A first drawback occurred with the entry into force of Regulation 2157/2001 refers to conditions imposed by Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of workers. Following the entry into force of this Directive by supplementing the rules, in practice there are two problems: first is about a directive requiring transposition, entry into force of the Regulation on European society had to be extended to all Member States to transpose conditions in their national legislation on employee involvement in European society. Which led to a real disadvantage because only six European countries have adopted on 08.10.2004 appropriate legislation to enable the establishment of European companies in their territories: Austria, Belgium, Denmark, Finland, Iceland, Sweden. The other problem arising in practice was generated by the fact that rules on employee involvement assumed complex and lengthy procedures. Another disadvantage of creating a European society is the cost of setting up procedures lengthy and complex legal uncertainty together with the lack of knowledge and practical experience of the advisors and competent public authorities are considered the most important negative factors in the establishment of an SE. The average costs of establishing European companies rose from EUR 100,000 to EUR 2 and 4 million Euro Regarding taxation, European society is a disadvantage because it remains subject to the regime of taxes in the territory where it is located. In this respect their status as tax is not perfect, in the absence of European harmonization sufficient in Another trend is that, in general, have established several European companies in countries that allow only the corporate governance system dualist than in countries that allow only the use

of the unified system of corporate governance. Choosing a management structure that is not provided for in the national legislation of the country where the European company is set up can be a source of legal uncertainty or practical difficulties. Finally, another drawback of the European society as insufficient knowledge in business in the EU and outside. Often when a company wants to transform itself into a European Company should explain her business partners, employees and even implies such a transformation.

## 5. Conclusions

European society has enabled companies with a European dimension to transfer its registered office across borders, organize and restructure better and choose between different management structures, while maintaining the right of employees to be involved and protecting the interests of minority shareholders and third parties. The European image and supra-national character are other positive aspects of European society. However, besides these positive aspects arising from the entry into force of the European Company Statute appeared many problems arising from its implementation. The first problem was due to the completion of the European Company Statute by the Directive on employee involvement directive did nothing but delay the implementation of the regulation on European society, it is to be transposed by all Member States. Skin that has not happened as predicted, neglecting many Member States, for various reasons, the deadline for transposition. One solution to this problem would have been that the provisions for employee involvement, currently laid down in Directive 2001/86 / EC must be effectively integrated in Regulation Nr. 2157/2001 since these provisions for employee involvement are vital and need to be met in order for European society to be formed.

Another problem arising in practice has been generated by the lack of a register, existing in the European Union, the European companies are registered. In this way, the decision is criticized by Regulation 2157/2001 European societies is registered as national companies, since this form of society was meant to be an existing EU-wide. To address this problem and to promote European society is necessary to create a registry account at EU level (like the Official Journal of the European Union). Regulation Nr. 2157/2001 covers only the establishment of a European society and not other areas of law, essential, such as taxation, competition, intellectual property or insolvency.

Consequently, the legislation of the Member States and of Community law is applicable in the above areas and in other areas not covered by regulation. Aspects particularly important for the proper functioning of

society and the regulation not leaving Member States to adopt legislation in these areas. The initial objective of the Regulation on the European Company Statute was to create a society that goes beyond the national framework and to reach the EU level, but this goal has not touched purpose since many of the provisions of the regulation make reference to national laws and not contain separate regulations.

The legal framework in which businesses need to run their own activities in the European Union is still based largely on national laws and therefore no longer corresponds to the economic framework they need to develop. This situation forms a considerable obstacle to the creation of groups of companies from different Member States. The author stresses that the regulation is not the desired uniformity of company followers are rather disparate rules and possibilities for mitigation standardizing. Legislative simplification, particularly to consolidate its provisions on joint European Union should be a target to be achieved at Union level.

A codification of existing companies at Union level should be a necessary solution rather different regulation, such as regulations for European society (Regulation no. 2157/2001), a Regulation for the European Cooperative Society (Regulation no. 1435/2003) a regulation for an economic interest group (Regulation Nr. 2137/85), a draft regulation for the European private company etc. This tendency of the European Union to adopt one regulation for each company form part should be stopped. A single regulation, encompassing all forms of society, but that does not stop just to list them or to predict how the constitution but whole set of provisions (and not by reference to national level) from how to set following provisions such as the functioning, organization, taxation provisions for independent European Union and not of each Member State, are necessary and should be adopted.

Finally, although the regulations in European society and the European cooperative society is a step towards unification of company law in the European Union, there are steps to be taken. Beginning achieved by regulating European company, even objectionable incomplete and bring some advantages in terms such as: the possibility of creating European companies, choosing the method of operation, SE relocation to countries that will have a favorable complementary legislation.

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