Societas Europaea (European Company)

November 2012
This document will describe the main characteristics of the European Company or Societas Europaea ("SE") from a Dutch corporate legal perspective.¹

**Introduction**

The SE is a public EU company created by the Council Regulation on the Statute for a European Company 2157/2001 (the “Statute”).

A SE is supranational, in the sense that it can register its seat in any member state of the European Union and transfer it to another EU member state. That said, the Statute does not contain one comprehensive set of rules for SE’s; it contains general provisions on their incorporation, applicable laws, annual accounting, merger and dissolution. National law supplements the general rules in the Statute (for the Netherlands: the rules on NV’s or naamloze vennootschappen). It could be said therefore that there is not a standard SE, but several, similar, SE-types. The Statute is furthermore complemented by an Employee Involvement Directive 2001/86/EG (the “Directive”) which sets rules for participation by employees in SE’s, and in the Netherlands by the Act of 17 March 2005 on the implementation of the Directive (the “Act”).

There is no EU-wide register of SE’s (a SE is registered with the national register of the member state in which it has its head office), but each registration is to be published in the Official Journal of the European Union. As of November 20, 2012, at least 1,517 registrations have been reported (for an overview see for example http://ecdb.worker-participation.eu/show_overview.php?letter=A&orderField=se.se_name&status_id=3&title=Established%20SEs). Examples of companies registered as a SE are Allianz SE and BASF SE. Only a limited number of the registered SE’s have their headquarters in the Netherlands.

1. **Main provisions**

1.1 **Formation**

The Statute provides four ways of forming a SE:

1. By merger of national companies from different member states
2. By the creation of a joint holding company of companies (or other entities) in different member states
3. By the creation of a SE subsidiary or joint venture
4. By the conversion of a national company into a SE

¹ This report contains information on the main characteristics of a SE. It is intended as general guidance only and it is not a substitute for detailed advice in specific circumstances. Therefore no responsibility is accepted by Eversheds Faasen for any errors and omissions, and no one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.
Formation by merger is available only to public limited companies from different EU member states. For the Netherlands this means that only NV’s can incorporate a SE through a merger.

Formation of a SE holding company is available to public and private limited companies with their registered offices in different member states or having subsidiaries or branches in member states other than that of their registered office. For the Netherlands this means that both NV’s (naamloze vennootschappen) and BV’s (besloten vennootschappen met beperkte aansprakelijkheid) can incorporate a SE holding company.

Formation of a joint subsidiary is available under the same circumstances to any legal entities governed by public or private law provided that they have their registered offices in different member states or have subsidiaries or branches in member states other than that of their registered office.

Conversion into a SE is possible for public limited companies (in the Netherlands: NV’s) having subsidiaries or branches in member states other than that of their registered office.

An existing SE may also incorporate a subsidiary-SE.

Incorporation of a SE in the Netherlands requires a deed of incorporation executed by a Dutch civil law notary. This deed also contains the articles of association of the SE.

1.2 Minimum capital

The minimum capital of a SE to be issued and subscribed for is EUR 120,000, subject to the provision that where a member state requires a higher amount of capital for companies exercising certain types of activities (such as financial activities), the same requirement will also apply to a SE with its registered office in that member state.

1.3 Registered office

The registered office of the SE designated in its articles of association must be the place where it has its central administration, that is to say its true centre of operations. The SE may move its registered office within the Community. Transferring the office to an other member state is subject to the provisions of the Statute which require, inter alia, the drawing up of a transfer proposal, a report justifying the legal and economic aspects of the transfer and the issuing, by the competent authority in the member state in which the SE is registered, of a certificate attesting to the completion of the required acts and formalities. In the Netherlands such a certificate is issued by a Dutch civil law notary.

1.4 Applicable laws

The laws applicable to the SE and their order of precedence of are set out in the Statute.
1.5 Registration

A SE must be registered in the member state where it has its registered office, in a register designated by the law of that state. In the Netherlands this is the trade registry held by the Chamber of Commerce.

Registration can only be made when the procedure on the position of employees has been observed (see below under 2).

The SE only acquires the status of an independent legal entity upon its registration.

The registration of a SE will furthermore be disclosed for information purposes in the Official Journal of the European Communities (see above).

1.6 Articles of association

The articles of association of the SE must provide for a general meeting of shareholders and either a management board and a supervisory board (two-tier board) or an administrative board (one-tier board).

Under the two-tier board system the SE is managed by a management board. The member or members of the management board have the powers to represent the SE externally and in legal proceedings. They are appointed and removed by the supervisory board. No person may be a member of both the management board and the supervisory board of a SE at the same time, but the supervisory board may appoint one of its members to exercise the functions of a member of the management board in the event of absence of management board members during for instance holidays. During such a period the function of the person concerned as a member of the supervisory board shall be suspended.

Under the one-tier board system, the SE is managed by an “administrative” board. The member or members of the “administrative” board have the power to represent the company in dealings with third parties and in legal proceedings. Under the one-tier board system the “administrative” board may delegate the power of management to one or more of its members.

1.7 Annual accounts

The SE are obliged to prepare and report annual accounts comprising of a the balance sheet, a profit and loss account and notes to the accounts, and an annual report giving a fair view of the SE’s business and of its position. Consolidated accounts may also be required.
1.8 Winding-up

Winding-up, liquidation, insolvency and suspension of payments are largely governed by national law. In case a SE transfers its registered office outside the EU, or no longer complies with requirements of article 7 of the Statute in any other manner, the member state must take appropriate measures to ensure compliance or take the necessary measure to ensure that the SE is liquidated.

1.9 Conversion into public limited company

A SE may convert into a public limited company organized under the laws of the member state in which it has its registered office provided it has been registered as a SE for at least two years.

2. Employee participation

The Directive and the Act supplement the Statute. The Directive establishes rules on employee involvement in the SE. This does not mean involvement in day-to-day decisions (this remains the responsibility of the management), but participation in the supervision and strategic development of the SE.

In their national legislations, EU member states differ in the degree of employee involvement in corporate management. In Germany, most large corporations are required to allow employees to elect a certain percentage of seats on the supervisory board. In other member states, such as the UK, this is generally not the case and considered a threat to the rights of the management. In the Netherlands the so-called structuurregeling exits (regime for large companies), giving works councils of large NV’s the right to submit recommendations for one third of the supervisory directors.

The Directive provides for employee co participation/determination in the SE if a minimum percentage of employees from the entities forming the SE enjoy employee involvement provisions. Pursuant to the Directive and the Act, employee co participation/determination provisions in the SE will be decided upon by negotiations between employees and management before the creation of the SE. If the parties do not reach an agreement, a set of standard principles set out in the Annex to the Directive (and in the Netherlands, in the Act) becomes applicable.

3. Further information

For further information about the SE, please contact:

Irene Steltenpool, Tel +31 20 5600 691 or irenesteltenpool@eversheds.nl