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

Passed 10.11.2004
RT I 2004, 81, 543
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Amended by the following acts

Passed	Published	Entry into force
15.06.2005	RT I 2005, 39, 308	01.01.2006
12.10.2005	RT I 2005, 57, 451	18.11.2005
20.03.2008	RT I 2008, 16, 116	12.04.2008
22.04.2010	RT I 2010, 20, 103	01.07.2010
22.04.2010	RT I 2010, 22, 108	01.01.2011, enters into force on the date which has been determined in the Decision of the Council of the European Union regarding the abrogation of the derogation established in respect of the Republic of Estonia on the basis provided for in Article 140 (2) of the Treaty on the Functioning of the European Union, Council Decision 2010/416/EU of 13 July 2010 (OJ L 196, 28.07.2010, p. 24–26).
10.10.2012	RT I, 25.10.2012, 1	01.12.2012
11.06.2014	RT I, 21.06.2014, 8	01.01.2015
13.04.2022	RT I, 05.05.2022, 1	01.02.2023

Chapter 1 GENERAL PROVISIONS

§ 1. Provisions applicable to European companies

(1) This Act regulates the legal status of a European company (*Societas Europaea* Latin, hereinafter SE) within the territory of Estonia insofar as this is not regulated by Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) (hereinafter *Regulation*).

(2) This Act and other national legislation applies to an SE if pursuant to the Regulation provisions of national law apply or if the Regulation permits the governing of certain areas on the basis of national law.

§ 2. Entry of SE in commercial register

An SE is entered in the commercial register pursuant to the provisions of the Commercial Register Act and the Commercial Code concerning entry of a public limited company in the commercial register.
[RT I, 05.05.2022, 1 – entry into force 01.02.2023]

§ 3. Share capital and accounts of SE

(1) The share capital of an SE shall be expressed in euros, pursuant to Article 67(1) of the Regulation.
[RT I 2010, 20, 103 - entry into force 01.07.2010]

(2) In the preparation of the annual accounts of an SE, the financial indicators shall be expressed in euros, pursuant to Article 67(2) of the Regulation.
[RT I 2010, 22, 108 - entry into force 01.01.2011]

§ 4. Competence

(1) The obligation provided for in Article 8(8) of the Regulation shall be performed by the registrar.
[RT I, 21.06.2014, 8 - entry into force 01.01.2015]

(2) The requests provided for in Article 22 of the Regulation shall be reviewed by Harju County Court in proceedings on petition.
[RT I 2005, 39, 308 - entry into force 01.01.2006]

(3) The obligation provided for in Article 25(2) of the Regulation shall be performed by the registrar.
[RT I, 21.06.2014, 8 - entry into force 01.01.2015]

(4) The obligations provided for in Article 26 of the Regulation shall be performed by the registrar.
[RT I, 21.06.2014, 8 - entry into force 01.01.2015]

(41) The rights provided for in Article 55(3) of the Regulation shall be exercised by the court in whose jurisdiction the registered office of the SE is located.
[RT I 2008, 16, 116 - entry into force 12.04.2008]

(5) The obligation provided for in Article 64(4) of the Regulation shall be performed by the court who established the infringement provided for in Article 7 of the Regulation.

Chapter 2

TRANSFER OF REGISTERED OFFICE OF SE

§ 5. Publication of transfer proposal

The management board shall submit the transfer proposal provided for in Article 8(2) of the Regulation to the registrar of the commercial register and publish a notice concerning the transfer proposal being drawn up in the official publication *Ametlikud Teadaanded*. The notice shall set out that the transfer proposal is available for examination in the registration department and in a place designated by the management board.

§ 6. Compensation in case of opposition to transfer of registered office

(1) If the registered office of an SE is transferred from Estonia to another Member State of the European Union, a shareholder who opposed the transfer of the registered office may, within two months as of the entry of the SE in the corresponding register of the other Member State, demand that the SE acquire the shareholder's shares for monetary compensation. The monetary compensation shall be equal to the sum of money which the shareholder would have received from the distribution of remaining assets upon liquidation of the SE if the SE had been liquidated at the time the resolution on the transfer the registered office was adopted.

(2) The provisions of clause 2 of subsection 2 of § 283 of the Commercial Code do not apply to the acquisition of shares by an SE on the bases specified in subsection 1 of this section.

(3) The names of the shareholders who opposed the transfer of the registered office of the SE and who wish to exercise the right provided for in subsection 1 of this section shall be appended to the resolution on the transfer the registered office. Opposition to the resolution on the transfer the registered office shall be confirmed by each shareholder by the signature of the shareholder.

(4) As of the entry of the new registration of the SE in another Member State, the SE shall pay interest on the compensation in an amount provided by law.

(5) If a shareholder who opposes the resolution to transfer the registered office does not demand the compensation specified in this section, the shareholder may transfer his or her shares within two months regardless of the restrictions on disposal provided by law or prescribed by the statutes.

§ 7. Protection of creditors in case of transfer of registered office

(1) The creditors of an SE planning to transfer its registered office may, within two months as of the publication of the transfer proposal, submit their claims to the SE for the receipt of security.

(2) The SE shall guarantee the claims of creditors submitted within two months as of the publication of the transfer proposal if the creditors cannot demand their claims to be satisfied and they substantiate that the transfer of the registered office may adversely affect the fulfilment of their claims.

§ 8. Consent of Tax and Customs Board in case of transfer of registered office of SE

If the registered office of an SE is transferred from Estonia to another Member State of the European Union, the registrar shall not issue a certificate provided for in Article 8(8) of the Regulation without the consent of the Tax and Customs Board. In order to obtain the consent, the registrar shall submit a written request to the Tax and Customs Board. The Tax and Customs Board may not refuse to grant consent if it does not have any claims against the SE, and also if the Tax and Customs Board deems it probable that no violation of tax law will be established in the course of the inspection procedure conducted by a tax authority at the time of the request for the consent. If consent is not received within twenty days after sending the request, the Tax and Customs Board shall be deemed to consent to the transfer of the registered office.

[RT I, 25.10.2012, 1 - entry into force 01.12.2012]

Chapter 3 FORMATION OF SE

Subchapter 1 Formation of SE by Merger

§ 9. Consent of Tax and Customs Board in case of formation of SE by merger

If a public limited company registered with the Estonian commercial register which is wound up as a result of the formation of the SE in a foreign state participates in the formation of the SE by way of merger, the registrar shall not issue the certificate provided for in Article 25(2) of the Regulation without the consent of the Tax and Customs Board. In order to obtain consent, the registrar shall submit a written request to the Tax and Customs Board. The Tax and Customs Board may not refuse to grant consent if it does not have any claims against the SE, also, if the Tax and Customs Board deems it probable that no violation of tax law will be established in the course of the inspection procedure conducted by a tax authority at the time of the request for the consent. If consent is not received within twenty days after sending the request, the Tax and Customs Board shall be deemed to consent to formation of the SE by way of merger.

[RT I, 25.10.2012, 1 - entry into force 01.12.2012]

§ 10. Communication of merger

The particulars specified in Article 21 of the Regulation concerning the merging companies shall be published in the official publication *Ametlikud Teadaanded* together with a notice as provided for in § 399 of the Commercial Code.

§ 11. Compensation in case of opposition to share-exchange ratio or merger

Subsections 2–4 of § 398 of the Commercial Code and § 404 of the Commercial Code, as appropriate, apply to the formation of an SE by merger.

Subchapter 2 Formation of Holding SE

§ 12. Contestation of resolution on formation of holding SE and compensation for damage

If in the course of the formation of a holding SE the share-exchange ratio of shares was fixed too low, a shareholder may demand compensation from the holding SE. As of the entry of a holding SE in the register, the holding SE shall pay default interest on the compensation in an amount provided by law. The above does not preclude or restrict the filing of claims for compensation for damage exceeding the default interest.

§ 13. Compensation in case of formation of holding SE

(1) A shareholder of a company participating in the formation of a holding SE who opposes the formation of the holding SE may, within two months as of the entry of the holding SE in the register, demand that the private limited company or public limited company acquire the shares of the shareholder for monetary compensation. The second sentence of subsection 1 of § 404 of the Commercial Code applies correspondingly.

(2) In the case of the acquisition of its share by a private limited company on the basis provided for in subsection 1 of this section, the nominal value of the share may exceed 1/10 of the share capital. In the case of the acquisition of its shares by a public limited company on the basis provided for in subsection 1 of this section, the nominal value or book value of the shares may exceed 1/10 of the share capital.
[RT I 2010, 20, 103 - entry into force 01.07.2010]

(3) The names of the shareholders who opposed the resolution on the formation of a holding SE and who wish to exercise the right provided for in § 12 of this Act and subsection 1 of this section shall be appended to the resolution on the formation. Opposition to the resolution on the formation shall be confirmed by each shareholder by the signature of the shareholder.

(4) As of the entry of a holding SE in the register, the company required to pay compensation shall pay interest on the compensation in an amount provided by law.

(5) If a shareholder who opposes the resolution on the formation of a holding SE does not demand the compensation specified in this section, the shareholder may transfer a share within two months regardless of the restrictions on disposal provided by law or prescribed by the statutes.

§ 14. Publication of memorandum of association

At least one month before the general meeting deciding on the formation of a holding SE, the management board of each company participating in the formation of the SE and entered in Estonian commercial register shall submit the memorandum of association to the registrar of the commercial register and shall publish a notice concerning the drawing up of the memorandum of association in the official publication *Ametlikud Teadaanded*. The notice shall set out that the memorandum of association is available for examination in the registration department and in a place designated by the management board.

Subchapter 3 Conversion of Public Limited Company into SE

§ 15. Publication of draft terms of conversion

At least one month before the general meeting deciding on the conversion of a public limited company in an SE, the management board shall submit the draft terms of conversion to the registrar of the commercial register and shall publish a notice concerning the drawing up of the draft terms of conversion in the official publication *Ametlikud Teadaanded*. The notice shall set out that the draft terms of conversion are available for examination in the registration department and in a place designated by the management organ.

Chapter 4 SE ORGANS

Subchapter 1 Two-Tier System

§ 16. Performing management functions by members of supervisory organ

Pursuant to Article 39(3) of the Regulation, the supervisory organ may appoint its member to perform management functions for a predetermined fixed term the time limit of which may not exceed one year. Re-appointment and extension of term of authority is permitted if the total term of authority of member of a supervisory organ acting as a member of the management organ does not exceed one year.

§ 17. Transactions for conclusion of which consent of supervisory organ is needed

The supervisory organ may, by its resolution, determine transactions for the conclusion of which the consent of the supervisory organ is needed.

Subchapter 2 One-Tier System

§ 18. Applicable provisions

(1) If the statutes of an SE provide, pursuant to Article 38 (b) of the Regulation, that the management system of the SE is one-tier and performed through an administrative board, the provisions of this Subchapter apply instead of §§ 306-327 of the Commercial Code.

(2) The provisions concerning the management board and supervisory board of a public limited company apply to an administrative board insofar as this is possible in case of one-tier company.

§ 19. Competence of administrative board

(1) The administrative board is the managing body of an SE which represents and manages the SE. The administrative board is required to act in the most economically purposeful manner.

(2) If an SE is insolvent and the insolvency, due to the SE's financial situation, is not temporary, the administrative board shall immediately, but not later than three weeks after insolvency became evident, submit to a court a bankruptcy petition of the SE. After insolvency has become evident, the members of the administrative board shall cease making payments in the name of the SE, except payments the making of which in the state of insolvency is in line with due diligence. The members of the administrative board shall be solidarily liable for the compensation to the SE for payments made after the insolvency of the SE has become evident the making of which was not in line with due diligence. Section 315 of the Commercial Code shall apply to the liability of administrative board members.

(3) The administrative board shall organise the accounting of the SE.

(4) More specific work procedure of the administrative board may be prescribed by the statutes or resolution of the administrative board.

(5) The administrative board shall prepare the questions to be discussed at the general meeting, draw up necessary drafts and ensure compliance with the resolutions of the general meeting.

(6) The administrative board shall ensure the application of necessary measures, above all the organisation of internal audit, in order to allow early detection of circumstances adversely affecting the activities of the SE.

§ 20. Right of representation of administrative board

(1) Every member of the administrative board may represent the SE in all legal acts unless the statutes prescribe that all or some of the members of the administrative board may represent the SE jointly. Joint representation shall apply with regard to third persons only if it is entered in the commercial register.

(2) In concluding transactions in the name of the SE, the members of the administrative board of the SE are required to observe the restrictions provided for in the statutes of the SE, and restrictions established by the general meeting or the administrative board. A restriction on the right of representation does not apply with regard to third persons.

(3) A transaction made between the SE and a member of the administrative board is void if the general meeting opposes the transaction. This does not apply to transactions which are made in the course of everyday economic activities of the SE on the basis of the market price of goods or services.

(4) The members of the administrative board do not have the right to represent the SE in legal acts to the performing of which a representative is separately appointed by the shareholders pursuant to law.

§ 21. Members of administrative board

(1) The administrative board shall consist of three members unless the statutes prescribe a greater number of members.

(2) A member of the administrative board must be a natural person with active legal capacity.

(3) A member of the administrative board need not be a shareholder.

(4) A person against whom a court has imposed a prohibition on acting as a member of the management board pursuant to § 49 of the Penal Code, or a person who is prohibited from operating in the same area of activity as the SE or who is prohibited from acting as a member of a management board on the basis of law or a court judgment shall not act as a member of the administrative board. The statutes may prescribe the prohibition on acting as a member of the administrative board also with respect to other persons.

(5) The residence of at least one-half of the members of the administrative board must be in Estonia, other Member State of the European Economic Area or Switzerland.

§ 22. Election and removal of members of administrative board

(1) In order to elect a member of the administrative board, the written consent of the person to be elected is needed.

(2) A member of the administrative board is recalled by the general meeting. Upon a resolution of the general meeting, a member of the administrative board elected by the general meeting may be recalled by any reason and the rights and obligations arising from the contract entered into with the member of the administrative board shall terminate pursuant to the contract.

(3) A resolution on removal of a member of the administrative board before expiry of his or her term of authority is adopted if at least two-thirds of the votes represented at the general meeting are in favour.

(4) Shareholders whose shares represent at least one-tenth of the share capital may, with good reason, request the removal of a member of the administrative board by a court.

(5) The member of the administrative board shall sign a petition for entry of expiry of the authority of a member of the administrative board or for entry of a new member of the administrative board in the register. The petition for entry of a new member of the administrative board in the commercial register shall also be signed by that member. The new member of the administrative board shall confirm in the petition that he or she has the right to act as a member of the administrative board by law. The resolution of the general meeting and the minutes of the general meeting or the record of vote shall be appended to the petition.

(6) With good reason, a court may appoint a new member of the administrative board to replace a withdrawn member of the management board on the petition of the administrative board, a shareholder or other interested person. The authority of a court-appointed member of the administrative board shall continue until the election of a new member of the administrative board by the general meeting.

(7) A member of the administrative board may withdraw from the administrative board for a good reason by giving notice thereof to the general meeting or the person who appointed the member, or if that proves impossible, by making a corresponding request to the commercial registrar. The provisions of § 631 of the Law of Obligations Act apply correspondingly.

§ 23. Calling of administrative board

(1) A meeting of the administrative board shall be called by the chairman of the administrative board or by a member of the administrative board substituting for the chairman. Advance notice of at least one day shall be given of the holding of a meeting and of its agenda unless the statutes prescribe a longer term.

(2) A member of the administrative board shall not be represented by another member of the administrative board or by a third person at a meeting or in the adoption of a resolution.

(3) A meeting of the administrative board shall be called if this is demanded by a member of the administrative board, an auditor or shareholders whose shares represent at least one-tenth of the share capital. If the meeting is not called in two weeks as of the receipt of the notice, the members of the administrative board, the auditor or shareholders have the right to call the meeting.

(4) A question which is not included on the agenda in the notice may be added to the agenda by the administrative board only if all members of the administrative board participate in the meeting and at least three-quarters of the members of the administrative support including the question on the agenda.

(5) Minutes shall be taken of the meetings of the administrative board. The minutes shall be signed by all the members of the administrative board who participate in the meeting and the recording secretary of the meeting. A dissenting opinion of a member of the administrative board shall be recorded in the minutes and confirmed by his or her signature.

(6) If the requirements of law or of the statutes are violated in the calling of a meeting of the administrative board, the administrative board shall not be authorised to adopt resolutions unless all the members of the administrative board participate in the meeting. Any resolution adopted at such meeting of the administrative board is void unless the members of the administrative board against whom the procedure of calling the meeting was violated approve the resolution.

§ 24. Resolution of administrative board

(1) Each member of the administrative board has one vote. A member of the administrative board shall not have the right to abstain from voting or to remain undecided.

(2) The quorum of the meeting of the administrative board or the validity of resolutions is not affected by a fact that the administrative board has fewer members than prescribed by the statutes.

(3) The members of the administrative board not present at the meeting may participate in voting by forwarding their vote in a format which can be reproduced in writing.

(4) A member of the administrative board shall not participate in voting if approval of the conclusion of a transaction between a third person and the SE is being decided if the interests of the member of the administrative board arising from such transaction are in conflict with the interests of the SE.

(5) On the petition of a shareholder or a member of the administrative board, a court may declare void a resolution of a meeting of the administrative board which is in conflict with law or the statutes if the petition is filed within three months after adoption of the resolution.

§ 25. Adoption of resolutions without calling meeting

(1) The administrative board has the right to adopt resolutions without calling a meeting, unless the statutes prescribe otherwise, and if all of the members of the administrative board consent to it.

(2) The chairman of the administrative board shall send a written draft of the resolution specified in subsection 1 of this section to all members of the administrative board, specifying the term by which the members of the administrative board must present their written position on the draft resolution. If a member of the administrative board does not give notice of whether he or she is in favour of or opposed to the resolution during this term, it shall be deemed that he or she votes against the resolution.

(3) A resolution adopted pursuant to the procedure specified in this section is deemed to be adopted if over one-half of the votes represented by the members of the administrative board are in favour unless the law or the statutes prescribe a greater majority requirement.

(4) The chairman of the administrative board shall prepare a record of voting on the results of voting in lieu of minutes of the meeting and shall send the record promptly to the members of the administrative board. A record of voting shall set out:

- 1) the business name and registered office of the SE;
- 2) the adopted resolutions and the number of votes in favour (including the names of the members of the administrative board who voted in favour of each resolution);
- 3) other circumstances of importance with regard to the vote.

(5) The written opinions of members of the administrative board specified in subsection 2 of this section shall be an integral part of the record of voting.

(6) If all the members of the administrative board consent to a resolution and sign it, the resolution may be formalised also without prior notice and record of voting. The resolution shall set out the names of the administrative board and the date of the adoption of the resolution.

§ 26. Conclusion of transactions and conduct of legal disputes with members of administrative board

The general meeting shall decide on conclusion and terms and conditions of transactions with members of the administrative board and on the conduct of legal disputes with the members of the administrative board. The general meeting shall appoint a representative of the SE for the conclusion of transactions and conduct of legal disputes.

§ 27. Prohibition on competition

(1) Without the consent of the general meeting, a member of the administrative board shall not:

- 1) be a sole proprietor in the area of activity of the SE;
- 2) be a partner of a general partnership or a general partner of a limited partnership which operates in the same area of activity as the SE;
- 3) be a member of a managing body of a company which operates in the same area of activity as the SE, except if the companies belong to one group.

(2) If the activities of a member of the administrative board are in conflict with the provisions of subsection 1 of this section, the SE may demand that the member of the administrative board terminate the prohibited activity, transfer the income received from the prohibited activity to the SE and compensate for damage to the extent exceeding the claimed income.

(3) The limitation period for a claim to terminate a prohibited activity and to transfer the income received from the prohibited activity shall be three months as of the date the SE becomes aware of the violation of the prohibition on competition but not longer than three years as of the violation of the prohibition on competition. The general limitation period shall apply to a claim for compensation of damage.

§ 28. Remuneration to members of administrative board

(1) The general meeting shall decide on the procedure for and amount of remuneration to the members of the administrative board. The founders shall decide on the remuneration to the first members of the administrative board.

(2) In determining the procedure for the remuneration to a member of the administrative board and the amount of other benefits and for conclusion of contracts with a member of the administrative board it shall be ensured

that the total amount payable by the SE to the member of the administrative board is reasonably proportionate to the functions of the member of the administrative board and the economic situation of the SE.

(3) If the economic situation of the SE significantly deteriorates and the continuing payment of remuneration designated to or agreed with a member of the administrative board or the allowing of other benefits would prove to be extremely unfair with respect to the SE, the SE may demand reduction of the remuneration and other benefits.

(4) The reductions specified in subsection 3 of this section do not apply to other conditions of the contracts entered into with the members of the administrative board. In the case of reduction of remuneration or other benefits, a member of the administrative board has the right to exercise the right to extraordinary cancellation of a contract entered into with him or her with one month advance notice.

(5) If the SE is declared bankrupt and the contract entered into with a member of the administrative board terminates, the member of the administrative board may demand compensation for the damage arising from the termination of the contract for the period of one year as of the termination of the contract.

Chapter 5 DISSOLUTION

§ 29. Dissolution of SE

(1) If an SE registered with the commercial register in Estonia no longer conforms to the requirements provided for in Article 7 of the Regulation, the registrar shall set a term for the SE during which the SE must transfer its management to Estonia or transfer its registered office to another Member State in accordance with Article 8 of the Regulation. The term shall not be shorter than two months.

(2) If the SE fails to eliminate the omissions during the set term, the registrar may decide on the compulsory dissolution of the SE.