



The Second pillar: Standardisation

- Regulations
 - Not only Company Law (e.g.: cross-border insolvency; e-IDAS; IMI...); and it all started with a non-company regulation (EEIG)
 - For ECL it means supra-national entities
 - This means entities having their foundations not in domestic MS' laws...
 - ...but directly in the EU Law
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But...

- This is not completely true
 - Due to subsidiarity there is not a legal frame in the EU law enabling directly a company form to exist
 - Each supranational entity has to rely on a domestic form in order to acquire a part of its features
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As a corollary...

- Even if the form is supranational, it is hard to say that they are the same everywhere in the EU
 - In any case, due to the subsidiarity principle, they are marked by a cross-border hallmark, mainly when it comes to the members
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Problem-solving?

- This means that a few issues unsolved under the harmonisation are likely to find a way of solution in the standardisation
- In particular:
 - Corporate governance
 - Group law (?)
 - Employee participation

Supranational forms

- **EEIG** – European Economic Interest Grouping (1985)
 - **SE** – European Company (2001)
 - **SCE** – European Cooperative Society (2003)
 - Many (abandoned) projects:
 - *SPE - Societas Privata Europaea*
 - *FE - Fundatio Europaea (still ongoing)*
 - *ME - Mutua Europaea*
 - *SUP - Societas Unius Personae*
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The European Company (SE)

- First proposals yet in 1970 (very specific)
- Memorandum 1985
- Second proposal 1989
- Third proposal (split) 1991
- Fourth proposal 1998

The core problem was employee participation; group- and tax-related issues were left out almost immediately



The reasons for the SE

- Presenting a company in the single market in a more uniform way
 - This uniform law should have regarded also the transfer of seat
 - Some kind of advantages as for the co-determination (Germany)
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Key data

- Regulation 2157/2001/EC
 - 70 articles (rules coming from both the EU and domestic law, not fully self-executive) (due to the principle of subsidiarity)
 - Directive 2001/86/EC for employees' participation
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System of sources

Art. 9.1 Regulation

1. An SE shall be governed:

(a) by this **Regulation**,

(b) where expressly authorised by this Regulation, by the **provisions of its statutes**

or

(c) in the case of matters not regulated by this Regulation or, where matters are partly regulated by it, of those aspects not covered by it, by:

(i) the provisions of **laws adopted by Member States in implementation of Community measures relating specifically to SEs**;

(ii) the provisions of **Member States' laws** which would **apply to a public limited-liability company** formed in accordance with the law of the Member State in which the SE has its **registered office**;

(iii) the **provisions of its statutes**, in the **same way as for a public limited-liability company** formed in accordance with the law of the Member State in which the SE has its registered office.



So...

- First degree: EU Regulation
- Second decree, insofar authorised, company's articles
- and, insofar not regulated, domestic laws (and articles of association, insofar allowed for public companies)

In this case:

1. Specific SE rules;
 2. Specific Public Ltd rules
 3. Specific articles rules, insofar allowed for domestic Public Ltds
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Prohibition of discrimination

- Domestic rules cannot be stricter for SE's than those set for national Ltd's (Art. 10)

*Subject to this Regulation, **an SE shall be treated in every Member State as if it were a public limited-liability company** formed in accordance with the law of the Member State in which it has its registered office.*



Unified rules

- Deal with...
 - **Formation** (numerus clausus of ways of formation)
 - **Structure** (corporate governance system)
 - **Structural changes** (transfer of seat & cross-border merger)
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Formation

- **Numerus clausus**
 - **Not** to be established by **natural persons**
 - Just as a means of **amendment or restructuration of existing companies**
 - **Merger**
 - **Creation of an holding**
 - **Creation of common subsidiary**
 - **Conversion**
 - **Subsidiary of another SE**
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Cross-border requirements

- Formation by **merger**:
 - at **least two of them are governed by the law of different Member States** (Art. 2.1)
 - **Other types** of formation:
 - Cross border requirements just in at least one of the considered companies (Grundmann), or
 - The same for merger (other literature)
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The criterium

Article 2.5

*5. A **Member State** may provide that a company the **head office of which is not in the Community** may participate in the formation of an SE provided **that company is formed under the law of a Member State**, has its **registered office in that Member State** and has a **real and continuous link with a Member State's economy**.*



Disclosure duties

- Upon registration
 - See **CodDir general provisions**
 - Two modifications:
 - SE's Registration depending on the **actual application of employees' safeguards** (art 12.2-.4)
 - Publication of **acquirement and loss of the form of SE** in the **EUOJ** (art 14)
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Formation by merger

- The model is the Merger directive (former 3rd directive, now CodDir)
 - Arts 2.1 & 17-31
 - Two basic forms (by **acquisition** or by **formation of a new company**)
 - Draft terms & explanatory report; independent examination, common expert, GM decision (with specific reference to employees' participation system)
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...

- The same also for registration and publication
 - If the merger is by **acquisition**, the **acquiring company becomes a SE**
 - **Nullity** just in the terms of cross-border mergers: only in the **case of complete lack of preventive control** (art. 30)
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As for the conflict of laws

- The law of **each participating company applies**:
 - Preparatory steps: the law of each concerned company
 - Control of the formed company: law of the formed SE
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Formation of an holding (or sub-)

- Arts 2.2 & .3 & 32-36
 - Similar procedure:
 - Draft terms, explanatory report, independent examination, GM's approval (at least 50% of the voting stock)
 - In addition: regime on offer (equivalent to a takeover) (art. 33)
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Art. 33

1. *The **shareholders of the companies promoting such an operation shall have a period of three months in which to inform the promoting companies whether they intend to contribute their shares to the formation of the holding SE.** That period shall begin on the date upon which the terms for the formation of the holding SE have been finally determined in accordance with Article 32.*

2. *The **holding SE shall be formed only if, within the period referred to in paragraph 1, the shareholders of the companies promoting the operation have assigned the minimum proportion of shares in each company in accordance with the draft terms** of formation and if all the other conditions are fulfilled.*

3. *If the conditions for the formation of the holding SE are all fulfilled in accordance with paragraph 2, that fact shall, in respect of each of the promoting companies, be publicised in the manner laid down in the national law governing each of those companies adopted in implementation of Article 3 of Directive 68/151/EEC.*

Shareholders of the companies promoting the operation who have not indicated whether they intend to make their shares available to the promoting companies for the purpose of forming the holding SE within the period referred to in paragraph 1 shall have a further month in which to do so.

4. ***Shareholders who have contributed their securities to the formation of the SE shall receive shares in the holding SE.***

5. *The holding SE may not be registered until it is shown that the formalities referred to in Article 32 have been completed and that the conditions referred to in paragraph 2 have been fulfilled.*



Joint subsidiary

- Act of the **management of the companies**
- Prerequisites regulated by the **law of the founding companies** (Art. 2.3)

3. Companies and firms within the meaning of the second paragraph of Article 48 of the Treaty and other legal bodies governed by public or private law, formed under the law of a Member State, with registered offices and head offices within the Community may **form a subsidiary SE** by subscribing for its shares, provided that **each of at least two of them:**

(a) **is governed by the law of a different Member State, or**

(b) **has for at least two years had a subsidiary company governed by the law of another Member State or a branch situated in another Member State.»**

«Companies, firms and other legal entities participating in such an operation shall be subject to **the provisions governing their participation in the formation of a subsidiary in the form of a public limited-liability company** under national law. (Art. 36)



Conversion

- **Not to be combined with a cross-border transfer of registered office** (Art 37.3)
 - **Optional veto right** (MS: qualified majority or unanimous) for the organ where the employees' participation is organised in (Art 37.8)
 - Before/after protection for the rights of the employees (Art. 37.9):
9. The **rights and obligations** of the **company** to be converted on **terms and conditions** of **employment** arising from **national law, practice** and **individual** employment contracts or **employment relationships** and existing at the date of the registration **shall**, by reason of such registration **be transferred to the SE**.
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Structure...

- As always:
 - Draft terms
 - Explanatory report
 - Examination by independent expert
 - Approval by the GM
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Transfer of seat

- The seat of a SE: Art. 7 & Art. 64. One of the models for the new Directive.

Art. 7

*The **registered office** of an SE shall be located within the Community, **in the same Member State as its head office**. A Member State may in addition impose on SEs registered in its territory the obligation of locating their head office and their registered office in the same place.*

Art. 64

1. *When an SE no longer complies with the requirement laid down in Article 7, the Member State in which the SE's registered office is situated shall take appropriate measures to oblige the SE to regularise its position within a specified period either:*
 - (a) by re-establishing its head office in the Member State in which its registered office is situated or*
 - (b) by transferring the registered office by means of the procedure laid down in Article 8.*



Transfer of seat

2. *The Member State in which the SE's registered office is situated shall put in place the measures necessary to ensure that an SE which fails to regularise its position in accordance with paragraph 1 is liquidated.*
 3. *The Member State in which the SE's registered office is situated shall set up a judicial remedy with regard to any established infringement of Article 7. That remedy shall have a suspensory effect on the procedures laid down in paragraphs 1 and 2.*
 4. *Where it is established on the initiative of either the authorities or any interested party that an SE has its head office within the territory of a Member State in breach of Article 7, the authorities of that Member State shall immediately inform the Member State in which the SE's registered office is situated.*
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Procedure

- Transfer **proposal**
 - Explanatory **report** (no expert)
 - **No problems for amendments** of articles (the structure stays the same)
 - **Registration** procedure and effects
 - Possible **protection of minority shareholders** and creditors
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Capital

- Minimum capital requirements: € 120.000
 - Possible higher national requirements in certain cases
 - CodDir applies as it is transposed in the national law
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The Structure: GM + Board

- General meeting: Arts 52-60
- Board: Arts 38-51
 - Freedom to choose between one-tier and two-tier system
 - General common rules + specific rules for each board type



Board: general rules

- The **board (management organ and managing directors)** is **responsible for managing the SE** (Arts 39.1 & 43.1)
 - Statutes are free to determine which decisions are to be taken by the board as a whole, and which can be delegated
 - Possible split of competences and responsibilities if so set by domestic law (Arts 39.1 and 43.1)
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Board: general rules

- Duration: statutes (max 6 years) (Art. 46)
 - Legal person director if allowed by MS (and with a natural person designated for the management)
 - Specific conditions for appointment set by statutes (if MS so allows); the same for minority shareholders
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Disqualification

- National laws
 - Members of the supervisory board cannot be members of the management board and vice versa
 - Disqualified from serving to the corresponding domestic company organ under the law of the State where the registered office is situated or even another member state (owing to a judicial or administrative decision)
 - National law also for conflict of interests
 - Remaining rules: national law of place of registration (free removal of members is likely to happen due to Art. 39.2).
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Instructions & authorisations

- Statutes
- Possible MS to allow such a competence directly to the supervisory board (Art. 48)

1. *An SE's statutes shall list the categories of transactions which require authorisation of the management organ by the supervisory organ in the two-tier system or an express decision by the administrative organ in the one-tier system.*

A Member State may, however, provide that in the two-tier system the supervisory organ may itself make certain categories of transactions subject to authorisation.

2. ***A Member State may determine the categories of transactions which must at least be indicated in the statutes of SEs registered within its territory.***



Conduct of business

- Self-regulation of the board
 - Duty not to divulge any information (art. 49)
 - Appointment of the chair (from shareholders, in case of co-determination)
 - Default rules (possible deviations in case of co-determination) for
 - Quorum: $\frac{1}{2}$ members present and represented
 - Decision-taking: majority of members present or represented (casting vote of the chairman)
 - Proxies are allowed
 - Breach of duties entails liability in accordance with the provisions applicable to public limited-liability companies in the Member State in which the SE's registered office is situated, for loss or damage sustained by the SE
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Two-tier system

- Art. 39.2: The member or members of the management organ shall be appointed and removed by the supervisory organ.
(but MS may require or permit the appointment by GM)
 - If member of the management organ, a person cannot be member of the supervisory organ (besides the case of temporary vacancy: Art. 39.3). Number of members and rules: statutes (MS free to set minimum or maximum: Art. 39.4)
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Two-tier system

Supervisory organ (Art. 40)

- Not entitled to manage the SE
 - Members appointed by GM (first members: statutes) – consistent with minority protection domestic rules
 - Number of members: statutes (MS free to set limits)
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Two-tier system: procedure

- Art. 41: management organ reports to the supervisory organ at least once every 3 months on the state-of-the-company
 - Plus: prompt additional information on events «likely to have an appreciable effect on the SE»
 - On demand: the supervisory organ may require the MB to provide for information needed for supervisory purposes
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One-tier system

- Art. 43. Liability on MS provisions for managing director(s)
 - Number of directors: statute (MS free to set limits); at least 3 members if co-determination
 - GM appoints members
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One-tier system: procedure

- The organ meets at least once every 3 months (no specific provision for a right to call for a meeting by each director)
 - Chairman among the members. If half of members appointed by employees, chairman appointed by GM
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General meeting

- Very limited rules
 - Competence: matters for which they have a sole responsibility on the basis of:
 - SE Regulation:
 - Appointment of members of supervisory organ (Art. 40.2) and management organ (Art. 43.3);
 - Amendment of articles (Art. 59.1);
 - National SE legislation for implementation of SE Regulation;
 - National legislation for domestic public companies (law or articles)
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General meeting

- Domestic law also for procedure (in particular voting rights: Art. 53)
 - Regulation only lays down that:
 - At least one GM each year; the board (even the supervisory) has the power to convene, and so the 10% of the capital (even lower in those MS when it is possible for public companies), with the power to add items to the agenda (Arts 54, 55 & 56)
 - Majorities (majority of the votes validly cast; even reinforced for articles' amendments: Arts 57 & 59)
 - More classes of shares: if class rights are affected, the class must validate the GM decision (separate decision)
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Employees' participation

- Main obstacle for long time
- Council Directive 2001/86/EC, accompanying the Regulation 2157/2001/EC
- The winning criterium:
 - Negotiated arrangements
 - If not: before/after principle – Recital 7 Directive:

*If and when participation rights exist within one or more companies establishing an SE, **they should be preserved through their transfer to the SE, once established**, unless the parties decide otherwise*



Negotiated arrangements

Arts 3-6 SE directive

- Creation of a body to represent employees (special negotiating body, just one for all the involved companies) with a view to an agreement (including also the number of representatives in the SE board, if applicable)
 - Negotiations continue for 6 months, regulated by the law of the MS where the SE's seat is placed
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Negotiated arrangements

Principle: **Art. 13.3 & .4**

3. *This Directive shall not prejudice*

- a) *the **existing rights to involvement of employees** provided for by national legislation and/or practice in the Member States as enjoyed by employees of the SE and its subsidiaries and establishments, other than participation in the bodies of the SE;*
- b) *the **provisions on participation in the bodies laid down by national legislation and/or practice applicable to the subsidiaries of the SE.***

4. *In order to preserve the rights referred to in paragraph 3, Member States may take the necessary **measures to guarantee that the structures of employee representation in participating companies which will cease to exist as separate legal entities are maintained after the registration of the SE.***

Negotiated arrangements

- Annex 3: standard rules for participation **(to be applicable in case of no-deal)**

Employee participation in an SE shall be governed by the following provisions

(a) In the case of an SE established by **transformation**, if the rules of a Member State relating to employee participation in the administrative or supervisory body **applied before registration, all aspects of employee participation shall continue to apply to the SE**. Point (b) shall apply mutatis mutandis to that end.

(b) In **other cases** of the establishing of an SE, the **employees** of the SE, its subsidiaries and establishments and/or their representative body shall have the **right to elect, appoint, recommend or oppose the appointment of a number of members of the administrative or supervisory body of the SE equal to the highest proportion in force in the participating companies concerned before registration of the SE**.



Negotiated arrangements

If none of the participating companies was governed by participation rules before registration of the SE, the latter shall not be required to establish provisions for employee participation.

*The **representative body** shall decide on the **allocation** of seats within the **administrative or supervisory** body among the members representing the employees from the various Member States or on the way in which the SE's employees may recommend or oppose the appointment of the members of these bodies according to the proportion of the SE's employees in each Member State. If the **employees of one or more Member States are not covered by this proportional criterion, the representative body shall appoint a member from one of those Member States, in particular the Member State of the SE's registered office where that is appropriate.** Each Member State may determine the allocation of the seats it is given within the administrative or supervisory body.*

*Every member of the administrative body or, where appropriate, the supervisory body of the SE who has been elected, appointed or recommended by the representative body or, depending on the circumstances, by the employees shall be **a full member with the same rights and obligations as the members representing the shareholders**, including the right to vote.*



Standard solution

- Default system
 - Minimum standard in the directive
 - The vested rights should be fully maintained at the highest level to be found in one of the participating companies. This for the ratio, not for the weight (but in the case of conversion: all the rights)
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European Economic Interest Grouping

- Regulation 2137/1985/EEC
 - The «grandparent» of all the remaining forms
 - Not a company (recital 5)
 - Limited scope of application
 - Limited participation (even in number of members (art. 4(3)) (no invitation to the public for investment: art. 23)
 - It is a legal subject, but not necessarily a legal person
 - All the capability to have a patrimony, and be a part of contracts
 - Debatable success rate...
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Purpose

- Just ancillary: recital 5

*A grouping **differs from a firm or company principally in its purpose**, which is only to **facilitate or develop the economic activities of its members** to enable them to improve their own results; whereas, by reason of that ancillary nature, a grouping's activities **must be related to the economic activities of its members** but not replace them so that, to that extent, for example, a grouping may not itself, with regard to third parties, practice a profession, the concept of economic activities being interpreted in the widest sense*



Members?

- Yes, Art. 4.1

1. Only the following may be members of a grouping:

- (a) **companies or firms within the meaning of the second paragraph of Article 58 of the Treaty and other legal bodies governed by public or private law**, which have been formed in accordance with the law of a Member State and which have their registered or statutory office and central administration in the Community; where, under the law of a Member State, a company, firm or other legal body is not obliged to have a registered or statutory office, it shall be sufficient for such a company, firm or other legal body to have its central administration in the Community;
- (b) **natural persons** who carry on any **industrial, commercial, craft or agricultural** activity or who provide **professional** or other services in the Community
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The grouping cannot...

- Act as a holding or so... (Art. 3.2)

2. Consequently, a grouping may not:

- (a) **exercise, directly or indirectly, a power of management or supervision over its members' own activities** or over the activities of another undertaking, in particular in the fields of personnel, finance and investment;
 - (b) **directly or indirectly, on any basis whatsoever, hold shares of any kind** in a member undertaking ; the holding of shares in another undertaking shall be possible only in so far as it is necessary for the achievement of the grouping's objects and if it is done on its members' behalf;
 - (c) **employ more than 500 persons;**
 - (d) **be used by a company to make a loan to a director of a company**, or any person connected with him, when the making of such loans is restricted or controlled under the Member States' laws governing companies. **Nor must a grouping be used for the transfer of any property between a company and a director**, or any person connected with him, except to the extent allowed by the Member States' laws governing companies. For the purposes of this provision the making of a loan includes entering into any transaction or arrangement of similar effect, and property includes moveable and immoveable property;
 - (e) **be a member of another European Economic Interest Grouping.**
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Supranational

1. As of **members (art. 4.2)**:

2. *A grouping must comprise at least :*

- (a) **two companies**, firms or other legal bodies, within the meaning of paragraph 1 , which **have their central administrations in different Member States**, or*
 - (b) **two natural persons**, within the meaning of paragraph 1 , who carry on **their principal activities** in different Member States, or*
 - (c) **a company**, firm or other legal body within the meaning of paragraph 1 and **a natural person**, of which the first has its central administration in one Member State and the second carries on his principal activity in another Member State.*
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Legal sources

Arts 1.1 & 2

*European Economic Interest Groupings shall be **formed upon the terms, in the manner and with the effects laid down in this Regulation.***

Art. 2

*1 . Subject to the provisions of this Regulation, the **law applicable**, on the one hand, to the contract for the formation of a grouping, except as regards matters relating to the status or capacity of natural persons and to the capacity of legal persons and, on the other hand, to the internal organization of a grouping shall be the **internal law of the State in which the official address is situated**, as laid down in the contract for the formation of the grouping.*

2. Where a State comprises several territorial units, each of which has its own rules of law applicable to the matters referred to in paragraph 1, each territorial unit shall be considered as a State for the purposes of identifying the law applicable under this Article.



It's (partially) a matter of seat

Arts 6 & 12

A grouping shall be **registered** in the State in which it has its **official address**, at the registry designated pursuant to Article 39 (1).

The official address referred to in the contract for the formation of a grouping must be situated in the Community.

The **official address** must be fixed either:

- (a) where the grouping has its **central administration**, or
 - (b) where **one of the members** of the grouping has its central administration or, in the case of a natural person, his **principal activity**, provided that the grouping carries on an activity there.
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More info in the contract

Art. 5

A contract for the formation of a grouping shall include **at least**:

- (a) the **name** of the grouping preceded or followed either by the words 'European Economic Interest Grouping' or by the initials 'EEIG', unless those words or initials already form part of the name;
 - (b) the **official address** of the grouping;
 - (c) the **objects** for which the grouping is formed;
 - (d) the **name, business name, legal form, permanent address or registered office**, and the number and place of registration, if any, **of each member** of the grouping;
 - (e) the **duration** of the grouping, except where this is indefinite.
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Disclosure

- Three levels:
 - A. Trade registry (Art. 7)
 - B. Publication in the national gazette (Arts 8 & 9 for effects – CodDir for Disclosure)
 - C. Publication in the EUOJ (restricted items, Art. 11)
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What to disclose?

- **Full information in Trade registry:**
 - *In particular contract and amendments (including change of members)*
 - *setting up or closure of any establishment of the grouping*
 - *judicial decision establishing or declaring the nullity*
 - *appointment of the managers of a grouping, their names and any other identification particulars required by the law of the Member State in which the register is kept, notification that they may act alone or must act jointly, and the termination of any manager's appointment (the same for liquidators)*
 - ***notice of a member's assignment of his participation in a grouping or a proportion thereof, in accordance with Article 22(1)***
 - *notice of the conclusion of a grouping's liquidation, as referred to in Article 35(2); (i) any proposal to transfer the official address, as referred to in Article 14(1)*
 - ***any clause exempting a new member from the payment of debts and other liabilities which originated prior to his admission, in accordance with Article 26(2)***
 - This all also for establishments of foreign EEIGs
 - **Extracts in the national gazette**
 - **Just notice of constitution and conclusion of liquidation in OJEU**
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Members' liability

Art. 24: Rule

1. The members of a grouping shall have **unlimited joint and several liability** for its debts and other liabilities of whatever nature. **National law shall determine the consequences** of such liability.

2. **Creditors may not proceed against a member** for payment in respect of debts and other liabilities, in accordance with the conditions laid down in paragraph 1, before the liquidation of a grouping is concluded, unless **they have first requested the grouping to pay** and payment has not been made within an appropriate period.



And again...

Before registration (Art 9.2):

*2. If activities have been carried on behalf of a grouping **before its registration** in accordance with Article 6 and if the grouping does not, after its registration, assume the obligations arising out of such activities, the **natural persons, companies, firms** or other legal bodies which **carried on those activities** shall bear **unlimited joint and several liability** for them.*



Exceptions? Some doubts...

Recital 10:

*Whereas the members of a grouping have unlimited joint and several liability for the grouping's debts and other liabilities, including those relating to tax or social security, **without, however, that principle's affecting the freedom to exclude or restrict the liability of one or more of its members in respect of a particular debt or other liability** by means of a specific contract between the grouping and a third party.*



How long?

Art. 37

1 . A period of **limitation of five years after the publication, pursuant to Article 8 , of notice of a member's ceasing to belong to a grouping** shall be substituted for any longer period which may be laid down by the relevant national law for actions against that member in connection with debts and other liabilities arising out of the grouping's activities before he ceased to be a member.

2. A period of **limitation of five years after the publication, pursuant to Article 8, of notice of the conclusion of the liquidation** of a grouping shall be substituted for any longer period which may be laid down by the relevant national law for actions against a member of the grouping in connection with debts and other liabilities arising out of the grouping's activities.

The new member: as a default rule his/her liability is **unlimited** and several **also for the obligation a company assumed before** his/her entrance, but a different agreement is possible



Nullity

- Cases: domestic law
 - Procedure (art. 15) ► Same principles of CodDir
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Organs

- Members acting collectively
 - Not properly a «general meeting»: less burdens
 - Per capita voting (default) (Art. 17.1)
 - Possible management decisions (Art. 16.3)
 - Different majorities; in the most severe cases even unanimous decisions (e.g.: membership's assignment (Art. 22); entrance of new members (Art. 26); consent to a member's withdraw (exit, Art. 27)
 - Consultation can be asked by request of any member (Art. 17.4); each member may have information (Art. 18)
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Manager(s)/Director(s)

- **Natural** (or even legal, if allowed under domestic law) **person**
 - **Disqualification** rules according to a net of domestic laws
 - *No person may be a manager of a grouping if :
 - by virtue of the law applicable to him, or
 - by virtue of the internal law of the State in which the grouping has its official address, or
 - following a judicial or administrative decision made or recognized in a Member State he may not belong to the administrative or management body of a company, may not manage an undertaking or may not act as manager of a European Economic Interest Grouping. (Art. 19.1b)*
- Only the managers have **representative power** (same limits of CodDir)
- Additional organs are possible and allowed, but in the case, the rules come from the contract
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Transparency...

Profits & losses (Art. 21)

1. *The profits resulting from a grouping's activities shall be **deemed to be the profits of the members and shall be apportioned among them in the proportions laid down in the contract** for the formation of the grouping or, in the absence of any such provision, in equal shares.*

2. *The **members of a grouping shall contribute to the payment of the amount by which expenditure exceeds income in the proportions laid down in the contract for the formation of the grouping** or, in the absence of any such provision, in equal shares.*



Membership related operations

- Transfer (assignment) (Art. 22.1)

*1. Any member of a grouping may assign his participation in the grouping, or a proportion thereof, either to another member or to a third party; the assignment **shall not take effect without the unanimous authorization of the other members.***

- Use of the participation as a security (Art. 22.2)

*2. A member of a grouping may use his **participation in the grouping as security** only after the other members have given their **unanimous authorization**, unless otherwise laid down in the contract for the formation of the grouping. **The holder of the security may not at any time become a member of the grouping by virtue of that security.***



Withdrawal and expulsion

- Art. 27

1 . A member of a grouping may **withdraw** in accordance with the **conditions laid down in the contract** for the formation of a grouping or, in the absence of such conditions, with the **unanimous agreement of the other members**. Any member of a grouping may, in addition, withdraw on just and proper grounds.

2. Any member of a grouping may be **expelled** for the **reasons listed in the contract** for the formation of the grouping and, in any case, if he **seriously fails in his obligations** or if **he causes or threatens to cause serious disruption** in the operation of the grouping. Such expulsion may occur only by the **decision of a court** to which joint application has been made by a majority of the other members, **unless otherwise provided by the contract** for the formation of a grouping.

Member's death

- Art. 28

1 . A member of a grouping shall cease to belong to it on **death** or when he **no longer complies with the conditions** laid down in Article 4 (1). In addition, a Member State may provide, for the purposes of its liquidation, winding up, insolvency or cessation of payments laws, that a member shall cease to be a member of any grouping at the moment determined by those laws.

2. In the event of the **death of a natural person** who is a member of a grouping, no person may become a member in his place except under the conditions laid down in the contract for the formation of the grouping or, failing that, with the unanimous agreement of the remaining members.



When a member ceases to be...

- ...a member, Arts 29 *seqq* apply
 - In summary:
 - Notice to the remaining members + disclosure
 - The EEIG continues with the remaining members, unless otherwise provided for in the contract or by unanimous decision
 - Liquidation to the withdrawn or expelled member pursuant the patrimony of the grouping as of its exit (Art. 33)
 - Liability for 5 years after exit (Arts 34-37)
-



Winding up

- Mandatory, voluntary or judiciary
- General rule + **voluntary** (Art. 31.1)

*A grouping **may** be wound up by a decision of its members ordering its winding up. Such a decision shall be taken **unanimously, unless otherwise laid down in the contract for the formation of the grouping.***

- **Mandatory** (art. 31.2 & .3)

*A grouping **must** be wound up by a decision of its members:*

- (a) *noting the expiry of the period fixed in the contract for the formation of the grouping or the existence of any other cause for winding up provided for in the contract, or*
- (b) *noting the accomplishment of the grouping's purpose or the impossibility of pursuing it further.*

Where, three months after one of the situation referred to in the first subparagraph has occurred, a members' decision establishing the winding up of the grouping has not been taken, any member may petition the court to order winding up.

- A grouping must also be wound up by a decision of its members or of the remaining member when the conditions laid down in Article 4(2) are no longer fulfilled.
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Judiciary winding-up

- Art. 32

1. On **application by any person concerned** or by a competent authority, in the event of the infringement of Articles 3, 12 or 31(3), **the court must order a grouping to be wound up**, unless its affairs can be and are put in order before the court has delivered a substantive ruling.

2. On **applications by a member**, the court may order a **grouping to be wound up on just and proper grounds**.

3. A Member State may provide that the court may, on application by a competent authority, order the winding up of a grouping which has its official address in the State to which that authority belongs, wherever the **grouping acts in contravention of that State's public interest**, if the law of that State provides for such a possibility in respect of registered companies or other legal bodies subject to it.

- In addition to para 3, see Art. 4.4:

4. **Any Member State may, on grounds of that State's public interest, prohibit or restrict participation in groupings by certain classes of natural persons, companies, firms, or other legal bodies.**

- Plus Art. 38 (but here we have no technical winding-up, but simply a prohibition to carry out some activities):

Where a grouping carries on any activity in a Member State in contravention of that State's public interest, a competent authority of that State may prohibit that activity. Review of that competent authority's decision by a judicial authority shall be possible.

Effects of winding up

- Art. 35

1. *The winding up of a grouping **shall entail its liquidation.***

2. *The liquidation of a grouping and the conclusion of its liquidation shall be governed by **national law.***

3. *A grouping shall **retain its capacity,** within the meaning of Article 1(2), until its liquidation is concluded.*

4. *The liquidator or liquidators shall take the steps required as listed in Articles 7 and 8.*

The transfer of seat

- Art 14 ► see also CodDir arts. 86b ss. after Directive (EU) 2019/1151

1. When the transfer of the official address results in a change in the law applicable pursuant to Article 2, a **transfer proposal** must be **drawn up, filed and published** in accordance with the conditions laid down in Articles 7 and 8.

No decision to transfer may be taken for two months after publication of the proposal. Any such decision must be taken by the members of the grouping **unanimously**. The transfer shall **take effect on the date on which the grouping is registered**, in accordance with Article 6, **at the registry for the new official address**. That registration **may not be effected until evidence has been produced that the proposal to transfer the official address has been published**.

2. The **termination of a grouping's registration at the registry for its old official address may not be effected until evidence has been produced that the grouping has been registered at the registry for its new official address**.

3. Upon publication of a grouping's new registration the new official address may be relied on as against third parties in accordance with the conditions referred to in Article 9 (1); however, **as long as the termination of the grouping's registration at the registry for the old official address has not been published, third parties may continue to rely on the old official address unless the grouping proves that such third parties were aware of the new official address**.

4. The laws of a Member State may provide that, as regards groupings registered under Article 6 in that Member State, the transfer of an official address which would result in a change of the law applicable shall not take effect if, within the two-month period referred to in paragraph 1, a competent authority in that Member State opposes it. Such opposition may be based only on grounds of public interest. Review by a judicial authority must be possible.



Societas Cooperativa Europaea

- Regulation 1435/2003/EC + Directive 2003/72/EC (involvement of employees)
- Purpose: facilitating cooperatives in cross-border activities
- Key features of formation:
 - Ex nihilo: at least 5 members (2 MS)
 - By mergers (2 MS)
 - By conversion (establishment in another MS 2 yrs)





- Formed under a MS law
 - Registered office in a MS, with link to that MS' economy
 - Minimum capital at least 30.000 €
 - GM has to pass each year a resolution about capital
 - Possible investor members if allowed by MS
 - Articles: according to national law
-



- Two-tier and one-tier as in the SE
 - Common rules for management as in the SE
 - For GM, one person, one vote principle; possible increase up to 5 (art. 59)
 - Principles: non discrimination, possible transfer of seat, internal structure, additional disclosure in EUOJ, involvement of employees alike it happens in SE
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SPE & SUP

Abandoned drafts

SPE (Regulation): Private companies

SUP (Directive): Single-member companies

now recast in the Company Law Package – Directive (EU) 2019/1151
