

## COMPANY LAW

### The European Public Limited-Liability Company

*by Michael A. Leipold, Solicitor*

The European public limited-liability company has been lavishly extolled in the relevant specialized press and has been elected the number one supranational business entity, replacing outdated concern structures, thanks to simplification through the introduction of pan-European regulations. However, criticism is increasing from those who see no advantage over the current national regulations, as the new European norms and economy measures still have to prove their worth.

As is frequently the case, the lawyer's comment : It all depends! It is therefore of decisive importance what objectives a company has, what structural provisions already exist and what structures are planned in the company for the future. With this in mind, the founding of or transformation into a public limited-liability company subject to European law can be advantageous not only for large-scale entrepreneurs such as Allianz SE, but also for middle-class companies with supranational connections.

The most significant advantages of the new *Societas Europaea* (SE) are a sphere of activity throughout Europe, a company which is dependent on one single judicial authority and in which the management only has to contend with one single management system and one reporting system. It is to be expected that this will result in considerable economies as far as transaction costs are concerned.

For any company actually contemplating European mergers or equivalent major restructuring, the European limited-liability company constitutes an interesting possibility whose advantages should not be neglected. Our firm of solicitors, ml Rechtsanwälte, is specialized in the field of commercial law and can elucidate the advantages for your company, providing you with advisory support in comprehending the new European regulations and the numerous links to national law.

The introduction of a uniform company structure throughout Europe is a long-standing dream of the European legislative, originating in 1970. One of the things which always disrupted negotiations was the difficulty in finding a standardized regulation governing the form of worker co-determination.

The European limited-liability company is an independent company form parallel to the recognized national companies. It finds its legal basis in the regulation relating to the Statutes for a European company (SEVO) of 8 October 2001 as directly applicable secondary Community Law, which came into force on 8 October 2004. The Federal Republic of Germany complemented this regulation by the law concerning the execution of the regulation (SEAG) on 22 December 2004.

Thanks to the European norms, widespread standardization has been introduced, although this is largely restricted to regulations involving company law.

The European legislative has not succeeded in organizing the SE completely uniformly. In the case of labour, taxation and insolvency legislation, national law continues to be binding.

A fundamental prerequisite for the formation of a European limited-liability company, whose subscribed original capital must be at least € 120,000.00, is that it have a cross-border element, independent of the respective type of formation (cf: Art. 2 SEVO).

The directive provides for four types of SE: the merger SE, the holding SE, the subsidiary SE and the conversion SE. Set-up of a European public limited-liability company is carried out in several phases, corresponding to the formation of a national public limited-liability company.

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Nevertheless, certain European peculiarities must be observed starting with the articles of association, including the notarial registration of the statutes right up to entry into the commercial register. This renders legal advice advisable.

In future, founders can choose between a two-tier system composed of a management organ and a supervisory organ or a monistic system in which the management of the company is put in the hands of the Board of Directors.

A further fundamental prerequisite to registration is presentation of evidence of an agreement concerning the involvement of workers, including the type of co-determination.

One of the most important and simultaneously most controversial topics involved in the introduction of the European public limited-liability company is the involvement of workers. Consequently, this was not directly regulated in the regulation on the statute of an SE but in a special Council directive (2001/86/EC) of 08 October 2001. This directive was adopted in Germany, within the agreed time limit, in the law on involvement of workers in a European company (abb. SE-Beteiligungsgesetz SEBG) on 22 December 2004. Worker involvement can take three different forms. The most intensive type of involvement is worker co-determination in which representatives of the employees nominate members of the supervisory or administrative organs. Then there is the information alternative, in which the management of the SE is obliged to inform representatives of the work-force about company and subsidiary affairs. The hearing procedure on the other hand is an exchange of opinions between representatives of the work-force and the management of the company. The special regulation of employee involvement within the framework of the European public limited-liability company provides the company with various favourable possibilities for intervening. In certain instances, for example, co-determination of employee representatives can be excluded.

In other cases, it is possible to negotiate employee involvement in an agreement between the management organs and the negotiating body.

SEVO does not include any regulations relating to the taxation laws for a European public limited-liability company. Art. 10 SEVO therefore refers to the taxation laws of the country in which the company has its registered office. Bearing in mind the cross-border activities of the SE within the internal European market, the provisions of Community law need to be considered. In particular, the merger regulation and the mother company/subsidiary regulation also affect the SE. However, the European Court of Justice is of the opinion that these norms are already applicable on account of the principle of equality.

The introduction of the European public limited-liability company can present an opportunity for any company with a cross-border sphere of activity. However, due to the novelty of this type of organisation, this opportunity should be used to its best advantage by taking expert legal advice.

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