# LEGISLATIVE ASPECTS REGARDING EUROPEAN SOCIETY

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REVIEW, RESEARCH ARTICLE

**Abstract**

*As a result of Romania's accession to the European Union in 2007, a series of changes occurred in the legislation that regulates the activity of commercial companies. As a result of this aspect, in Law 31/1990 on commercial companies, were introduced regulations regarding the establishment and running of the activity of European commercial companies, thus creating the legal framework necessary for the existence of such a company.*

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## INTRODUCTION

European Company (abbreviated E.C.) or Societas Europea in Latin, is a form of joint-stock company that appeared in 2004, which allows commercial activity to be carried out in different countries of the European Economic Area (EEA) based on the same set of rules[1]. Along with the appearance of the regulation of the existence of such a company, was also regulated the possibility of establishing the European Economic Interest Group and the European Cooperative Society.

The European Company is a commercial company that allows companies to operate throughout the European Union as a single legal entity. It was created to encourage the free movement of capital and labor between EU member states.

The need for the appearance and regulation of such a company emerged as a result of both the economic development of entrepreneurs and their need to expand their business geographically.

## MATERIAL AND METHOD

The materials used in writing this paper are composed of legislation and web sites. The methods used are legal, namely the formal method, the comparative method, the logical and sociological method, the analytical method. The use of these methods has the role of performing a systematic analysis of the information from the studied sources in order to elaborate the points of view and the conclusions.

## RESULTS AND DISCUSSIONS

The creation of the internal market and the improvements it brings to the economic and social situation in the European Community required not only a removal of trade barriers, but also an adaptation of production structures to the community dimension. For this purpose, it is essential that those societies whose activity is not limited to the satisfaction of purely local needs can conceive and undertake the reorganization of their activities on a community scale. This reorganization requires that existing companies in different member states have the possibility to unite their potential through mergers. These operations can only be performed in compliance with the competition rules.

The realization of restructuring and collaboration operations involving companies from different member states raises a series of legal, psychological and fiscal difficulties. The harmonization of the law of commercial companies in force in the member states through the directives adopted under Article 44 of the treaty can solve some of these difficulties. However, such harmonization does not exempt companies regulated by different legislative systems from the obligation to choose a type of

[1] https://europa.eu/youreurope/business/running-business/developing-business/setting-up-european-company/index_ro.htm

company regulated by a certain domestic legislation.

Regulation (EC) NO. 2157/2001 of the Council of 8th October 2001 regarding the statute of the European company and Directive 2001/86/EC of the Council of 8th October 2001 supplementing the statute of the European company with regard to the involvement of workers are the normative acts that regulate the manner of establishment and development of the activity of such a company. The provisions of these normative acts were also transposed into our legislation, more precisely by amending Law 31/1990 on the commercial company - republished, by inserting Title VII1: The European Company art. 2702a) – 2702e) Government Decision 187/2007 regarding information procedures, consultation and other ways of involving employees in European companies and Law 217/2005 regarding the establishment, organization and operation of the European Works Council – Republication.

The European Company presents the following features: it is a company whose capital is divided into shares; no shareholder is liable for an amount other than the subscribed amount; a European company has legal personality; the capital of such a company is expressed in euros (the subscribed capital cannot be lower than €120,000); the legislation of a member state that provides for a higher subscribed capital for companies carrying out certain types of activities applies to ECs with registered offices in the member state in question[2] ; the association is managed by its own board of directors; the capital is composed of shares, each shareholder is liable only up to the amount deposited; shareholders have the right to participate in the general meeting.

In order to establish a European Company, the following conditions must be fulfilled:[3]

1. the companies forming the EC must have their registered office and headquarters in the same EU country
2. the constituent companies must be present in other EU countries (through subsidiaries or branches); if this requirement is not met, the companies involved must be regulated by the laws of at least 2 EU countries
3. being a capital association, minimum subscribed capital of EUR 120 000
4. to have concluded an agreement with the employees representatives regarding their participation within the company and how they will be consulted and informed

Examples of European companies are: Allianz SE; BASF SE; Fresenius SE; MAN SE; Q-CELLS SE; SILVA SE; STRABAG SE; WILO SE; WIMBI BOATS SE.

European companies with their headquarters in Romania have legal personality from the date of registration in the trade register. An European company can only be registered in the trade register after concluding an agreement regarding the involvement of employees in the company's activity, under the conditions provided for by Government Decision no. 187/2007. Within 30 days from the registration, the National Office of the Trade Register will communicate to the Official Journal of the European Union an announcement regarding the company's registration[4]. The announcement will include the following information: name, number, date and place of EC registration; date and place of publication and title of the publication; the registered office and field of activity of the EC. If the registered office of an EC is transferred, an announcement is published with the information previously presented, as well as the information regarding the new registration.[5]

Any European company registered in Romania can transfer its registered office to another member state. The transfer project, approved by the registrar of the trade register, is published in the Official Gazette of Romania, Part IV, at the expense of the company, at least 30 days before the date of the meeting in which the extraordinary general meeting is to decide on the transfer. The decision of the general meeting regarding the transfer of the registered office of the European company to another member state is adopted under the terms of art. 115 para. (2). If the shareholders representing the majority of the social capital are present or represented, the decision can be adopted with a simple majority. Creditors of European companies whose claims are prior to the date of

[2] Title I art. 1 and art. 4 Regulation (EC) no. 2157/2001 of the Council of 8th october 2001 regarding the status of the European company

[3] https://europa.eu/youreurope/business/running-business/developing-business/setting-up-european-company/index_ro.htm

[4] art. 2702a), art.2702b), art. 2702c) Law 31/1990 on commercial companies - republished

[5] art. 14 Regulation 2157/08-oct-2001 regarding the European company statute

publication of the transfer project and which are not due on the date of publication can file an opposition[6] within 30 days from the date of publication of the decision of the associates or of the additional amending act in the Official Gazette of Romania, Part IV , is submitted to the office of the trade register which, within 3 days from the date of submission, will mention it in the register and submit it to the competent court and the opposition (if any) is judged in the council chamber, with the summoning of the parties. The opposition suspends the execution of the operation until the date when the court decision remains final, unless the debtor company proves the payment of debts or offers guarantees accepted by creditors or concludes an agreement with them for the payment of debts. The shareholders who did not vote in favor of the decision of the general meeting by which was approved the transfer of the headquarters to another member state have the right to withdraw from the company and request the purchase of their shares by the company. The right of withdrawal can be exercised within 30 days from the date of adoption of the decision of the general meeting. The shareholders will submit to the company headquarters, along with the written withdrawal statement, the shares they own or, as the case may be, the shareholder certificates. The price paid by the company for the shares of the person exercising the right of withdrawal will be established by an independent authorized expert, as the average value resulting from the application of the two valuation methods recognized by the legislation in force at the valuation date. The expert is appointed by the registrar of the trade register. The evaluation costs are borne by the company. The judge-delegate, after verifying the legality of the transfer, pronounces a conclusion certifying the fulfillment of the legal conditions. After the deletion of the transferred European company, the trade register office will communicate to the Journal of the European Union, at the company's expense, an announcement regarding the deletion of the company from the Romanian trade register as a result of the transfer of its headquarters to another member state [7].

[6] art. 62 Law 31/1990 on commercial companies - republished

[7] art. 2702c) - 2702e) Law 31/1990 on commercial companies - republished

At the establishment of a European Society, can be chosen one of the following structures in which the future company can operate: monist system - where the management of the company consists of an administrative body that must meet at least once every three months and has a president appointed from among its members or the dualist system – where the management of the company is represented by a management body and a control body; however, one person cannot be a member of both bodies, and the governing body must report to the supervisory body at least once at three months and transmit the relevant information[8].

## CONCLUSIONS

The legal framework in which companies must carry out their activities within the European Community is based on both internal and Community legislation.

The provisions of Regulation (EC) no. 2157/2001 allows the creation and administration of companies that have a European dimension, without the constraints resulted from the disparity and limited territorial application of domestic law regarding commercial companies.

An EC must be established as a joint-stock company, this being the form that best responds, both in terms of financing and management, to the requirements of a company that carries out its activities at the European level.

In order to ensure the fact that these companies are of reasonable size, a minimum volume of capital is established in such a way that the respective companies have a sufficient patrimony, without this making it difficult for small and medium-sized enterprises to set up ECs.

An EC must be effectively managed and adequately supervised. It must be taken into account that there are currently two different systems of administration of joint-stock companies in the European Community. Allowing at the same time to a SE to choose one of the two systems, there must be a clear demarcation between the responsibilities of those in charge of management and those in charge of supervision.

[8] https://avocat-alina-szilaghi.ro/dreptcomercial/infiintare-societate-europeana/

Based on the rules and general principles of private international law, if an enterprise controls another enterprise governed by a different legal order, its rights and obligations in terms of protection of minority shareholders and third parties are regulated by the law under which the controlled enterprise is located, without this affecting the obligations of the tutelary enterprise under the law that regulates it, such as, for example, the requirement to draw up consolidated accounts, thus the rules and general principles of private international law are applied if an EC controls another company, as well as if it is controlled by another company.

An EC has the possibility to transfer its registered office to another member state. Thus, in this sense, the adequate protection of the interests of minority shareholders who oppose the transfer, creditors and other interested persons must be done in a proportionate manner. This transfer must be without prejudice to the rights prior to the transfer.

## REFERENCES

Law 31/1990 on commercial companies - republished

Regulation (EC) no. 2157/2001 of the Council of 8th october 2001 regarding the status of the European company

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