



COMPANY LAW

European company law is partially codified in Directive (EU) 2017/1132, and Member States continue to operate separate company acts, which are amended from time to time to comply with EU directives and regulations. Ongoing efforts towards establishing a modern and efficient company law and corporate governance framework for European undertakings, investors and employees aim to improve the business environment in the EU.

LEGAL BASIS

Articles 49, 50(1) and (2)(g), and 54, second paragraph, of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

An effective corporate governance framework creates a positive EU-wide business environment in the internal market. The objective of harmonising company law is to promote the achievement of freedom of establishment (Title IV, Chapter 2 of the TFEU) and to implement the fundamental right laid down in Article 16 of the Charter of Fundamental Rights of the European Union, the freedom to conduct a business within the limits of Article 17 of the Charter (right to property) ([4.1.2](#)).

Article 49, second paragraph, of the TFEU, guarantees the right to take up and pursue activities in a self-employed capacity and to set up and manage undertakings, in particular companies or firms ([2.1.4](#)).

The purpose of EU rules in this area is to enable businesses to be set up anywhere in the EU, enjoying the freedom of movement of persons, services and capital ([2.1.3](#)), to provide protection for shareholders and other parties with a particular interest in companies, to make businesses more competitive, and to encourage businesses to cooperate over borders ([2.1.5](#)).

The internal market implies the creation of Europe-wide companies. There are currently around 24 million companies in the EU, of which approximately 80% are limited liability companies. While around 98-99% of limited liability companies are small and medium-sized enterprises (SMEs), companies must be able to act throughout the EU according to a uniform legal framework.



ACHIEVEMENTS

A. A minimum set of common obligations

Although there is no codified European company law as such, harmonisation of the national rules on company law has created some minimum standards and covers areas such as the protection of the interests of shareholders and their rights, rules on takeover bids for public limited companies, branch disclosure, mergers and divisions, minimum rules for single-member private limited liability companies, financial reporting and accounting, easier and faster access to information on companies, and certain disclosure requirements for companies. The 2019 Company Law package has, nevertheless, streamlined many rules that previously applied under several EU instruments.

1. Setting up a company, capital and disclosure requirements

The First Council Directive (68/151/EEC), dating back to 1968, has been amended many times and was finally replaced by [Directive \(EU\) 2017/1132 of the European Parliament and of the Council relating to certain aspects of company law](#). It aimed to give the public easier and faster access to information on companies and deals, among other things, with the validity of obligations entered into by a company and nullity of the company. It applies to all public and private limited liability companies. A second Council Directive (77/91/EEC of 1976), equally replaced by [Directive \(EU\) 2017/1132^{\[1\]}](#), related only to public limited liability companies; the constitution of such companies requires a minimum amount of authorised capital (currently EUR 25 000) as security for creditors and a counterpart to the limited liability of members. There are also rules on maintaining and modifying the capital and a minimum content requirement for public limited liability companies' instruments of incorporation. The [12th Company Law Directive \(2009/102/EC of 16 September 2009\)](#) provides a framework for single-member private limited liability companies where all shares are held by a single shareholder.

2. Company operations involving more than one country

Directive (EU) 2017/1132 relating to certain aspects of company law introduced disclosure requirements for foreign branches of companies. It covered EU companies that set up branches in another EU country or companies from non-EU countries setting up branches in the EU. A [proposal](#) for a directive to further expand and upgrade the use of digital tools and processes in company law was adopted by the Commission on 29 March 2023. It aims to improve transparency and trust in the business environment in the single market.

Council [Directive 2014/86/EU](#) of 8 July 2014 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States introduces tax rules that are neutral from the point of view of competition for groups of companies of different Member States. There is no double taxation of dividends distributed by a subsidiary in one Member State to its parent company in another (see

[1] Amended by Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 as regards the use of digital tools and processes in company law, OJ L 186, 11.7.2019, p. 80.



also [Council Directive 2008/7/EC of 12 February 2008](#) concerning indirect taxes on the raising of capital).

[Directive 2004/25/EC on takeover bids](#) aims to establish minimum guidelines for the conduct of takeovers of companies governed by the laws of Member States. It sets minimum standards for takeover bids or changes of control and aims to protect minority shareholders, employees and other interested parties. In order to allow limited liability companies to exercise their freedom of establishment in the single market, [Directive \(EU\) 2017/1132](#) deals with the interconnection of central, commercial and companies registers (business registers) and harmonises the safeguards required across the EU for the protection of the interests of companies' shareholders and third parties in the event of division or mergers within one country, as well as cross-border mergers of a limited liability company and a public limited liability company.

In addition, [Commission Implementing Regulation \(EU\) 2021/1042](#) sets out technical specifications and procedures required for the system of interconnection of business registers.

3. Company restructuring (mergers and divisions, transfer of seat)

Transferring the registered office of a limited liability company from one Member State to another, as well as merging or dividing it, is an inherent aspect of the freedom of establishment guaranteed by Articles 49 and 54 of the TFEU (see the [Cartesio ruling](#) of the Court of Justice of the European Union^[2] (CJEU)). However, the principle of freedom of establishment does not guarantee that a company that moves from its home Member State to another Member State can retain its status as a company governed by the law of the Member State of incorporation.

Shareholders and third parties have the same guarantees during restructuring of the company (mergers and divisions). The rules concerning mergers between limited liability companies and public limited liability companies, and their division, were changed by Directive (EU) 2017/1132, which also guarantees protection for shareholders, creditors and employees.

The possibility of operating beyond national borders is an important part of a company's life and may include carrying out a cross-border merger, division or conversion, providing the chance to survive and grow by, for example, tapping into new business opportunities in other Member States or adapting to changing market conditions. Concerning cross-border conversions, mergers and divisions, in November 2019 Parliament and the Council adopted [Directive \(EU\) 2019/2121](#). The directive aims to remove unjustified obstacles to the freedom of establishment of EU companies in the single market by facilitating cross-border conversions, mergers and divisions, and introduces comprehensive procedures for those operations and additional rules for cross-border mergers of limited liability companies established in an EU Member State. Moreover, the directive outlines similar rules on employee participation rights and seeks to ensure that employees will be adequately informed of and consulted about their expected impact. Minority and non-voting shareholders' rights enjoy greater

[2]Case C-210/06, ECLI:EU:C:2008:723, paragraphs 111-113.



protection, while creditors of the companies concerned are given clearer and more reliable safeguards.

The question of cross-border transfer of registered offices has not yet been resolved. In [Case C-106/16, Polbud](#), the CJEU, in answer to a preliminary question, further specified the conditions of 'freedom of establishment', stating that it is applicable also to the transfer of the registered office of a company formed in accordance with the law of one Member State to the territory of another Member State, for the purpose of its conversion.

4. Guarantees concerning the financial situation of companies

To ensure that information provided in accounting documents is equivalent in all Member States, Directives [2006/43/EC](#) and [2013/34/EU](#) require company accounts (annual accounts, consolidated accounts and approval of persons responsible for carrying out statutory audits) to give a true and fair view of the company's assets, liabilities, financial position and profit or loss. Directive 2006/43/EC aims to improve the reliability of the financial statements of companies by establishing minimum requirements for the statutory audit of annual and consolidated accounts. Directive 2013/34/EU simplifies the financial reporting requirements for micro-enterprises in order to enhance their competitiveness and also introduced the obligation for EU listed companies to provide a corporate governance statement in their annual report. [Regulation \(EC\) No 1606/2002](#) on the application of international accounting standards harmonises the financial information presented by publicly traded companies in order to guarantee protection for investors. [Regulation \(EU\) 2015/848 of 20 May 2015 on insolvency proceedings](#) (on the basis of Article 81 of the TFEU on civil law cooperation) helps to resolve conflicts of jurisdiction and laws, and ensures the recognition of judgments across the EU. It does not harmonise substantive insolvency laws of the Member States, it simply establishes common rules on the court competent to open insolvency proceedings, the applicable law, and the recognition of the court's decisions. The main objective is to avoid the transfer of assets or judicial proceedings from one Member State to another. [Directive \(EU\) 2019/1023](#) aims to offer a 'second chance for entrepreneurs'. This directive addresses concerns raised by large numbers of investors about the risk of lengthy or complex insolvency procedures abroad, which they attribute as the main reason for not investing outside their own country.

5. The cross-border exercise of shareholders' rights

[Directive 2007/36/EC](#) (amended by Directives [2014/59/EU](#) and [\(EU\) 2017/828](#)) on the exercise of certain rights of shareholders in listed companies abolishes the main obstacles to a cross-border vote in listed companies that have their registered office in a Member State, by introducing specific requirements for a certain number of shareholder rights at the general meeting. It also sets out certain rights for shareholders in listed companies, including timely access to relevant information on general meetings and easier proxy voting. [Directive \(EU\) 2017/828](#) encourages shareholder engagement, and introduces requirements in relation to identification of shareholders, transmission of information, facilitation of exercise of shareholders' rights, transparency of institutional investors, asset managers and proxy advisors, remuneration of directors and related party transactions.



6. Company reporting

The EU provides rules on financial information to be disclosed by companies and auditing to improve the integrity of financial statements.

a. Financial reporting

All limited liability companies have to prepare financial statements to monitor the health of their business and provide a true and fair view of their financial position. In [Directive 2013/34/EU](#) (the Accounting Directive), the EU introduced rules to ensure consistent and comparable financial reporting across the EU.

b. Corporate sustainability reporting

EU rules also require certain companies to report annually on the social and environmental impacts and risks related to their activities. This helps investors, civil society organisations, consumers, policymakers and other stakeholders to evaluate the non-financial performance of large companies and encourages companies to develop a responsible approach to business.

[Directive 2014/95/EU](#) (the Non-Financial Reporting Directive) lays down the rules on the disclosure of non-financial and diversity information by certain large companies. These cover areas such as environmental matters, social matters and the treatment of employees, respect for human rights, anti-corruption and bribery, and diversity on company boards (e.g. age, gender, educational and professional background). The directive applies to large public-interest companies with more than 500 employees.

On 5 January 2023, the [Corporate Sustainability Reporting Directive \(\(EU\) 2022/2464\)](#) entered into force. The directive modernises the rules concerning the social and environmental information that companies are obliged to report. A broader set of large companies, as well as listed SMEs, will be required to report on sustainability.

The new rules will ensure access to the information necessary to assess investment risks arising from climate change and other sustainability issues, creating a culture of transparency about the impact of companies on people and the environment. Reporting costs will be reduced for companies over the medium to long term by harmonising the information to be provided.

B. EU legal entities

European legal entities apply throughout the EU and coexist with national ones.

1. The European Company (SE)

After a long period of stalemate (during which the negotiations lasted 30 years), the Council adopted the two legislative instruments needed to establish a European company, namely [Regulation \(EC\) No 2157/2001](#) on the Statute for a European company and Directive 2001/86/EC supplementing the Statute with regard to the involvement of employees in the European company. This enables a company to be set up within the territory of the EU in the form of a public limited liability company, known by the Latin name 'Societas Europaea' (SE). Several options are made available to undertakings of at least two Member States that wish to set themselves up as an SE: merger, establishment of a holding company, formation of a subsidiary, or conversion into an SE. The SE must take the form of a company with share capital. In order to



ensure that such companies are of reasonable size, a minimum amount of capital is set, i.e. not less than EUR 120 000.

Directive 2001/86/EC is aimed at ensuring that the establishment of an SE does not entail the disappearance or reduction of practices of employee involvement existing within the companies participating in the establishment of that SE.

2. The European Cooperative Society (SCE)

Regulation (EC) No 1435/2003 on the Statute for a European Cooperative Society (SCE) puts in place a genuine single legal statute for the SCE. It enables a cooperative to be established by persons resident in different Member States or by legal entities established under the laws of different Member States. With a minimum capital of EUR 30 000, these new SCEs can operate throughout the single market with a single legal personality, set of rules and structure.

Directive 2003/72/EC supplements this statute with regard to the involvement of employees in the SCE, in order to ensure that the establishment of an SCE does not entail the disappearance or reduction of practices of employee involvement existing within the companies participating in the establishment of that SCE.

3. European Economic Interest Grouping (EEIG)

Council [Regulation \(EEC\) No 2137/85](#) sets out a statute for European Economic Interest Groupings (EEIGs). The EEIG, which is endowed with legal capacity, enables a company in one Member State to cooperate in a joint venture (for example, to facilitate or develop the economic activities of its members, but not to make profits for itself) with companies or natural persons in other Member States, the profits being shared between the members. An EEIG may not invite investment from the public.

4. European private company (SPE)

The Commission proposal of 2008 for a statute for a European private company with limited liability (Societas Privata Europaea) aimed at making it easier for SMEs to do business in the internal market, to improve their market performance and enhance their competitiveness by facilitating their establishment and operation. The proposal did not seek to regulate matters related to labour law, tax law, accounting or the insolvency of the company. Nevertheless, it had to be withdrawn in 2014 because of concerns in the European Parliament about safeguarding workers' co-determination rights.

5. Single-member private limited liability company (SUP)

The Commission proposal of 2014 for a directive of the European Parliament and of the Council on single-member private limited liability companies (Societas Unius Personae) aimed at making it easier to set up such a company with a single shareholder in the EU across borders between Member States. As Parliament's Committee on Employment and Social Affairs had serious concerns about the participation of trade unions during the drafting process of the proposal, it was also finally withdrawn in 2018.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has always succeeded in amending legislation, e.g. defending worker participation in companies or making progress in the creation of the various forms of



European companies in order to facilitate the cross-border activities of enterprises. In February 2007, Parliament asked the Commission to present a proposal for a European private company adapted to the needs of SMEs and to prepare for a review of the European company statute in order to simplify procedures for the constitution of such companies. Following the withdrawal of the two proposals for regulations on a European association and mutual society, Parliament invited the Commission to resurrect these projects. Finally, on 5 September 2023, the Commission adopted the [proposal on European cross-border associations](#). The draft directive will improve the functioning of the internal market by removing legal and administrative barriers. This will create a level playing field between non-profit associations in the EU that wish to operate in more than one Member State. Parliament also called for an appropriate legal framework for foundations. On 8 February 2012, the Commission proposed a Council Regulation on the Statute for a European Foundation, 'Fundatio Europaea', designed to make it easier for such organisations to work for the public good anywhere in the EU.

In its [resolution of 14 June 2012 on the future of European company law](#), Parliament took the view that EU company forms supplementing the existing forms available under national law have considerable potential and should be further developed. In order to address the specific needs of SMEs, Parliament urged the Commission to make further efforts with a view to the adoption of the [Private Company Statute \(SPE\)](#). In response to the Commission communication on the matter, Parliament adopted a resolution on a renewed EU strategy for corporate social responsibility in February 2013. Its resolution of 14 March 2013 on the Statute for a European mutual society contained recommendations to the Commission on such a statute. Finally, Parliament has, on numerous occasions, called for a directive on the cross-border transfer of company seats, through various resolutions and oral questions deploring the current lack of common rules that undermine corporate mobility and thus freedom of establishment^[3]. [Directive \(EU\) 2019/2121 of 27 November 2019 amending Directive \(EU\) 2017/1132 as regards cross-border conversions, mergers and divisions](#) was adopted at the end of 2019.

In [Parliament's resolution of 13 June 2017 on cross-border mergers and divisions](#), attention was drawn to the rights of minority shareholders and rules on creditor protection, as well as to the lengthy and complex procedures required for cross-border divisions. It has also called, on numerous occasions, for a proposal on the cross-border transfer of seats (14th Company Law Directive).

A number of petitions dealing with digitalisation of EU company law and cross-border operations have been received by Parliament. The Committee on Petitions usually asks the Commission to provide relevant information or give its opinion on the points raised by the petitioner. (4.1.5).

In May 2017, Parliament adopted a resolution on the [EU e-Government action plan, in which it called on](#) the Commission to consider further ways to promote digital solutions for formalities throughout a company's lifecycle and underlined the importance of

[3]See, for example, its resolutions of [25 October 2007 on the European Private Company and the Fourteenth Company Law Directive on the transfer of the company seat](#) and of [13 June 2017 on cross-border mergers and divisions](#).



interconnecting business registers. Parliament has a long-standing body of research calling for digital facilitations in this area^[4].

In April 2019, [Parliament adopted substantial amendments](#) to the Commission's proposal to amend Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions, with additional rules on cross-border mergers of limited liability companies.

In July 2019, Parliament adopted [Directive \(EU\) 2019/1151](#) to amend Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law, which is designed to facilitate the establishment of businesses by electronic means and promote online operations throughout company life cycles. A full set of online registration procedures for businesses has not yet been provided by all Member States, despite the fact that online registration is twice as fast on average and can be up to three times cheaper than traditional paper-based formats. Parliament is currently considering the Commission's [proposal](#) of 29 March 2023 to further expand and upgrade the use of digital tools and processes in company law and amending Directive (EU) 2017/1132.

On 1 June 2023, Parliament adopted its [position](#) on a [proposal for a corporate sustainability due diligence directive](#). The proposed legislation would oblige firms to identify, and where necessary prevent, end or mitigate the negative impacts of their activities, including those of their business partners, on human rights and the environment. This includes child labour, slavery, labour exploitation, pollution, environmental degradation and biodiversity loss.

This fact sheet was written by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs.

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[4]Godel, M. I. et al., [Reducing Costs and Barriers for Businesses in the Single Market](#), Directorate-General for Internal Policies, Policy Department for Economic and Scientific Policy, April 2016; van Veenstra, A. F. et al., [Ubiquitous Developments of the Digital Single Market](#), Directorate-General for Internal Policies, Policy Department for Economic and Scientific Policy, October 2013.

