



CCBE RESPONSE TO THE COMMISSION CONSULTATION ON THE RESULTS OF THE STUDY ON THE OPERATION AND THE IMPACTS OF THE STATUTE FOR A EUROPEAN COMPANY (SE)

CCBE response to the Commission consultation on the results of the study on the operation and the impacts of the statute for a European Company (SE)

The Council of Bars and Law Societies of Europe (CCBE) is the representative organisation of around 1 million European lawyers through its member bars and law societies from 31 full member countries, and 11 further associate and observer countries. The CCBE responds regularly on behalf of its members on policy issues which affect European citizens and lawyers.

The CCBE would like to submit the following comments in response to the consultation questionnaire.

II – Drivers

1. Do you agree with the findings of the study about the positive and negative drivers for setting up an SE and their importance? Please explain your answer.

The CCBE agrees with the findings of the study about the advantages and disadvantages of adopting the Statute for a European Company. The SE is indeed the only European form of organization to date which allows a company to transfer its registered office to another Member State. However, the possible future adoption of a directive on the transfer of registered offices between Member States could obviate one of the major advantages of using the European Company.

2. Do you agree with the study's assessment on the attractiveness/non-attractiveness of national legislation for setting up an SE? Do you think that other or additional issues in the national legislation should be taken into consideration for that assessment?

The Regulation provides many references to the national laws of the Member States in order to specify the conditions of setting up SE's, as well as their operating procedures. The lack of harmonization between local legislations explains the complexity of the legal system governing the SE, and why there is so little enthusiasm for this form of organization.

3. What are in your view the most important regulatory issues to consider for a company when assessing in which country to place its registered office and/or head office (both at the moment of formation and during the life of a company – taking into account the possibility to transfer the registered office).

The CCBE already had an opportunity to work on the issue of transferring registered or head offices within the Member States. In the CCBE's view, the main elements that a company considers when planning to transfer its head office are as follows:

- *Maintaining its legal personality in the Member State to which the office is being transferred;*
- *Requirements regarding minimum capital stock;*
- *The applicable tax regime ;*
- *The ease and costs of setting up and then operating the company whose office is being transferred;*
- *The flexibility with which the company's operation can be organized.*

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III - Main trends

- 4. Do you agree with the study that the main reasons for the current distribution of SEs across the EU/EEA Member States are connected to the employee participation system and corporate governance system of the individual Member State? Please explain your answer.**

Employee representation within company organs is undeniably one of the factors which may explain the success - or conversely, the unpopularity - of the European Company within the Member States. We consider that the presence of employee representatives within company organs is likely to dissuade some business entities from adopting this form of organization, especially if national laws do not create such an obligation for forms of organization subject to national law.

- 5. Do you agree with the possible explanations for the current distribution of SEs in the EU/EEA presented in the study? If you think there are other possible explanations please list them.**

The CCBE believes that other factors could explain the geographical distribution of European Companies in the Member States. A possible explanation for this is to be found in the existence – or conversely, in the lack – of competing national forms of organization within the Member States. Some Member States do indeed provide flexible forms of organization in their national laws (such as the “Société par actions simplifiée” under French law) by allowing self-governance through statutes, which in turn creates direct competition for the European Company.

- 6. What are in your view the main advantages for a company to buy a ready-made shelf SE compared to setting up an SE directly?**

In the CCBE’s view, there are many advantages of purchasing a ready-made shelf SE:

- (i) No need to set up a wage negotiation scheme as explained in the study;*
- (ii) Quick set-up and quasi-immediate operation of the European Company, with the option of transferring its registered office to another Member State afterwards;*
- (iii) The option of purchasing a European Company set up under the national law of another Member State which shows attributes that the Member State of origin is not able to offer.*

IV - Practical problems encountered

- 7. Please provide examples of practical problems you have encountered in the course of setting up or running an SE (please focus only on company law related problems).**

The CCBE has had the opportunity to contact a company which had adopted the status of a European Company, in order to obtain its practical experience following the adoption of such a corporate form. As a result, it appears that some practical difficulties are encountered by European Companies:

- (i) The long period needed for incorporation procedures for the company, particularly because of the timetable to be followed with the establishment of a special negotiating group,*
- (ii) The imprecise nature of the texts governing the functioning of the European Company, since the European Regulation focuses on methods of incorporating a European Company and refers companies back frequently to national law regarding its day-to-day operation,*
- (iii) The impossibility of forming a single-member European Company.*

V - Possible follow-up

8. Do you agree with the study's recommendations for possible amendments of the SE Regulation? Which recommendations are the most important in your view? Do you have any other suggestions for amendments of the SE Regulation that would increase its attractiveness for businesses (e.g. for SMEs, groups operating across borders)?

The CCBE thinks that the study's proposed amendments to the Regulation meet the expectations of business entities.

VI - Any other comments

No