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# Societas Europaea

The main advantages of establishing  
a European Company

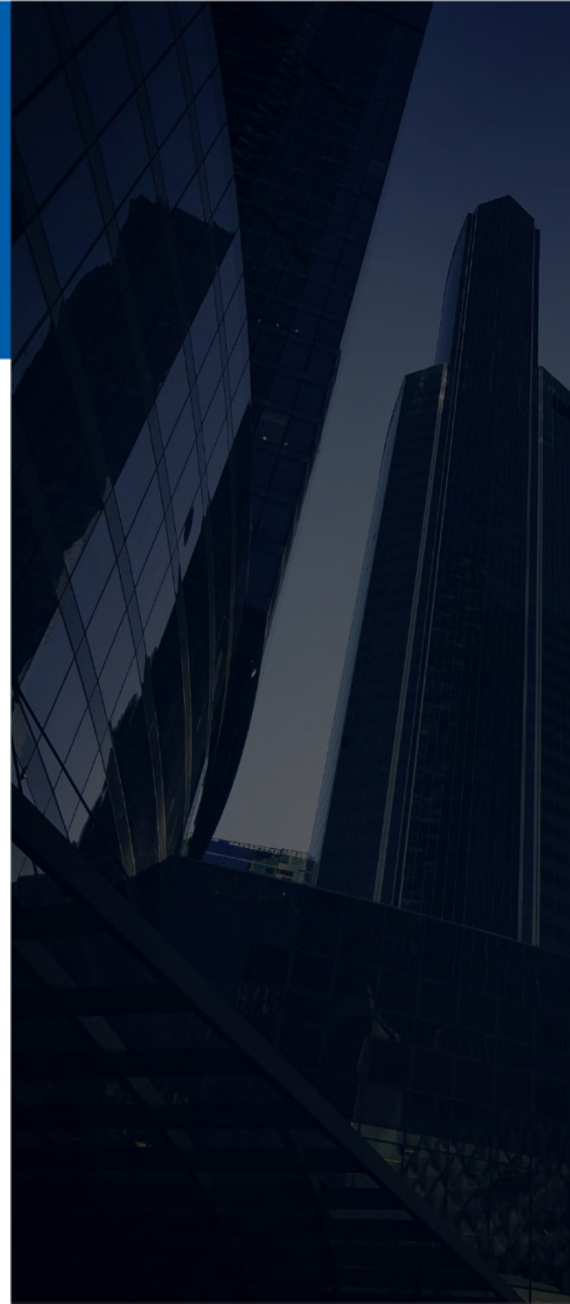


# Introduction

Did you know that in EU member states, there is a possibility to carry out business activities also by means of the legal form of Societas Europaea (or SE, in short)? This multinational form of business offers several advantages for companies, even though its establishment process may be quite demanding. Nonetheless, we have got you covered.

Accace offers services ranging from the establishment of an SE to accounting and tax consultancy tailored to this company type. Moreover, our corporate department offers services like selling of shelf companies, provision of registered seat, registration of changes in the Commercial Register, dissolution of companies and others, besides the establishment of different forms of entities and their registration.

In this eBook, we would like to present you some brief characteristics of Societas Europaea and its advantages.



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## Establishment of Societas Europaea

### Basic characteristics of SE

SE has a unified form – a joint stock company, whose business is running according to the EU law to simplify free movement of capital and unify the law concerning the companies. The registration is done in the particular member states according to the legal framework of the particular country, and then it is governed by the valid business and tax law of the member state.

### Ways of establishment

SE is established with at least **2 companies** originating in **different EEA countries** and is created in several ways:

- corporate consolidation of two or more joint stock companies or SE, which is governed by different legal systems
- establishment of SE as a holding company consisting of two or more companies (LLC, joint stock company) which is governed by different legal systems, which have a subsidiary company or branch in other member state for at least two years,
- establishment of SE as a subsidiary company consisting of two or more legal entities, which is governed by different legal systems or which have a subsidiary company or branch in other member state for at least two years,
- transformation of a joint stock company, which has a subsidiary company in other member state for at least two years, to SE.

Societas Europaea itself can further establish one or more subsidiaries in the form of an SE.

## Financial and organizational structure of Societas Europaea



The basic capital of SE shall be at least **EUR 120,000**.

The founders of SE **may choose to organize SE** in a two-tier or one-tier system:



**Two-tier (dual) system:** SE shall be organized by the Board of Directors as the statutory body of the company, and by the Supervisory Body as the executive body with the powers to control the activities of the Board of Directors.



**One-tier (monistic) system:** It is a simplified and more flexible method of SE organization. In this case, the Administrative Organ shall perform the powers of the statutory body of the company.

## Participation of employees

The way how the employees participate in SE management plays a significant role in the setting-up process. The issue of employees' participation has to be solved, otherwise this international company cannot be established. The power of the employees to manage SE includes the right to be informed and to discuss, as well as the right to elect and to be elected, to nominate or recommend or to express their disapproval with the election or appointment of the Administrative Organ or Supervisory Body of SE.

## Benefits of Societas Europaea



### Brand management

Giving the **image of a global player**, SE symbolises the international (more precisely, European) approach of the company and is, therefore, attractive to entrepreneurs in Europe who are looking to develop their cross-border business. By adopting the SE structure, the groups can demonstrate their desire to be **companies with European roots and global reach**.

Some huge companies in the EU have already changed their legal form into SE, for instance Zalando SE, Puma SE, BASF SE, Fresenius SE, MAN SE, SCOR SE, Strabag SE or Porsche SE.

### Change of registered seat of Societas Europaea

It is possible to remove the seat of SE within the entire EU, without the necessity to wind-up the company in the home member state and establish a new legal entity in the host member state, which entails the loss of legal and business continuity.

SE may **change its seat several times per year**. Although the registered office of SE should be located in the same member state as its head office, the rule has been weakened by the CJEU case-law (for instance by the case *Centros*). Frequently chosen destinations are Cyprus or Luxembourg, who offer **more flexible legislation** from a corporate, tax and labour law point of view.

In member states where no law exists on cross-border transfer of the registered office of the companies, the transfer of the registered office of SE offers the easiest way to do so.

The transfer precedes the accomplishment of all obligations towards authorities, including protection of interests of creditors, the 2 months' public notice about the intention to transfer and the approval of shareholders.

### Simplified business across the EU

Societas Europaea enables to organise business activities under **a single European brand name** and run the business without setting up a network of subsidiaries. Given that the basic requirements for SE are the same in each member state, it may **reduce the transaction costs**.



The law does not require a newly formed SE to be a commercially operating entity. This means that SE company might be established as a shell company. Thanks to the secure legal basis and simplification of organisational structures, it is easier for companies to undertake cross-border restructurings and establishing holdings.

## Tax optimization of Societas Europaea

Thanks to the possibility to choose the seat of the company, it is also possible to choose the most suitable tax system, the so-called *country shopping*. Taxation of SE follows the applicable national tax system for stock corporations of the member state in which SE is domiciled.

Change of the seat in certain circumstances allows to solve **tax optimization of business transactions**, e.g., claims trade, goods trade, purchase and sale of business shares, financing and development of software, dividend pay-out, internet services and beyond.

SE may also be used for **tax neutral transfer of assets across borders** between different permanent establishments of an SE. While transferring the seat, only assets that are allocated to the head office of the legal entity changing its registered seat are subject to taxation; assets that are allocated to a permanent establishment in the original member state are not taxed.

In member states where SE maintains a branch or permanent establishment, SE remains liable for taxation of such branch or permanent establishment.

## Determination of employment representation

Societas Europaea gives companies **more flexibility on collective co-determination** (employment participation) compared to some national laws, such as Germany, Austria or Luxemburg, where nearly half of the Supervisory Board members are employee representatives. Given that the SE negotiates an agreement with the employees on a share in the management of the company, for example the possibility of electing part of the members of the Supervisory Body, it is possible to negotiate the extent of the participation in the management. If no agreement is reached, the standard set of rules applies. In case the SE is established by means of transformation, the agreement shall provide for at least the same level of employee involvement as the ones existing within the transforming company.

In addition, the level of co-determination existing in the company at the time of changing its legal form remains unaffected for the future. The change of the circumstances affecting the co-determination under national laws, especially if the number of employees exceeds certain thresholds, does not affect the level of co-determination in SE. This effect is called *the effect of freezing the status quo*.

As a result, SE companies might **soften or at least freeze participation of the employees** in the company. In addition, in some cases the conversion into SE might downsize the Supervisory Body of the company - as a result, it can minimise the influence of the unions.

## More convenient business environment and higher legal confidence in businesses

SE companies benefit from the option of choosing a suitable legal system, which will be more stable, and which will provide higher confidence and option to enforce its right for the company. In addition, the size can ensure a **stronger negotiating position** when concluding contractual relationships, as well as stronger position during negotiations with banks and in cases of applications for EU financial support.

Moreover, SE companies, unlike national companies, can rely on international agreements for the protection of investments concluded with the particular member state.

## Saving management expenses

The organization and management structure of SE often allows a **lower number of members of its bodies**. This depends on the member state and its decision to use the possibility to set a minimum and/or maximum number of members of the management organ.

Societas Europaea is also popular in member states where the one-tier system is not available to domestic public limited-liability companies.

## Possibility to establish a subsidiary Societas Europaea

An existing SE may create one or more subsidiaries that are also SE companies. They can be further sold as **ready-made companies**. These might be attractive for future successors due to their fixation of the total absence of employee participation in the management of the company in case of their future growth.

### Disclaimer

Please note that our publications have been prepared for general guidance on the matter and do not represent a customized professional advice. Furthermore, because the legislation is changing continuously, some of the information may have been modified after the publication has been released. Accace does not take any responsibility and is not liable for any potential risks or damages caused by taking actions based on the information provided herein.



## Complex corporate, tax and legal solutions for your business



Having years of experience in supporting our customers to grow their business internationally, we can provide a full-range support when entering new markets and help with navigating the country specific statutory requirements – starting from a smooth incorporation process. We have developed a wide range of professional services, covering the go-to-market research, tailored incorporation and necessary administrative support for the business start, followed by a full package of tax and legal advisory, accounting, tax and payroll services.

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**Get all your needs sorted**

## Get in touch with us

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Originally established in Central and Eastern Europe in 2006, Accace ranks among the leading outsourcing and consultancy providers in the region. Engaging over 600 experts, we have vast experience with handling small to large scale, multi-country outsourcing projects and providing a comprehensive range of our services to over 2,000 customers.

## About Accace Circle

Accace operates internationally as Accace Circle, a co-created business community of like-minded BPO providers and advisors who deliver outstanding services with elevated customer experience. Covering almost 40 jurisdictions with over 2,000 professionals, we support more than 10,000 customers, mostly mid-size and international Fortune 500 companies from various sectors, and process at least 170,000 pay slips globally.

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