






























BUSINESSEUROPE



The European Private Company Statute (SPE)

**4th European Forum for In-house
Counsel
23-24 April 2009**

BUSINESSEUROPE: 40 members in 34 countries

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Spain	Sweden	Switzerland	Switzerland	The Netherlands	Turkey	Turkey	United Kingdom



What is BUSINESSEUROPE?



- ✓ The Confederation of European business, representative of more than 20 million small, medium and large companies
- ✓ A Social Partner

Mission

- ✓ „Actively promote and represent business in Europe“
- ✓ „Advocate a favourable and competitive business environment to foster sustainable economic growth“

Purpose

- ✓ Influence EU policies to create a business-friendly environment

Pillars

- ✓ Members FIRST
- ✓ Staff: about 45 persons
- ✓ Supporting network of 31 companies (ASGroup)
- ✓ Alliance for a Competitive European Industry
- ✓ European Employers Network



BUSINESSEUROPE – policy priorities

- 1. Implement the reforms for growth and jobs**
- 2. Integrate the European market**
- 3. Govern the EU efficiently**
- 4. Shape globalisation and fight all kinds of protectionism**
- 5. Promote a secure, competitive and climate-friendly energy system**
- 6. Reform European social systems to respond to global challenges**



SPE Background

- 1998: MEDEF and CCIP Draft for a Regulation
- Immediate and strong support from:
 - BUSINESSEUROPE
 - EUROCHAMBRES
 - 61.8% replies to the consultation by the “Winter Group” (2002)
 - EESC (2002)



Why do SMEs need the SPE statute

- One-size-fits-all is not the right approach in the area of company law
- SMEs need an instrument suitable to their needs
- It will help the about 90% of SMEs that do not have a cross-border activity to expand within the Single Market
- Compliance with a set of company law rules will reduce administrative and financial burdens: will allow savings between €10,000-30,000 or even more
- European Label: reinforce presence international markets
- Increase flexibility-based on contractual freedom-and mobility



Background: EU Commission

- Great interest for a corporate form adequate to SMEs- Commission's Feasibility study (2005)
- Commission's consultation on Future Priorities for Company Law and Corporate Governance (July 2006)
- Commission's consultation on a possible statute for a European private company statute (June 2007)
- Commission proposal for a regulation on the statute for a European private company (25 June 2008)
 - Legal basis: article 308 EC Treaty
 - Unanimity at Council level
 - Consultation of the European Parliament



Background: European Parliament

- EPP-ED hearing (June 2006)
- MEP Szejna own-initiative report on recent developments and prospects on company law (July 2006)
- MEP Lehne own-initiative report with recommendations to the Commission on the SPE statute adopted in plenary (1 February 2007)
- EP legislative resolution on the proposal for a regulation on the statute for a European private company (10 March 2009)



Highlights of the Commission proposal

- **Creation of a SPE:**
 - may be set up ex nihilo
 - by transformation or division of an existing company or by the merger of existing companies
 - any company form existing under national law may become an SPE, in accordance with the relevant provisions of national law
 - an SE or another SPE may also participate in the formation of an SPE



Highlights of the Commission proposal (cont'd)

- **Requirements for establishment:**
 - not subject to a cross-border requirement
 - capital will be divided into shares
 - a shareholder will not be liable for more than the amount he has subscribed or agreed to subscribe
 - it will have legal personality
 - its shares will not be offered to the public or publicly traded
 - it may be formed by one or more natural persons and/or legal entities



Highlights of the Commission proposal (cont'd)

- Large degree of freedom to determine matters relating to the rights and obligations attached to shares and on internal organisation of the SPE, to be regulated by Articles of Association;
- Minimum capital requirement: 1 Euro;
- Possible to transfer SPE registered office to another Member State without having to wind-up;
- Rules on protection of creditors' interests;



Highlights of the Commission proposal (cont'd)

- Dissolution of an SPE or its transformation to a national company form to be dealt by national law;
- Worker participation, tax, procedures for insolvency and cessation of payments and criminal law for Member States.



Ongoing discussions at Council level

- Progress report by French Presidency;
- Ongoing discussions technical level;
- Most problematic aspects:
 - Lack of cross-border requirement;
 - Minimum capital of 1 Euro;
 - Employee participation.



EP legislative resolution (10 March 2009)

- Introduces cross-border component demonstrated by one of the following:
 - a cross-border business intention or corporate object,
 - an objective to be significantly active in more than one Member State,
 - establishments in different Member States, or
 - a parent company registered in another Member State.
- Minimum capital:
 - EUR 1 with a solvency certificate; or
 - EUR 8,000;
- Rules on employee participation:
 - Reference to Directive 2001/86/EC on employee involvement on SE and to Directive 2005/56/EC on cross-border mergers.



BUSINESSEUROPE's position

- Full support for Commission proposal - optional tool that meets specific needs of SMEs;
- No changes to the Commission proposal should be made, in particular on:
 - a low threshold for company capital;
 - no need for a cross-border element; and
 - national rules applying to worker participation.



*THANK YOU
FOR YOUR ATTENTION!*

