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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- The Netherlands
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What is BUSINESSEUROPE?

**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

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