Statute for a European Company (SE)

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The Commission presents a report on the application of Council Regulation 2157/2001/EC on the Statute for a European Company (SE), following an external study. It notes that as of June 2010, 595 SEs were registered in the EU/EEA Member States. The number of SEs increased in an exponential way from 2004 to 2008. In 2009 fewer new SEs were created than in 2008, but in 2010 the trend was again an increased number of new SEs created. SEs were registered in 21 out of the 30 EU/EEA Member States, with the vast majority (around 70%) in the Czech Republic or Germany. Very few SEs were registered in Southern European Member States, with the exception of Cyprus.

Positive and negative drivers for setting up an SE: positive drivers include the European image of an SE, and its supra-national character. The possibility of transferring the registered office to another Member State is considered an essential driver and a real comparative advantage of the SE compared to national companies. A number of respondents to the public consultation mentioned the SE's potential for reorganisation and simplification of the group structure as a positive driver.

The **set-up costs, time-consuming and complex procedures, and legal uncertainty together with the lack of hindsight and practical experience** of the advisors and competent public authorities are reported as the most important negative drivers when establishing an SE. Some consider the rules on **employee involvement** as a negative driver as, in their view, they are complex and time-consuming, especially in Member States where the national legislation does not provide for a system of worker participation. Stakeholders also mention a **heavy cross-border requirement** (in particular the requirement for companies forming an SE to have had a subsidiary or a branch in another Member State for at least two years before the SE creation), **limited methods of creation** of an SE and a **high minimum capital requirement** as considerable obstacles.

Trends on the distribution of SEs: it is reported that the size of national companies is likely to have an effect on the distribution of SEs. It is argued that the increased cost (especially the high minimum capital requirement) and complexity of setting up an SE as compared to a public limited-liability company constitutes more of a hurdle in Member States where the national companies tend to be SMEs. Poland, Spain, Portugal, Greece and Italy are mentioned as examples of countries where this could partially explain the small number of SEs. The knowledge and awareness in the legal and business community about the SE form also seems to have an impact.

As regards the correlation between the distribution of SEs in different Member States and the national rules on employee participation stakeholders' views vary. While the external study and the vast majority of respondents to the public consultation agree that such trend, in general, exists, worker organisations and researchers working in the field of labour law disagree with this view.

Respondents to the public consultation mentioned also other possible explanations for the distribution of SEs in the EU/EEA, in particular: (i) the flexibility of certain aspects of the SE form compared to national legal forms; (ii) the different value of the European label; (iii) differing set-up costs and transaction costs of an SE; (iv) tax systems of Member States.

The high number of **shelf SEs** in certain Member States, in particular the Czech Republic and Germany, also contribute to the explanation of the high number of SEs in these two Member States.

The report notes that the SE Regulation imposes administrative burdens of EUR 5.2 million annually. This represents 0.04% of the EUR 12.1bn administrative burden measured in the annual account/company law

area in February 2009. However, it should be noted that administrative costs include all information obligations regardless of whether or not these obligations are necessary to protect legitimate stakeholder interests. The High Level Group of Independent Stakeholders on Administrative Burdens (HLG) underlines that any future reform of the SE Statute should take into account the need to reduce administrative burdens.

The external study **concludes that the original objectives of the SE Statute** have been achieved to some extent, but the situation could still be improved. The European Company has made it possible for companies with a European dimension to transfer the registered seat cross-border, to reorganise better and to choose between different board structures, while maintaining the rights of employees to involvement and protecting the interests of minority shareholders and third parties. The European image and supra-national character of the SE are other positive aspects of the SE.

However, six years of experience with the SE Regulation have shown that the application of the Statute poses a number of problems in practice. The **SE Statute does not provide for a uniform SE form** across the EU, but 27 different types of SEs. The Statute contains many references to national law and there is uncertainty about the legal effect of directly applicable law and its interface with national law. Furthermore, the uneven distribution of SEs across the EU shows that the Statute is not adapted to the situation of companies in all Member States.

Any amendments to the SE Statute to tackle the practical problems identified by various stakeholders will have to take into account that the SE Statute is a result of a delicate compromise following lengthy negotiations. The Commission is currently reflecting on potential amendments to the SE Statute, with a view to making proposals in 2012, if appropriate. Any such amendments would need to be carried out in parallel with any possible revision of the SE Directive, which would be subject to consultation of social partners, as well as to an impact assessment.