Company law: statute for a European private company

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The Council held a **public debate** on the creation of a European private company on the basis of a Presidency **compromise proposal** (see Council doc. *10611/11*). The Council concluded that **the compromise text failed to secure the unanimity required for the proposal to be approved**.

While broad agreement has been reached on most parts of the revised Presidency compromise text, delegations' views remain divergent as regards in particular the following, closely inter-linked, issues:

- seat of an SPE;
- minimum capital requirement;
- employee participation.

With a view to finding a balanced compromise solution to the outstanding issues that would be acceptable to all delegations, the Presidency suggests the following compromise package:

On the seat: the Presidency suggest to provide that the registered office and the central administration or principal place of business of the SPE should be in the European Union in accordance with the applicable national law. Furthermore, a recital relative to the seat sets out that Member States should, where necessary, ensure that SPEs are not used for the purpose of evading the SPEs' obligations in the territory of the Member State where they are established.

On the capital: the Presidency's proposal is unchanged: to set out that the capital of the SPE should be at least EUR 1, and allow Member States to set a higher minimum capital requirement of a maximum of EUR 8 000 for SPEs registered in their territory; and to set out a specific reference to the minimum capital requirement in the review clause in Article 48.

On employee participation: the Presidency suggests to:

- set out a single threshold of at least 500 employees habitually working in a Member State that provides for a higher level of participation rights for employees than is provided for those employees in the Member State where the SPE has its registered office; and in cases of transfer of the registered office to provide that the rules on employee participation should apply where at least 1 /3, but not less than 500, of the employees of the SPE habitually work in the Home Member State, and the employees in the Home Member State were provided with a higher level of participation rights than is provided for those employees in the Host Member State;
- to provide that Member States should ensure that the existing rights of employees to information and consultation are applied also in situations where the SPE has employees in different Member States, or where employees are situated in a Member State other than where the SPE has its registered office;
- to make a specific reference to the employee participation thresholds in the review clause in Article 48.

To recall, the proposal would establish the legal form of a future European private company (also called "Societas Privata Europaea" or "SPE"). The SPE would be a limited-liability company, i.e. its

shareholders may not be liable for more than the amount they have subscribed for. As the SPE is a private company, the shares of the SPE may not be offered to the public or be publicly traded.

The draft regulation was presented by the Commission in 2008 as part of a series of measures in the Small Business Act for Europe, and a first ministerial discussion took place in December 2009.