Basic information

2008/0130(NLE) NLE - Non-legislative enactments Regulation	Procedure lapsed or withdrawn
Company law: statute for a European private company **Subject** 3.45.01 Company law	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
JURI Legal Affairs	LEHNE Klaus-Heiner (PPE-DE)	25/06/2008

Committee for opinion	Rapporteur for opinion	Appointed
ECON Economic and Monetary Affairs	GOTTARDI Donata (PSE)	08/07/2008
EMPL Employment and Social Affairs	ETTL Harald (PSE)	09/09/2008

Council of the European Union

Council configuration	Meetings	Date
Competitiveness (Internal Market, Industry, Research and Space)	2982	2009-12-03
Competitiveness (Internal Market, Industry, Research and Space)	2910	2008-12-01
Competitiveness (Internal Market, Industry, Research and Space)	3094	2011-05-30

European Commission

Commission DG	Commissioner
Financial Stability, Financial Services and Capital Markets Union	BARNIER Michel

Key events

Date	Event	Reference	Summary
25/06/2008	Legislative proposal published	COM(2008)0396	Summary
02/09/2008	Committee referral announced in Parliament		
01/12/2008	Debate in Council		Summary

20/01/2009	Vote in committee		Summary
04/02/2009	Committee report tabled for plenary, 1st reading/single reading	A6-0044/2009	
09/03/2009	Debate in Parliament		
10/03/2009	Decision by Parliament	T6-0094/2009	Summary
10/03/2009	Results of vote in Parliament		
02/12/2009	Additional information		Summary
03/12/2009	Debate in Council		Summary
30/05/2011	Debate in Council		Summary
21/05/2014	Proposal withdrawn by Commission		Summary

Technical information

Procedure reference	2008/0130(NLE)
Procedure type	NLE - Non-legislative enactments
Procedure subtype	Consent by Parliament
Legislative instrument	Regulation
Legal basis	Treaty on the Functioning of the European Union TFEU 352-p1sub2
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	JURI/6/64736

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE412.151	09/09/2008	
Amendments tabled in committee		PE414.933	04/11/2008	
Committee opinion	EMPL	PE412.345	05/11/2008	
Amendments tabled in committee		PE416.290	24/11/2008	
Committee opinion	ECON	PE414.201	03/12/2008	
Committee report tabled for plenary, 1st reading/single reading		A6-0044/2009	04/02/2009	
Text adopted by Parliament, 1st reading/single reading		T6-0094/2009	10/03/2009	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2008)0396	25/06/2008	Summary
	SEC(2008)2098		

Document attached to the procedure		25/06/2008	
Document attached to the procedure	SEC(2008)2099	25/06/2008	
Commission response to text adopted in plenary	SP(2009)3060	04/06/2009	

Additional information		
Source	**Document**	**Date**
National parliaments	IPEX	
European Commission	EUR-Lex	

Company law: statute for a European private company

2008/0130(NLE) - 30/05/2011

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.

Company law: statute for a European private company

2008/0130(NLE) - 10/03/2009 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 578 votes to 72, with 25 abstentions, a legislative resolution amending, under the consultation procedure, the proposal for a Council regulation on the Statute for a European private company. Parliament's key amendments inserted new provisions on employee participation.

The main amendments were as follows:

Definitions: Parliament clarified the definitions of 'distribution', and inserted a definition for 'level of employee participation'.

Requirements for SPE: Members added to the requirements with which an SPE must comply, specifying, in addition to those listed in the proposal, that the SPE shall have a cross-border component demonstrated by one of several factors listed in the text e.g a cross-border business intention or corporate object; or establishments in different Member States,

Seat: an SPE shall not be under any obligation to have its central administration or principal place of business in the Member State in which it has its registered office. If the central administration etc is located in a Member State other than that in which it has its registered office, the SPE shall lodge in the register of the Member State where the central administration is located, the particulars referred to in the text.

Articles of association: the articles of association of a SPE shall be in writing and signed by every founding shareholder. Further formalities may be prescribed by applicable national law, unless the SPE uses official model articles of association.

Registration: a copy of each registration of an SPE and copies of all subsequent amendments thereto shall be sent by the respective national registers to a European register managed by the Commission and the competent national authorities and held in that European register. The Commission shall monitor the data entered in that register, particularly with a view to avoiding possible abuses and mistakes. If the SPE is unable to demonstrate that it complies with the requirement described above regarding a cross-border component within two years of registration, it shall be converted into the appropriate national legal form.

Formalities: the corporate object, including an explanation of the cross-border component of the business objective of the SPE, where appropriate must be included upon application for the registration of a SPE, as well as a list of shareholders.

Disclosure: the letters and order forms of an SPE, whether they are in paper or electronic form, as well as its website, if any, shall include the following particulars: details of its central administration or principal place of business, the existence of any branches and details of the members of the executive management body of the SPE.

Transfer of shares: this becomes effective in relation to third parties, on the day the shareholder is entered in the list of shareholders or the third party's status as shareholder is published in the register.

Withdrawal of a shareholder: the right of withdrawal shall be exercisable by shareholders who do not subscribe to certain resolutions listed in the text. The articles of association of the SPE may provide for additional grounds for withdrawal.

Share capital: the Commission had not specified a capital stock when the SPE is established, stating only that the capital shall be EUR 1. Members stated that the capital of the SPE shall be at least EUR 1, provided that the articles of association require that the executive management body sign a solvency certificate. Where the articles of association contain no provision to that effect, the capital of the SPE shall be at least EUR 8 000. Where the value of the consideration in kind falls short of the value of the share acquired, the shareholder shall pay a consideration in cash equal to the shortfall. The company's claim to payment shall lapse 8 years after the company's registration.

Distributions: a distribution shall be permissible only where the remaining amount of the deposit does not fall below the minimum amount referred to in the text.

Capital reduction: similarly, it is specified that a reduction of the share capital shall be permissible only where the remaining amount of the deposit does not fall below the minimum amount.

Executive management body: this is now re-named, Members having deleted "management body". Members' resolutions shall be internally binding on the executive management body.

Resolutions of the shareholders: these may be declared ineffective on the grounds of an infringement of the provisions of the articles of association, of this Regulation or of the applicable law only by means of an action before the court that has jurisdiction in relation to the SPE's registered office. An action may be brought within one month from the date of the resolution by any shareholder who did not vote in favour of the resolution, provided that the company does not remedy the deficiency in the resolution and the complainant does not give his or her subsequent agreement. The articles of association may allow a longer time for appeal.

General duties and liabilities of directors: Members amended the text to restate clearly the principle of joint and several liability of the directors, while at the same time making it possible for that liability not to extend to anyone who can demonstrate their blamelessness or had made known their personal disagreement. They also provide that directors shall pay compensation, in particular where payments have been made in breach of the provisions on

distribution, or own shares in the company have been acquired in breach of the provisions on acquisition of own shares. A requirement on the part of the directors to compensate the company's creditors shall not be waived on the grounds that they acted in accordance with a resolution of the shareholders. However, any right of action pursuant to this provision shall lapse within 4 years of when it arose.

References to national law: references to national law should be avoided wherever possible. Members felt that the SPE regulation should therefore offer rules of its own on points that are crucial for the 'daily life' of the SPE. This will enhance legal certainty with regard to legal transactions within the EU internal market, since both members and third parties will know what rules they might expect throughout the EU. Members provided rules specific to the SPE regarding: the liability of executive directors, the consequences of defective resolutions and the consequences of ineffective clauses in the articles of association. (See above).

Employee participation: the general rule is that the SPE shall be subject to the rules on employee participation, if any, applicable in the Member State in which it has its registered office. Those rules shall apply to the entire workforce of the SPE. However, this general rule will not apply where: a) the SPE employs altogether more than 1 000 employees and more than 25 % of the total workforce habitually works in a Member State or Member States which provide for a greater level of employee participation than the Member State in which the SPE has its registered office; b) the SPE employs altogether between 500 and 1 000 employees and more than 33⅓ % of the total workforce habitually works in a Member State or Member States which provide for a greater level of employee participation than the Member State in which the SPE has its registered office; c) the SPE has been founded through the transformation of an existing company, the merger of existing companies, or the division of an existing company (i.e. the SPE is not created in accordance with the Regulation), and it employs altogether fewer than 500 employees, and more than 33⅓ % of the total workforce habitually works in a Member State or Member States which provide for a greater level of employee participation than the Member State in which the SPE has its registered office; (d) the SPE has been created in accordance with this Regulation and employs altogether fewer than 500 employees, and more 50 % of the total workforce habitually works in a Member State or Member States which provide for a greater level of employee participation than the Member State in which the SPE has its registered office.

In the event that any of these exceptions apply, certain specified provisions of Directive 2001/86/EC and Directive 2005/56/EC will apply. An adaptation clause provides for rules to be applied in the absence of provisions on employee participation.

Non-euro Member States: SPEs with a registered office in Member States that have not adopted the euro shall, in addition, express their capital in euro.

Arbitration clause: a new Article is inserted providing for referral to arbitrators of disputes.

Severability clause: a further new provision aims to clarify which rules apply where individual clauses of the articles of association are ineffective.

Web-pages: Member States shall maintain web pages listing SPEs registered in their territory and any court judgments relating to the operation of SPEs in their territory. The Commission shall maintain a web page which provides an electronic link to those discrete national web pages.

Company law: statute for a European private company

2008/0130(NLE) - 25/06/2008 - Legislative proposal

PURPOSE: to lay down the conditions governing the establishment of companies in the form of a European private company with limited liability (Societas Privata Europaea, "SPE").

LEGISLATIVE ACT: Council Regulation.

CONTENT: this proposal forms part of a package of measures designed to assist SMEs, referred to as the Small Business Act for Europe (SBA).

The objective of the SBA is to make it easier for SMEs to do business in the Single Market and consequently to improve their market performance. The proposal creates a new European legal form intended to enhance the competitiveness of SMEs by facilitating their establishment and operation in the Single Market. The statute for a European Private Company will allow an SPE to be created and operate according to uniform principles in all Member States. It has been designed to address the current onerous obligations on companies operating across borders, who need to set up subsidiaries in different company forms in every Member State in which they want to do business. The SPE aims to reduce compliance costs on the creation and operation of businesses arising from the disparities between national rules both on the formation and on the operation of companies.

General provisions: the SPE is a company having legal personality and share capital. It is a private limited-liability company. As regards the scope of application of the Statute, the Regulation provides that: (1) an SPE is governed first by the directly applicable mandatory provisions of the Regulation; (2) the Regulation requires a range of matters, in particular the internal organisation of the SPE, to be regulated in the articles of association. In order to ensure flexibility, shareholders are free to decide how to regulate these questions subject only to the rules of the Regulation; (3) in matters covered by the SPE Statute, national company law is only relevant where specified by the Regulation. The provisions which are required or allowed by Annex I to be included in the articles of association are not subject to national law. The provisions of the Regulation and the list of matters in Annex I which must be covered in the articles of association define the scope of the EU rules. National law governs those matters which are not covered by the Regulation or by the articles of association of the SPE as stipulated in Annex I. This is the case, in particular, for matters such as insolvency or tax law).

Formation: an SPE may be set up ex nihilo, in accordance with the provisions of the Regulation. It may also be created by transforming or dividing an existing company or by the merger of existing companies. An SE or another SPE may also participate in the formation of an SPE. The name of any European Private Company must be followed by the abbreviation "SPE".

The Regulation does not set up a specific registration procedure for the SPE. It sets out some requirements to make the formation of an SPE easier and cheaper:

- it must be possible to apply for the registration of a SPE by electronic means;

- the Regulation contains a closed list of documents and particulars which Member States may require for the registration of the SPE;

- the proposal provides for a single legality check, i.e. either control of the legality of the SPE's documents and particulars by an administrative or judicial body, or their certification by a notary, on registration of an SPE.

Shares: the proposal allows shareholders a large degree of freedom to determine matters relating to shares, in particular the rights and obligations attached to shares. An SPE may issue ordinary or priority shares. Restrictions only apply when necessary in the interest of third parties or minority shareholders.

The conditions for the transfer of the shares must be regulated in the articles of association. Any new restriction or prohibition on transfers requires a qualified majority decision. There are provisions to protect minority shareholders.

Capital: in order to facilitate start-ups, the Regulation sets the minimum capital requirement at €1. The articles of association must set out whether the founders need to provide consideration in cash or in kind. The Regulation contains uniform rules regarding distributions (e.g. dividend, purchase of the SPE's own shares, incurring of debt) to shareholders from the assets of the SPE. A distribution may only be made if the SPE satisfies a specified balance-sheet test, but there is no mandatory solvency test on distributions, but the proposal explicitly allows shareholders to provide for a solvency test in the articles. The proposal does not prevent the SPE from acquiring its own shares under certain conditions to protect the company's assets, if the SPE carries out a balance-sheet test and, if prescribed in the articles of association, a solvency test.

Organisation: the shareholders of the SPE enjoy a high degree of freedom in determining the internal organisation of the SPE, subject to the Regulation. The proposal provides a non exhaustive list of the decisions which must be taken by shareholders. The articles of association must set out the required majority and quorum for voting subject to the text which provides that certain of these decisions require a qualified majority (i.e., at least 2 /3 of the voting rights of the SPE, but the articles may provide for a greater majority, e.g. 3/4). The Regulation ensures two specific minority rights for the shareholders. The articles determine the management structure of the SPE (a single director or several directors, a one-tier or a two-tier board system). However, if the SPE is subject to employee participation, the chosen management structure must allow for the exercise of this right. The Regulation does not give individual shareholders or creditors the right to sue the members of the management body.

Employee participation: employee participation exists in small companies only in a few Member States (e.g. Sweden, Denmark). The general principle is that the SPE is subject to the employee participation rules of the Member State where it has its registered office. However, special rules are required in the case of the transfer of the registered office of an SPE.

Transfer of the registered office: the SPE can transfer its registered office to another Member State, while maintaining its legal personality and not having to wind-up. In order to protect the interests of third parties, the Regulation does not allow the transfer of the SPE's registered office during winding-up, liquidation or similar proceedings. The transfer procedure is inspired by the provisions on the transfer of the registered office of the SE Regulation.

The Regulation provides for a special regime where an SPE that is subject to employee participation transfers its registered office to another Member State where there is no or a lower level of employee participation rights or which does not provide for employees of establishments of the SPE situated in other Member States the same entitlement to exercise participation rights as they enjoyed before the transfer.

Restructuring, dissolution and nullity: the proposal refers the dissolution of an SPE or its transformation to a national company form to national law.

Company law: statute for a European private company

2008/0130(NLE) - 01/12/2008

The Council examined a progress report on a proposal for a Regulation on the statute for a European private company (SPE).

The Ministers' discussions focused on key aspects of the proposal: the applicable law, the cross-border element, share capital, compliance control, provisions on the company's registered office, liability of directors, and employee participation.

The proposal for a Regulation was discussed on several occasions by the Council's preparatory bodies following the presentation of the proposal by the Commission on 27 June 2008. It is part of a package of measures contained in the "Small Business Act for Europe" and provides for the establishment and functioning of the European private company.

Company law: statute for a European private company

2008/0130(NLE) - 03/12/2009

Since the unanimity needed for an agreement was not reached, the Council noted that **further work is required** on the proposal aimed at establishing the legal form for the European private company (also called "*Societas Privata Europaea*" or "SPE").

The draft regulation was presented by the Commission on 27 June 2008 as part of a series of measures in the Small Business Act for Europe (SBA). It has been examined on a number of occasions in the Council's preparatory bodies and, last May, the Council took note of a progress report (doc. *9658 /09*) during discussions concerning the implementation of the SBA.

The discussions focused on the text of the draft SPE Regulation as a whole. As a result of the substantial exchanges of views in the Working Party and written contributions by delegations, a number of amendments were introduced to several aspects of the proposal. They relate, in particular, to:

- taking into account the different national approaches to the term “shares”, which now covers both securities and parts;
- complementing the rules on expulsion and withdrawal of a member from the SPE;
- amending the provisions on consideration for shares;
- clarifying the provisions on the organisation of the SPE, in particular in relation to the role of the general assembly of members, the information rights of members and the representation of the SPE in relation to third parties;
- providing for a minority right to convene a general meeting;
- aligning the part on the procedure of the transfer of the registered office of the SPE to that of Regulation 2157/2001;
- introducing, in an Annex to the proposed Regulation, the list of national forms of private-limited liability companies.

In addition, as regards the important issue of the employee participation rights, the Presidency elaborated a comprehensive framework, with the aim of accommodating concerns related to a possible circumvention of any such rights provided for by national law through the establishment of SPEs, while, at the same time, preserving the flexibility of the instrument. This framework provides that, where certain conditions are fulfilled, SPEs should start negotiations with the employee representatives on arrangements for employee participation in the SPE.

The matter of employee participation, as well as several other important aspects of the proposal, will need to be further discussed in order to reach an agreement.