



## The European Private Company - Update

### Current Status

- In 2006, the European Parliament approved a Report of MEP K-H Lehne requesting the Commission to submit to Parliament, on the basis of Article 308 of the EC Treaty, a legislative proposal on the Statute for a European Private Company (SPE). The proposed regulation was published on 25 June 2008 as part of the Commission so-called 'Small Business Act'.
- The SPE is a company having legal personality and share capital. It is 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 Proposal aims at being adapted to the specific needs of SMEs. It allows entrepreneurs to set up an SPE following the same, simple and flexible set of company law provisions across the Member States. It also aims at reducing compliance costs arising from the disparities between national rules both on the formation and on the operation of companies.
- The Commission proposed to use the legislative instrument of a Regulation. 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. National law also has to set out the sanctions for a breach of the Regulation or omission of the required elements of Annex I.
- Examples of reference to national law can be found in Article 25: "(1) An SPE shall be subject to the requirements of the applicable national law as regards preparation, filing, auditing and publication of accounts. (2) The management body shall keep the books of the SPE. The bookkeeping of the SPE shall be governed by the applicable national law".

### FEE Position

FEE commented on the proposed regulation in a letter to Commissioner McCreevy in September 2008. Detailed observations included in the FEE letter are available on the FEE website (see below).

- FEE believes that the SPE has clear merits as a corporate form, provided that it remains a truly European company and not too many provisions are left to national law, whereby notably the possibility to transfer the legal seat, and to have its main operations in another country is an important provision.
- The costs and benefits of the SPE requirements need to be carefully considered in order to provide the SPE with a competitive regime compared to the national regimes available. The SPE Regulation, however, should not go beyond the requirements that currently apply for public companies under the Second Directive. In general private companies should have a less onerous regime than public companies.



## Next Steps

- The legislative Resolution of the European Parliament of 10 March 2009 proposes several amendments to the EC Commission initial Proposal. Three elements of this resolution are worthwhile being highlighted.
  - The European Parliament proposes an additional requirement that the SPE should have a cross-border dimension (Art.3.1.ea) which was not initially required.
  - As pointed out in FEE comments, an SPE can be an attractive legal form for large private companies. It is not surprising that Parliament extensively discussed the issue of workers' participation,
  - The Parliament agreed that the SPE could have just a 1€ capital, provided that the articles of association require that the executive management body sign a solvency certificate. Otherwise, the capital of the SPE should be at least 8 000 €. (Art.19)
- To be adopted on the basis of Article 308 of the Treaty, the text of the Regulation must be unanimously approved by Council. Discussion is in progress in Council. Political agreement is expected to be reached by the end of 2009.

## Further references

EC Commission initial proposal for a Regulation

[http://ec.europa.eu/internal\\_market/company/docs/epc/proposal\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/epc/proposal_en.pdf)

European Parliament legislative resolution of 10 March 2009 on the proposal for a Council regulation on the Statute for a European private company

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0094+0+DOC+XML+V0//EN&language=EN>

FEE position on the European Private Company

[http://www.fee.be/publications/default.asp?library\\_ref=4&content\\_ref=738](http://www.fee.be/publications/default.asp?library_ref=4&content_ref=738)

## About FEE

**FEE (Fédération des Experts comptables Européens – Federation of European Accountants) represents 43 professional institutes of accountants and auditors from 32 European countries, including all of the 27 EU Member States.**

In representing the European accountancy profession, FEE recognises the public interest. It has a combined membership of more than 500.000 professional accountants, working in different capacities in public practice, business, government and education, who all contribute to a more efficient, transparent, and sustainable European economy.

## For more information

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