



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from: Presidency
to: Council (Competitiveness)

No. prev.doc.: 16606/09 DRS 76 SOC 738
No. Cion prop.: 11252/08 DRS 17

Subject : - Proposal for a Regulation on a European private company
= *Political agreement (Public deliberation, pursuant to Article 7 CRP)*

I. INTRODUCTION

1. On 27 June 2008, the Commission submitted to the Council a proposal for a Council Regulation on the Statute for a European private company (hereinafter referred to as "SPE"). The proposal is based on Article 308 of the TEC/Article 352 of the TFEU.
2. The objective of the proposal, which is one of the key elements of the "Small Business Act for Europe", is to create a new Community instrument to enhance the competitiveness of small and medium-sized enterprises ("SMEs") by facilitating their establishment and operation in the Single Market, by providing for a flexible corporate law regime across the EU and by reducing the compliance costs which arise at the stage of setting-up and operating of SMEs.
3. Upon consultation, in accordance with Article 308 of the TEC, the European Parliament adopted its opinion on the proposal for the SPE on 10 March 2009.

4. On 13 and 25 November 2009, the Permanent Representatives Committee discussed the outstanding issues on the basis of Presidency compromise texts (doc. 15355/09ADD1 and doc. 16155/09 ADD1, 16606/09) .
5. While broad agreement has been reached on most parts of the revised Presidency compromise text (set out in doc. 16155/09 ADD1 and 16606/09), delegations' views remain divergent as regards in particular the following issues:
 - seat of an SPE;
 - employee participation.
6. An outline of these issues can be found in Part II below. The overall Presidency compromise text is set out in the Addendum to this Note, with the remaining positions of delegations on the outstanding issues reflected in the footnotes.

II. MAIN OUTSTANDING ISSUES

Seat of an SPE (Article 7)

The Commission's proposal which allowed the SPE to have its registered office and central administration in different Member States was supported by several delegations.

However, some delegations wished to have the possibility to oblige SPEs to have their central administration and their registered office in the same Member State, while other delegations would have preferred the matter to be governed entirely by national law.

With a view to finding a compromise between those diverging positions, the Presidency suggests a transitional period of two years as from the date of application of the Regulation, during which SPEs would be obliged to have their registered office and their central administration and/or principal place of business in the same Member State. After that period national law would apply.

Employee participation (Article 35)

As regards the issue of the employee participation rights, the outstanding issue remains that of the threshold above which the rules on employee participation foreseen in the proposal would be applied.

Although most delegations welcomed the lowering of the threshold of the number of employees from which the rules on employee participation would have to be applied and the simplification of the rules presented in the Presidency compromise text (doc. 16606/09), some delegations would prefer the threshold to be further lowered, while a few delegations consider the threshold of "at least 500 employees" to be too low.

The Presidency suggests setting the threshold at at least 500 employees and at least 1/2 of the 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.

Additionally, the Presidency suggests adding a recital clarifying that the rules on employee participation in SPEs would not have to be applied for national private limited-liability companies.

III. CONCLUSION

The Competitiveness Council is invited, at its forthcoming meeting on 3-4 December 2009, to discuss the outstanding issues referred to in Part II of this Note with a view to reaching political agreement on the draft Regulation.