

P6_TA(2009)0094

Statute for a European private company *

European Parliament legislative resolution of 10 March 2009 on the proposal for a Council regulation on the Statute for a European private company (COM(2008)0396 – C6-0283/2008 – 2008/0130(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2008)0396),
 - having regard to Article 308 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0283/2008),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on Economic and Monetary Affairs and the Committee on Employment and Social Affairs (A6-0044/2009),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Calls for initiation of the conciliation procedure under the Joint Declaration of 4 March 1975 if the Council intends to depart from the text approved by Parliament;
 5. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 6. Instructs its President to forward its position to the Council and the Commission.

Amendment 1

Proposal for a regulation

Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) Existing Community forms of company have a cross-border component. That cross-border component should not

be an obstacle for the founding of a European private company (SPE). The Commission and Member States should, however, without prejudice to the requirements of registration and within two years of registration, conduct ex-post monitoring in order to examine whether the SPE has the required cross-border component;

Amendment 2

Proposal for a regulation

Recital 3

Text proposed by the Commission

(3) Since a private company (*hereinafter "SPE"*) which may be created throughout the Community is intended for small businesses, a legal form should be provided which is as uniform as possible throughout the Community and as many matters as possible should be left to the contractual freedom of shareholders, while a high level of legal certainty is ensured for shareholders, creditors, employees and third parties in general. Given that a high degree of flexibility and freedom is to be left to the shareholders to organise the internal affairs of the SPE, the private nature of the company should also be reflected by the fact that its shares may not be offered to the public or negotiated on the capital markets, including being admitted to trading or listed on regulated markets.

Amendment

(3) ***Sustainable and steady growth of the internal market requires a comprehensive body of business law tailored to the needs of small and medium-sized enterprises (SMEs).*** Since a private company which may be created throughout the Community is intended for small businesses, a legal form should be provided which is as uniform as possible throughout the Community and as many matters as possible should be left to the contractual freedom of shareholders, while a high level of legal certainty is ensured for shareholders, creditors, employees and third parties in general. Given that a high degree of flexibility and freedom is to be left to the shareholders to organise the internal affairs of the SPE, the private nature of the company should also be reflected by the fact that its shares may not be offered to the public or negotiated on the capital markets, including being admitted to trading or listed on regulated markets.

Amendment 3

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) In order to enable businesses to reap the

Amendment

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full benefits of the internal market, the SPE should be able to have its registered office and principal place of business in different Member States and to transfer its registered office from one Member State to another, with or without also transferring its central administration or principal place of business.

full benefits of the internal market, the SPE should be able to have its registered office and principal place of business in different Member States and to transfer its registered office from one Member State to another, with or without also transferring its central administration or principal place of business. ***At the same time, however, steps should be taken to prevent the use of SPEs to circumvent legitimate legal requirements of Member States.***

Amendment 4

Proposal for a regulation

Recital 8

Text proposed by the Commission

(8) In order to reduce the costs and administrative burdens associated with company registration, the formalities for the registration of the SPE should be limited to those requirements which are necessary to ensure legal certainty and the validity of the documents filed upon the creation of a SPE should be subject to a single verification, ***which may take place either before or after registration***. For the purposes of registration, it is appropriate to use the registries designated by First Council Regulation 68/151/EEC of 9 March 1968 on the co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community.

Amendment

(8) In order to reduce the costs and administrative burdens associated with company registration, the formalities for the registration of the SPE should be limited to those requirements which are necessary to ensure legal certainty and the validity of the documents filed upon the creation of a SPE should be subject to a single ***preventive*** verification. For the purposes of registration, it is appropriate to use the registries designated by First Council Regulation 68/151/EEC of 9 March 1968 on the co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community.

Amendment 5

Proposal for a regulation

Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) In line with the Council and Commission commitments to the concept

of “e-justice”, all forms pertinent to the formation and registration of an SPE should be available online. Furthermore, in order to reduce duplicate filing of documents, the Commission should maintain a central registry with electronic links to the discrete national registries of Member States.

Amendment 6

Proposal for a regulation Recital 8 b (new)

Text proposed by the Commission

Amendment

(8b) In order to ensure transparency and disclosure of accurate information about SPEs, the Commission should establish and coordinate a database for SPEs, available on the Internet, for the purpose of collecting, disclosing and disseminating information and particulars concerning their registration, registered office, centre of activity, branches and any transfers of their registered office, transformation, merger, division, or dissolution.

Amendment 7

Proposal for a regulation Recital 11

Text proposed by the Commission

Amendment

(11) The SPE should not be subject to a high mandatory capital requirement since this would be a barrier to the creation of SPEs. Creditors, however, should be protected from excessive distributions to shareholders which could affect the ability of the SPE to pay its debts. To this end, distributions that leave the SPE with liabilities exceeding the value of the assets of the SPE should be prohibited. Shareholders, however, should also be free to require the management body of the SPE

(11) The SPE should not be subject to a high mandatory capital requirement since this would be a barrier to the creation of SPEs. Creditors, however, should be protected from excessive distributions to shareholders which could affect the ability of the SPE to pay its debts. To this end, distributions that leave the SPE with liabilities exceeding the value of the assets of the SPE should be prohibited. Shareholders, however, should also be free to require the ***executive*** management body

to sign a solvency certificate.

of the SPE to sign a solvency certificate.

Amendment 74

Proposal for a regulation

Recital 15

Text proposed by the Commission

(15) Employees' rights of participation should be governed by the legislation of the Member State in which the SPE has its registered office (the "home Member State"). The SPE should not be used for the purpose of circumventing such rights. ***Where the national legislation of the Member State to which the SPE transfers its registered office does not provide for at least the same level of employee participation as the home Member State, the participation of employees in the company following the transfer should in certain circumstances be negotiated. Should such negotiations fail, the provisions applying in the company before the transfer should continue to apply after the transfer.***

Amendment

(15) Employees' rights of participation should be governed by the legislation of the Member State in which the SPE has its registered office (the "home Member State"). ***Where the law of the home Member State provides for participation rights, the entire workforce of the SPE should have the right to elect, appoint, recommend or oppose the appointment of a number of members of the administrative or supervisory organ of the SPE.*** The SPE should not be used for the purpose of circumventing ***employees' rights of participation. In particular, appropriate safeguards should be put in place so that the SPE Statute cannot be used by large companies as a way to circumvent existing obligations under national and Community law, without overburdening small and medium-sized enterprises wishing to form an SPE for genuine business reasons. Where a significant part of the workforce is habitually employed in a Member State or Member States with employee participation that is more extensive than the level of participation of the home Member State, the company should start negotiations with the employees on a uniform system of participation at the level of the SPE, in line with the provisions of Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees¹. Tailored rules should, however, apply to SPEs formed ex nihilo and employing altogether fewer than 500 employees. Negotiations on employee participations should only be initiated where a dominant part of the workforce***

habitually works under a more favourable participation regime than that applying in the home Member State. The place where an employee is habitually employed should be understood as the Member State where he normally carries on his working activities, even if he is temporarily seconded to another place.

¹ OJ L 294, 10.11.2001, p. 22.

Amendment 75

Proposal for a regulation Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) The rules on the possible negotiation of participation arrangements should not impair the dynamism of the SPE by being too rigid. Where the size and/or the deployment of the workforce of an SPE changes significantly, for example by reason of a major acquisition or transfer of activities between Member States, the existing participation arrangements should be adapted whilst respecting the will of the parties. If the existing participation arrangements do not permit the requisite adaptation to be carried out, the need for, and, where applicable, the content of, participation arrangements should be reassessed in the light of the rules applicable in the case of the formation of an SPE.

Amendment 76

Proposal for a regulation Recital 15 b (new)

Text proposed by the Commission

Amendment

(15b) Where the national legislation of the Member State to which the SPE transfers its registered office does not provide for at least the same level of employee participation as that applying in

the home Member State, the participation of employees in the company following the transfer should in certain circumstances be negotiated. For reasons of consistency and to avoid creating loopholes, the rules concerning possible negotiations on participation rights in the event of transfer of the registered office should be the same as those applicable in the case of the formation of an SPE.

Amendment 9

Proposal for a regulation

Recital 16

Text proposed by the Commission

(16) Employees' rights *other than rights of participation* should remain subject to Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, Council Directive 2001/23/EC of 12 March 2001 on the approximation of the law of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses and Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community.

Amendment

(16) Employees' rights should remain subject to **Community law and its implementation in Member States, in particular** Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, Council Directive 2001/23/EC of 12 March 2001 on the approximation of the law of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses and Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community.

Amendment 77

Proposal for a regulation

Recital 17

Text proposed by the Commission

(17) The Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation, including infringements of the obligation to regulate in the articles of association of the SPE the matters prescribed by this Regulation, and should ensure that they are implemented. Those penalties must be effective, proportionate and dissuasive.

Amendment

(17) The Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation, including infringements of the obligation to regulate in the articles of association of the SPE the matters prescribed by this Regulation, **and the rules applicable to employee participation**, and should ensure that they are implemented. Those penalties must be effective, proportionate and dissuasive.

Amendment 10

Proposal for a regulation

Article 2 – paragraph 1 – point b

Text proposed by the Commission

(b) 'distribution' means any financial benefit derived directly or indirectly from the SPE by a shareholder, in relation to the shares held by him, including any transfer of money or property, as well as the incurring of a debt;

Amendment

(b) 'distribution' means any financial benefit derived directly or indirectly from the SPE by a shareholder, in relation to the shares held by him, including any transfer of money or property, as well as the incurring of a debt, **that is not balanced by a full claim to compensation or reimbursement**;

Amendment 12

Proposal for a regulation

Article 2 – paragraph 1 – point d

Text proposed by the Commission

(d) 'management body' means one or more individual managing directors, the management board (dual board) or the administrative board (unitary board), designated in the articles of association of the SPE as being responsible for the management of the SPE;

Amendment

(d) '**executive** management body' means one or more individual managing directors, the management board (dual board) or the administrative board (unitary board), designated in the articles of association of the SPE as being responsible for the management of the SPE;

Amendment 13

Proposal for a regulation

Article 2 – paragraph 1 – point e

Text proposed by the Commission

(e) 'supervisory body' means the supervisory board (dual board), designated in the articles of association of the SPE as being responsible for the supervision of the management body;

Amendment 14

Proposal for a regulation

Article 2 – paragraph 1 – point e a (new)

Text proposed by the Commission

Amendment 15

Proposal for a regulation

Article 3 – paragraph 1

Text proposed by the Commission

1. An SPE shall comply with the following requirements:

- (a) its capital *shall* be divided into shares,
- (b) *a shareholder shall* not be liable for more than the amount *he has* subscribed or agreed to subscribe,
- (c) *it shall have legal personality,***
- (d) its shares *shall* not be ***offered to the public*** and *shall* not be publicly traded,
- (e) it may be formed by one or more natural persons and/or legal entities, hereinafter "founding shareholders".

Amendment 70

Amendment

(e) 'supervisory body' means the supervisory board (dual board), ***when*** designated in the articles of association of the SPE as being responsible for the supervision of the management body;

Amendment

(ea) 'level of employee participation' means the proportion of employee representatives amongst the members of the administrative or supervisory body or their committees or of the management group which covers the profit units of the SPE;

Amendment

1. An SPE ***shall be a corporate body possessing legal personality and*** shall comply with the following requirements:

- (a) its capital *must* be divided into shares,
- (b) *its shareholders must* not be liable for more than the amount *they have* subscribed or *have* agreed to subscribe,
- (d) its shares *must* not be ***made the subject of general public offers,*** and *must* not be publicly traded; ***this shall not, however, prohibit offers to employees,***
- (e) it may be formed by one or more natural persons and/or legal entities, hereinafter "founding shareholders",

Proposal for a regulation
Article 3 – paragraph 1 – point e a (new)

Text proposed by the Commission

Amendment

(ea) it shall have a cross-border component demonstrated by one of the following:

- a cross-border business intention or corporate object,***
- an objective to be significantly active in more than one Member State,***
- establishments in different Member States, or***
- a parent company registered in another Member State.***

Amendment 18

Proposal for a regulation
Article 7

Text proposed by the Commission

Amendment

An SPE shall have its registered office and its central administration or principal place of business in the Community.

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.

An SPE shall have its registered office and its central administration or principal place of business in the Community.

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 or principal place of business 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 or principal place of business is located the particulars referred to in points (a), (b) and (c) of Article 10(2). The information recorded in the register shall be deemed to be accurate.***

The lodging of documents in a European central register will fulfil the requirements for lodging documents in accordance with the second paragraph.

Amendment 19

Proposal for a regulation

Article 7 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

The registered office shall be the address at which all legal documents relating to the SPE are to be served.

Amendments 20 and 79

Proposal for a regulation

Article 8 – paragraphs 2 and 3

Text proposed by the Commission

Amendment

2. The articles of association of a SPE shall be in writing and signed by every founding shareholder.

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

3. The articles of association and any amendments thereto may be relied upon as follows:

3. The articles of association and any amendments thereto may be relied upon as follows:

(a) in relation to the shareholders and the management body of the SPE and its supervisory body, if any, from the date on which they are signed or, in the case of amendments, adopted;

(a) in relation to the shareholders and the ***executive*** management body of the SPE and its supervisory body, if any, from the date on which they are signed or, in the case of amendments, adopted;

(b) in relation to third parties, in accordance with the provisions of the applicable national law implementing ***paragraphs 5, 6 and 7*** of Article 3 of Directive 68/151/EEC.

(b) in relation to third parties, in accordance with the provisions of the applicable national law implementing ***paragraphs 2, 5, 6 and 7*** of Article 3 of Directive 68/151/EEC.

Amendment 21

Proposal for a regulation

Article 9 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. 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 point (ea) of Article 3(1) within two years of registration, it shall be converted into the appropriate national legal form.

Amendment 22

Proposal for a regulation Article 10

Text proposed by the Commission

1. Application for registration shall be made by the founding shareholders of the SPE or by any person authorised by them. Such application may be made by electronic means.
2. Member States shall not require any particulars *and* documents to be supplied upon application for the registration of a SPE other than the following:
 - (a) the name of the SPE and the address of its registered office;
 - (b) the names, addresses and any other information necessary to identify the persons who are authorised to represent the SPE in dealings with third parties and in legal proceedings, or take part in the administration, supervision or control of the SPE;
 - (c) the share capital of the SPE;

Amendment

1. Application for registration shall be made by the founding shareholders of the SPE or by any person authorised by them. Such application may be made by electronic means, ***in accordance with the provisions of the applicable national law implementing Article 3(2) of Directive 68/151/EEC.***
2. Member States shall not require any particulars *or* documents to be supplied upon application for the registration of a SPE other than the following:
 - (a) the name of the SPE and the address of its registered office;
 - (b) the names, addresses and any other information necessary to identify the persons who are ***members of the executive management body, and those who are*** authorised to represent the SPE in dealings with third parties and in legal proceedings, or take part in the administration, supervision or control of the SPE;
(ba) the corporate object, including an explanation of the cross-border component of the business objective of the SPE, where appropriate;
 - (c) the share capital of the SPE;
(ca) the list of shareholders in accordance

- (d) the share classes and the number of shares in each share class;
- (e) the total number of shares;
- (f) the nominal value or accountable par of the shares;
- (g) the articles of association of the SPE;
- (h) where the SPE was formed as a result of a transformation, merger or division of companies, the resolution on the transformation, merger or division that led to the creation of the SPE.

3. The documents and particulars referred to in paragraph 2 shall be provided in the language required by the applicable national law.

4. Registration of the SPE *may* be subject to *only* one of the following requirements:

- (a) a control by an administrative or judicial body of the legality of the documents and particulars of the SPE;
- (b) the certification of the documents and particulars of the SPE.

5. The SPE shall submit any change in the particulars or documents referred to in points (a) to (g) of paragraph 2 to the register within 14 calendar days of the day on which the change takes place. After every amendment to the articles of association, the SPE shall submit its complete text to the register as amended to date.

6. The registration of an SPE shall be disclosed.

Amendment 23

Proposal for a regulation

Article 11 – paragraph 2 – point b

with Article 15;

- (d) the share classes and the number of shares in each share class;
- (e) the total number of shares;
- (f) the nominal value or accountable par of the shares;
- (g) the articles of association of the SPE;
- (h) where the SPE was formed as a result of a transformation, merger or division of companies, the resolution on the transformation, merger or division that led to the creation of the SPE.

3. The documents and particulars referred to in paragraph 2 shall be provided in the language required by the applicable national law.

4. Registration of the SPE *shall* be subject to *at least* one of the following requirements:

- (a) a control by an administrative or judicial body of the legality of the documents and particulars of the SPE;
- (b) the certification *or legal authentication* of the documents and particulars of the SPE.

5. The SPE shall submit any change in the particulars or documents referred to in points (a) to (g) of paragraph 2 to the register within 14 calendar days of the day on which the change takes place. After every amendment to the articles of association, the SPE shall submit its complete text to the register as amended to date. ***The second sentence of paragraph 1 and paragraph 4 shall apply mutatis mutandis.***

6. The registration of an SPE shall be disclosed.

Text proposed by the Commission

(b) the name of the SPE, the address of its registered office and, where appropriate, the fact that the company is being wound up.

Amendment

(b) the name of the SPE, the address of its registered office and, where appropriate, ***details of its central administration or principal place of business, the existence of any branches and*** the fact that the company is being wound up;

Amendment 24

Proposal for a regulation

Article 11 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) details of the members of the executive management body of the SPE.

Amendment 25

Proposal for a regulation

Article 15

Text proposed by the Commission

Amendment

1. The management body of the SPE shall draw up a list of shareholders. The list shall contain at least the following:

- (a) the name and address ***of*** each shareholder;
- (b) the number of shares held by the shareholder concerned, their nominal value or accountable par;
- (c) where a share is owned by more than one person, the names and addresses of the co-owners and of the common representative;
- (d) the date of acquisition of the shares;
- (e) the amount of each consideration in cash, if any, paid or to be paid by the shareholder concerned;
- (f) the value and nature of each consideration in kind, if any, provided or to be provided by the shareholder concerned;
- (g) the date on which a shareholder ceases

1. The ***executive*** management body of the SPE shall draw up a list of shareholders. The list shall contain at least the following:

- (a) the name ***of***, and ***a postal*** address ***for***, each shareholder;
- (b) the number of shares held by the shareholder concerned, their nominal value or accountable par;
- (c) where a share is owned by more than one person, the names and addresses of the co-owners and of the common representative;
- (d) the date of acquisition of the shares;
- (e) the amount of each consideration in cash, if any, paid or to be paid by the shareholder concerned;
- (f) the value and nature of each consideration in kind, if any, provided or to be provided by the shareholder concerned;
- (g) the date on which a shareholder ceases

to be a member of the SPE.

2. The list of shareholders shall, unless proven otherwise, constitute evidence of the **authenticity** of the matters listed in points (a) to (g) of paragraph 1.

3. The list of shareholders and any amendments thereto shall be kept by the management body and may be inspected by the shareholders or third parties on request.

Amendment 27

Proposal for a regulation Article 16 – paragraph 3

Text proposed by the Commission

3. On notification of a transfer, the management body shall, without undue delay, enter the shareholder in the list referred to in Article 15, provided that the transfer has been executed in accordance with this Regulation and the articles of association of the SPE and the shareholder submits reasonable evidence as to his lawful ownership of the share.

Amendment 28

Proposal for a regulation Article 16 – paragraph 4 – point a

Text proposed by the Commission

(a) in relation to the SPE, on the day the shareholder notifies the SPE of the transfer;

Amendment 29

Proposal for a regulation Article 16 – paragraph 4 – point b

to be a member of the SPE.

2. The list of shareholders **registered in accordance with Article 10** shall, unless proven otherwise, constitute evidence of the **accuracy** of the matters listed in points (a) to (g) of paragraph 1.

3. The list of shareholders **registered in accordance with Article 10** and any amendments thereto shall be kept by the **executive** management body and may be inspected by the shareholders or third parties on request.

Amendment

3. On notification **by the shareholder** of a transfer, the **executive** management body shall, without undue delay, enter the shareholder in the list referred to in Article 15 **and registered in accordance with Article 10**, provided that the transfer has been executed in accordance with this Regulation and the articles of association of the SPE and the shareholder submits reasonable evidence as to his lawful ownership of the share.

Amendment

(a) in relation to the SPE, on the day the **new** shareholder notifies the SPE of the transfer;

Text proposed by the Commission

(b) in relation to third parties, on the day the shareholder is entered in the list referred to in Article 15.

Amendment

(b) in relation to third parties, on the day the shareholder is entered in the list referred to in Article 15 **or his status as shareholder is published in the register in accordance with Article 9.**

Amendment 30

**Proposal for a regulation
Article 18 – paragraph 1**

Text proposed by the Commission

1. ***A shareholder shall have the right to withdraw from the SPE if the activities of the SPE are being or have been conducted in a manner which causes serious harm to the interests of the shareholder as a result of one or more of the following events:***

- (a) ***the SPE has been deprived of a significant part of its assets;***
- (b) ***the registered office of the SPE has been transferred to another Member State;***
- (c) ***the activities of the SPE have changed substantially;***
- (d) ***no dividend has been*** distributed for at least 3 years even though the SPE's financial position would have permitted such distribution.

Amendment

1. ***The right of withdrawal shall be exercisable by shareholders who do not subscribe to resolutions concerning:***

- (a) ***operations which deprive the SPE of a significant part of its assets;***
- (b) ***operations which bring about a substantial change in the activities of the SPE;***
- (c) ***transferral of the registered office of the SPE to another Member State;***
- (d) ***non-distribution of dividends*** for at least *three* years, even though the SPE's financial position would have permitted such distribution.

The articles of association of the SPE may provide for additional grounds for withdrawal.

Amendment 31

**Proposal for a regulation
Article 18 – paragraph 3**

Text proposed by the Commission

3. The management body of the SPE shall, on receipt of the notice referred to in paragraph 2, without undue delay, request a resolution of the shareholders on the purchase of the shareholder's shares by the

Amendment

3. The ***executive*** management body of the SPE shall, on receipt of the notice referred to in paragraph 2, without undue delay, request a resolution of the shareholders on the purchase of the shareholder's shares by

other shareholders or by the SPE itself.

the other shareholders or by the SPE itself.

Amendment 32

Proposal for a regulation Article 18 – paragraph 4

Text proposed by the Commission

4. Where the shareholders of the SPE fail to adopt a resolution referred to in paragraph 3 or do not accept the shareholder's reasons for withdrawal within 30 calendar days of the submission of the notice referred to in paragraph 2, the management body shall notify the shareholder of that fact without undue delay.

Amendment

4. Where the shareholders of the SPE fail to adopt a resolution referred to in paragraph 3 or do not accept the shareholder's reasons for withdrawal within 30 calendar days of the submission of the notice referred to in paragraph 2, the ***executive*** management body shall notify the shareholder of that fact without undue delay.

Amendment 33

Proposal for a regulation Article 19 – paragraph 4

Text proposed by the Commission

4. The capital of the SPE shall be at least EUR 1.

Amendment

4. 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 as referred to in Article 21. Where the articles of association contain no provision to that effect, the capital of the SPE shall be at least EUR 8 000.***

Amendment 34

Proposal for a regulation Article 20 – paragraph 3

Text proposed by the Commission

3. ***Without prejudice to paragraphs 1 and 2, the liability of shareholders for the consideration paid or provided shall be governed by the applicable national law.***

Amendment

3. ***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 eight years after the company's registration.***

Amendment 35

Proposal for a regulation

Article 21 – paragraph 1

Text proposed by the Commission

1. Without prejudice to Article 24, the SPE may, on the basis of a proposal of the management body, make a distribution to shareholders provided that, after the distribution, the assets of the SPE fully cover its liabilities. The SPE may not distribute those reserves that may not be distributed under its articles of association.

Amendment

1. Without prejudice to Article 24, the SPE may, on the basis of a proposal of the **executive** management body, make a distribution to shareholders provided that, after the distribution, the assets of the SPE fully cover its liabilities. The SPE may not distribute those reserves that may not be distributed under its articles of association. ***A distribution shall be permissible only where the remaining amount of the deposit does not fall below the minimum amount referred to in Article 19(4).***

Amendment 36

Proposal for a regulation

Article 21 – paragraph 2

Text proposed by the Commission

2. If the articles of association so require, the management body of the SPE, in addition to complying with paragraph 1, shall sign a statement, hereinafter a 'solvency certificate', before a distribution is made, certifying that the SPE will be able to pay its debts as they become due in the normal course of business within one year of the date of the distribution. Shareholders shall be provided with the solvency certificate before the resolution on the distribution referred to in Article 27 is taken.

Amendment

2. If the articles of association so require, the **executive** management body of the SPE, in addition to complying with paragraph 1, shall sign a statement, hereinafter a 'solvency certificate', before a distribution is made, certifying that the SPE will be able to pay its debts as they become due in the normal course of business within one year of the date of the distribution. Shareholders shall be provided with the solvency certificate before the resolution on the distribution referred to in Article 27 is taken.

Amendment 37

Proposal for a regulation

Article 22

Text proposed by the Commission

Any shareholder who has received distributions made contrary to Article 21

Amendment

Any shareholder who has received distributions made contrary to Article 21

must return those distributions to the SPE,
*provided that the SPE proves that the
shareholder knew or in view of the
circumstances should have been aware of
the irregularities.*

must return those distributions to the SPE.

Amendment 38

Proposal for a regulation Article 24 – paragraph 1

Text proposed by the Commission

1. In the case of a reduction of the share capital of the SPE, Articles 21 and 22 shall apply mutatis mutandis.

Amendment

1. In the case of a reduction of the share capital of the SPE, Articles 21 and 22 shall apply mutatis mutandis. ***A reduction of the share capital shall be permissible only where the remaining amount of the deposit does not fall below the minimum amount referred to in Article 19(4).***

Amendment 39

Proposal for a regulation Article 25 – paragraph 1

Text proposed by the Commission

1. An SPE shall be subject to the requirements of the applicable national law as regards preparation, filing, auditing and publication of accounts.

Amendment

1. An SPE shall be subject to the requirements of the applicable national law as regards preparation, filing, auditing and publication of ***statutory*** accounts.

Amendment 40

Proposal for a regulation Article 25 – paragraph 2

Text proposed by the Commission

2. The management body shall keep the books of the SPE. The bookkeeping of the SPE shall be governed by the applicable national law.

Amendment

2. The ***executive*** management body shall keep the books of the SPE. The bookkeeping of the SPE shall be governed by the applicable national law.

Amendment 41

Proposal for a regulation Article 26 – paragraph 1

Text proposed by the Commission

1. The SPE shall have **a** management body, which shall be responsible for the management of the SPE. The management body may exercise all the powers of the SPE not required by this Regulation or the articles of association to be exercised by the shareholders.

Amendment

1. The SPE shall have **an executive** management body, which shall be responsible for the management of the SPE. The **executive** management body may exercise all the powers of the SPE not required by this Regulation or the articles of association to be exercised by the shareholders. **Members' resolutions shall be internally binding on the executive management body.**

Amendment 42

**Proposal for a regulation
Article 27 – paragraph 2**

Text proposed by the Commission

2. Resolutions on the matters indicated in points (a), (b), (c), (i), (l), (m) (n), (o) and (p) of paragraph 1 shall be taken by a qualified majority.

Amendment

2. Resolutions on the matters indicated in points (a), (b), (c), **(h)**, (i), (l), (m) (n), (o) and (p) of paragraph 1 shall be taken by a qualified majority.

Amendment 43

**Proposal for a regulation
Article 27 – paragraph 3**

Text proposed by the Commission

3. The adoption of resolutions shall not require the organisation of a general meeting. The management body shall provide all shareholders with the proposals for resolutions together with sufficient information to enable them to take an informed decision. Resolutions shall be recorded in writing. Copies of the decisions taken shall be sent to every shareholder.

Amendment

3. The adoption of resolutions shall not require the organisation of a general meeting. The **executive** management body shall provide all shareholders with the proposals for resolutions together with sufficient information to enable them to take an informed decision. Resolutions shall be recorded in writing. Copies of the decisions taken shall be sent to every shareholder.

Amendment 44

**Proposal for a regulation
Article 27 – paragraph 4**

Text proposed by the Commission

Amendment

4. Resolutions of the shareholders shall comply with this Regulation and the articles of association of the SPE.

The right of shareholders to challenge resolutions shall be governed by the applicable national law.

4. Resolutions of the shareholders shall comply with this Regulation and the articles of association of the SPE.

Resolutions of the shareholders 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.

Amendment 45

Proposal for a regulation

Article 27 – paragraph 7 – point (a)

Text proposed by the Commission

(a) in relation to the shareholders, the management body of the SPE and its supervisory body, if any, on the date they are adopted,

Amendment

(a) in relation to the shareholders, the **executive** management body of the SPE and its supervisory body, if any, on the date they are adopted,

Amendment 46

Proposal for a regulation

Article 28 – paragraph 1

Text proposed by the Commission

1. Shareholders shall have the right to be duly informed and to ask questions to the management body about resolutions, annual accounts and all other matters relating to the activities of the SPE.

Amendment

1. Shareholders shall have the right to be duly informed and to ask questions to the **executive** management body about resolutions, annual accounts and all other matters relating to the activities of the SPE.

Amendment 47

Proposal for a regulation

Article 28 – paragraph 2

Text proposed by the Commission

2. The management body may refuse to give access to the information only if doing so could cause serious harm to the business interests of the SPE.

Amendment

2. The **executive** management body may refuse to give access to the information only if doing so could cause serious harm to the business interests of the SPE.

Amendment 48

Proposal for a regulation

Article 29 – paragraph 1

Text proposed by the Commission

1. Shareholders holding 5% of the voting rights attached to the shares of the SPE shall have the right to request the management body to submit a proposal for a resolution to the shareholders.

Amendment

1. Shareholders holding 5% of the voting rights attached to the shares of the SPE shall have the right to request the **executive** management body to submit a proposal for a resolution to the shareholders.

Amendment 49

Proposal for a regulation

Article 29 – paragraph 1 – subparagraph 3

Text proposed by the Commission

If the request is refused or if the management body does not submit a proposal within 14 calendar days of receiving the request, the shareholders concerned may then submit a proposal for a resolution to the shareholders regarding the matters in question.

Amendment

If the request is refused or if the **executive** management body does not submit a proposal within 14 calendar days of receiving the request, the shareholders concerned may then submit a proposal for a resolution to the shareholders regarding the matters in question.

Amendment 50

Proposal for a regulation

Article 29 – paragraph 2 – subparagraph 2

Text proposed by the Commission

The expert shall be allowed access to the documents and records of the SPE and to require information from the management body.

Amendment

The expert shall be allowed access to the documents and records of the SPE and to require information from the **executive** management body.

Amendment 51

Proposal for a regulation
Article 31 – paragraph 4

Text proposed by the Commission

4. ***A director of the SPE shall be liable to the company for any act or omission in breach of his duties deriving from this Regulation, the articles of association of the SPE or a resolution of shareholders which causes loss or damage to the SPE. Where such breach has been committed by more than one director, all directors concerned shall be jointly and severally liable.***

Amendment

4. ***The directors shall be jointly and severally liable in respect of the company for any prejudice to the SPE deriving from a failure to fulfil the duties incumbent on them under this Regulation, the articles of association of the SPE or a resolution of shareholders. Such liability shall not extend to directors who are able to demonstrate their blamelessness and who made known their disagreement with the failure to fulfil duties.***

Amendment 52

Proposal for a regulation
Article 31 – paragraph 5

Text proposed by the Commission

5. ***Without prejudice to the provisions of this Regulation, the liability of directors shall be governed by the applicable national law.***

Amendment

5. ***Directors shall pay compensation in particular where payments have been made in breach of Article 21 or own shares in the company have been acquired in breach of Article 23(2). 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.***

Amendment 53

Proposal for a regulation
Article 31 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. ***Any right of action pursuant to this Article shall lapse within four years of the date when it arose.***

Amendment 54

Proposal for a regulation
Article 33

Text proposed by the Commission

1. The SPE shall be represented in relation to third parties by one or more **directors**. Acts undertaken by the **directors** shall be binding on the SPE even if they are not within the objects of the SPE.
2. The articles of association of the SPE may provide that **directors** are to exercise jointly the general power of representation. Any other limitation of the powers of the directors, following from the articles of association, a resolution of shareholders or a decision of the management or supervisory body, if any, may not be relied on against third parties even if they have been disclosed.
3. **Directors** may delegate the right to represent the SPE in accordance with the articles of association.

Amendment 71

Proposal for a regulation
Article 34 – paragraph 1

Text proposed by the Commission

1. 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, subject to the provisions of this Article.

Amendment

1. The SPE shall be represented in relation to third parties by one or more **members of the executive management body**. Acts undertaken by the **members of the executive management body** shall be binding on the SPE even if they are not within the objects of the SPE.
2. The articles of association of the SPE may provide that **members of the executive management body** are to exercise jointly the general power of representation. Any other limitation of the powers of the directors, following from the articles of association, a resolution of shareholders or a decision of the management or supervisory body, if any, may not be relied on against third parties even if they have been disclosed.
3. **Members of the executive management body** may delegate the right to represent the SPE in accordance with the articles of association.

Amendment

1. 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, subject to the provisions of this Article. **Those rules, if any, shall apply to the entire workforce of the SPE.**
1a. Paragraph 1 shall not apply where:
(a) the SPE employs altogether more than 1 000 employees and more than one quarter (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. In that event, the

provisions on employee participation of Directive 2001/86/EC shall apply mutatis mutandis. In addition, the SPE may also apply Article 16(4) of Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies¹;

(b) the SPE employs altogether between 500 and 1 000 employees and more than one third (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. In that event, the provisions on employee participation of Directive 2001/86/EC and of Article 16(3)(e), (4) and (5) of Directive 2005/56/EC shall apply mutatis mutandis;

(c) the SPE has been founded pursuant to point (b), (c) or (d) of Article 5(1) and employs altogether fewer than 500 employees, and more than one third (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. In that event, the provisions on employee participation of Directive 2001/86/EC and of Article 16(3)(e), (4) and (5) of Directive 2005/56/EC shall apply mutatis mutandis;

(d) the SPE has been founded pursuant to point (a) of Article 5(1) and employs altogether fewer than 500 employees, and more than half (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 that event, the provisions on employee participation of Directive 2001/86/EC and of Article 16(3)(e), (4) and (5) of Directive 2005/56/EC shall apply mutatis mutandis.

Amendment 72

Proposal for a regulation Article 34 a (new)

Text proposed by the Commission

Amendment

Article 34a

Adaptation clause

In the absence of provisions on employee participation, Article 34(1a) shall apply if, due to changes in the number of employees, the conditions laid down therein are fulfilled.

If the conditions laid down in Article 34(1a) cease to be fulfilled, the management board of the SPE may apply Article 34(1).

Existing participation arrangements, if any, shall remain in place until the new arrangements enter into force.

Amendment 56

Proposal for a regulation Article 36 – paragraph 1 – introduction

Text proposed by the Commission

Amendment

1. The management body of an SPE planning a transfer shall draw up a transfer proposal, which shall include at least the following particulars:

1. The *executive* management body of an SPE planning a transfer shall draw up a transfer proposal, which shall include at least the following particulars:

Amendment 57

Proposal for a regulation Article 36 – paragraph 2 – introduction

Text proposed by the Commission

Amendment

2. At least one month before the resolution of the shareholders referred to in paragraph 4 is taken, the management body of the SPE shall:

2. At least one month before the resolution of the shareholders referred to in paragraph 4 is taken, the *executive* management body of the SPE shall:

Amendment 58

Proposal for a regulation Article 36 – paragraph 3

Text proposed by the Commission

3. The management body of the SPE shall draw up a report to the shareholders explaining and justifying the legal and economic aspects of the proposed transfer and setting out the implications of the transfer for shareholders, creditors and employees. The report shall be submitted to the shareholders and the employee representatives, or where there are no such representatives, to the employees themselves together with the transfer proposal.

Amendment

3. The **executive** management body of the SPE shall draw up a report to the shareholders explaining and justifying the legal and economic aspects of the proposed transfer and setting out the implications of the transfer for shareholders, creditors and employees. The report shall be submitted to the shareholders and the employee representatives, or where there are no such representatives, to the employees themselves together with the transfer proposal.

Amendment 59

Proposal for a regulation Article 36 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Where the management body receives in time the opinion of the employee representatives on the transfer, that opinion shall be submitted to the shareholders.

Amendment

Where the **executive** management body receives in time the opinion of the employee representatives on the transfer, that opinion shall be submitted to the shareholders.

Amendment 73

Proposal for a regulation Article 38

Text proposed by the Commission

1. The SPE shall be subject, as from the date of registration, to the rules in force in the host Member State, if any, concerning arrangements for the participation of employees.
2. Paragraph 1 shall not apply where the **employees of the SPE in the home Member State account for at least one third of the total number of employees of the SPE including subsidiaries or**

Amendment

1. The SPE shall be subject, as from the date of registration, to the rules in force in the host Member State, if any, concerning arrangements for the participation of employees.
2. Paragraph 1 shall not apply where the **conditions laid down in Article 34(1a) are fulfilled. In that event, Article 34(1a) shall apply mutatis mutandis.**

branches of the SPE in any Member State, and where one of the following conditions is met:

(a) the legislation of the host Member State does not provide for at least the same level of participation as that operated in the SPE in the home Member State prior to its registration in the host Member State. The level of employee participation shall be measured by reference to the proportion of employee representatives amongst the members of the administrative or supervisory body or their committees or of the management group which covers the profit units of the SPE, subject to employee representation;

(b) the legislation of the host Member State does not confer on the employees of establishments of the SPE that are situated in other Member States the same entitlement to exercise participation rights as such employees enjoyed before the transfer.

3. Where one of the conditions set out in points (a) or (b) of paragraph 2 is met, the management body of the SPE shall take the necessary steps, as soon as possible, after disclosure of the transfer proposal, to start negotiations with the representatives of the SPE's employees with a view to reaching an agreement on arrangements for the participation of the employees.

4. The agreement between the management body of the SPE and the representatives of the employees shall specify:

(a) the scope of the agreement;

(b) where, during the negotiations, the parties decide to establish arrangements for participation in the SPE following the transfer, the substance of those arrangements including, where applicable, the number of members in the company's administrative or supervisory body employees will be entitled to elect, appoint, recommend or oppose, the

procedures as to how these members may be elected, appointed, recommended or opposed by employees, and their rights;

(c) the date of entry into force of the agreement and its duration, and any cases in which the agreement should be renegotiated and the procedure for its renegotiation.

5. Negotiations shall be limited to a period of six months. The parties may agree to extend negotiations beyond this period for an additional six-month period. The negotiations shall otherwise be governed by the law of the home Member State.

6. In the absence of an agreement, the participation arrangements existing in the home Member State shall be maintained.

Amendment 60

Proposal for a regulation Article 42 – paragraph 1

Text proposed by the Commission

1. Member States in which the third phase of the economic and monetary union (EMU) does not apply may require SPEs having their registered office in their territory to express their capital in the national currency. *An SPE may also* express *its* capital in euro. The national currency/euro conversion rate shall be as on the last day of the month preceding the registration of the SPE.

Amendment

1. Member States in which the third phase of the economic and monetary union (EMU) does not apply may require SPEs having their registered office in their territory to express their capital in the national currency. *Such SPEs shall, in addition,* express *their* capital in euro. The national currency/euro conversion rate shall be as on the last day of the month preceding the registration of the SPE.

Amendment 61

Proposal for a regulation Article 42 – paragraph 2

Text proposed by the Commission

2. An SPE *may* prepare and publish its annual and, where applicable, consolidated accounts in euro in Member States where the third phase of the economic and monetary union (EMU) does not apply.

Amendment

2. An SPE *shall* prepare and publish its annual and, where applicable, consolidated accounts *both in the national currency and* in euro in Member States where the third phase of the economic and monetary

However such Member States may also require SPEs to prepare and publish their annual and, where applicable, consolidated accounts in the national currency in accordance with the applicable national law.

union (EMU) does not apply.

Amendment 62

Proposal for a regulation Article 42 a (new)

Text proposed by the Commission

Amendment

Article 42a

Arbitration clause

1. The articles of association may, in the form of an arbitration clause, provide for the referral to arbitrators of any disputes arising between shareholders, or between shareholders and the SPE, concerning its corporate relations. The articles of association may also provide that the arbitration clause cover disputes with the directors. In that case, the arbitration clause shall be binding on the directors upon their acceptance of the post.

2. Any amendment of the constituent act, introducing or removing the arbitration clause by a resolution of the shareholders under Article 27 must be approved by shareholders representing at least two-thirds of the share capital.

Amendment 63

Proposal for a regulation Article 43 a (new)

Text proposed by the Commission

Amendment

Article 43a

Severability clause

Any clause of the articles of association that is ineffective shall be severable and the remaining clauses of the articles of association shall continue to be effective. The ineffective clause shall be replaced by

the corresponding clause of the model articles of association until they have been corrected by a resolution of the shareholders. Where the sample articles of association make no provision for a corresponding clause, the ineffective clause shall be replaced by the law relating to limited-liability companies of the Member State in which the registered office of the SPE is situated.

Amendment 64

Proposal for a regulation Article 45

Text proposed by the Commission

Member States shall notify the form of private limited-liability *company* referred to in the second paragraph of Article 4 *to the Commission by 1 July 2010 at the latest.*

The Commission shall publish this information in the *Official Journal of the European Union.*

Amendment

Member States shall notify *the Commission by 1 July 2010 of* the form of private limited-liability *companies* referred to in the second paragraph of Article 4, *of the consequences under their national law of failure to comply with any provisions of this Regulation, and of any additional provisions of their company law which apply to an SPE.*

The Commission shall publish this information in the *Official Journal of the European Union.*

Furthermore, 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.

Amendment 65

Proposal for a regulation Annex I – Chapter IV – Capital – indent 7

Text proposed by the Commission

– whether the management body is required to sign a solvency certificate before a distribution is made, and the

Amendment

– whether the *executive* management body is required to sign a solvency certificate before a distribution is made, and the

applicable requirements,

applicable requirements,

Amendment 66

Proposal for a regulation

Annex I – Chapter V – Organisation of the SPE – indent 10

Text proposed by the Commission

– whether the SPE's management body is composed of one or more managing directors, a management board (dual board) or an administrative board (unitary board),

Amendment

– whether the SPE's **executive** management body is composed of one or more managing directors, a management board (dual board) or an administrative board (unitary board),

Amendment 67

Proposal for a regulation

Annex I – Chapter V – Organisation of the SPE – indent 13

Text proposed by the Commission

– where there is a management board (dual board) or one or more managing directors, whether the SPE has a supervisory body, and if so, its composition and organisation and its relationship with the management body,

Amendment

– where there is a management board (dual board) or one or more managing directors, whether the SPE has a supervisory body, and if so, its composition and organisation and its relationship with the **executive** management body,

Amendment 68

Proposal for a regulation

Annex I – Chapter V – Organisation of the SPE – indent 20

Text proposed by the Commission

– the rules on representation of the SPE by the management body, in particular if the directors have the right to represent the SPE jointly or separately and any delegation of this right,

Amendment

– the rules on representation of the SPE by the **executive** management body, in particular if the directors have the right to represent the SPE jointly or separately and any delegation of this right,

Amendment 69

Proposal for a regulation

Annex I – Chapter V – Organisation of the SPE – indent 21

Text proposed by the Commission

Amendment

– the rules on delegation of any management power to another person.

– the rules on delegation of any *executive* management power to another person.