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2004



2009

Committee on Employment and Social Affairs

2008/0130(CNS)

5.11.2008

OPINION

of the Committee on Employment and Social Affairs

for the Committee on Legal Affairs

on the proposal for a Council regulation on the Statute for a European private
company
(COM(2008)0396 – C6-0283/2008 – 2008/0130(CNS))

Rapporteur: Harald Ettl

PA_Legam

AMENDMENTS

The Committee on Employment and Social Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Draft legislative resolution Paragraph 1 a (new)

Draft legislative resolution

Amendment

1a. Calls for a separate directive to regulate information, consultation and participation in the European Private Company.

Amendment 2

Proposal for a regulation Recital 7

Text proposed by the Commission

Amendment

(7) In order to make the SPE an accessible company form for individuals and small businesses, it should be capable of being created ex nihilo or of resulting from the transformation, the merger or the division of existing national companies. The creation of an SPE by way of transformation, merger or division of companies should be governed by the applicable national law.

(7) In order to make the SPE an accessible company form for individuals and small businesses, it should be capable of being created ex nihilo or of resulting from the transformation, the merger or the division of existing national companies. The creation of an SPE by way of transformation, merger or division of companies should be governed by the applicable national law, ***without prejudice to the provisions on employees' rights of participation.***

Justification

The aim of this amendment is to prevent employees' rights of participation from being circumvented.

Amendment 3

Proposal for a regulation Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) Where an SPE transfers its registered office to another Member State it should conduct negotiations with its employees concerning their participation, in accordance with the rules laid down in the SPE's statute, and a special negotiating body should be set up, in line with Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees* for the purpose of reaching an agreement in line with Article 5 of Directive 2001/86/EC.

* OJ L 294, 10.11.2001, p. 22.

Amendment 4

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 to sign a solvency certificate.

(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 distributions to shareholders which could ***undermine*** 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 to sign a solvency certificate.

Amendment 5

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"). 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 *prior to* the transfer should be negotiated. Should such negotiations fail, the provisions applying in the company before the transfer should continue to apply after the transfer.

Amendment 6

Proposal for a regulation

Article 3 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Private-public limited liability companies formed under the law of a Member State and having registered offices within the Union may form an SPE provided that at least two of them:

a) are governed by the laws of different Member States; or

b) have a subsidiary company governed by the law of another Member State or a branch situated in another Member State.

Amendment 7

Proposal for a regulation
Article 4 – paragraph 1 – subparagraph 2

Text proposed by the Commission

However, where a **matter** is not covered by the articles of this Regulation or by Annex I, an SPE shall be governed by the law, including the provisions implementing Community law, which applies to private limited-liability companies in the Member State in which the SPE has its registered office, hereinafter "applicable national law".

Amendment

However, where a **provision** is not covered by the articles of this Regulation or by Annex I, an SPE shall be governed by the law, including the provisions implementing Community law, which applies to private limited-liability companies in the Member State in which the SPE has its registered office, hereinafter "applicable national law".

Amendment 8

Proposal for a regulation
Article 5 – paragraph 2

Text proposed by the Commission

2. Formation of the SPE by the transformation, merger or division of existing companies shall be governed by the national law applicable to the transforming company, to each of the merging companies or to the dividing company. Formation by transformation shall **not** give rise to the winding up of the company or any loss or interruption of its legal personality.

Amendment

2. Formation of the SPE by the transformation, merger or division of existing companies shall be governed by the national law applicable to the transforming company, to each of the merging companies or to the dividing company. Formation by transformation shall **neither** give rise to the winding up of the company or any loss or interruption of its legal personality **nor affect employees' existing rights of participation**.

Amendment 9

Proposal for a regulation
Article 5 – paragraph 3

Text proposed by the Commission

3. For the purposes of paragraphs 1 and 2, 'company' shall mean any form of company that may be set up under the law of the Member States, a European Company and, where applicable, an SPE.

Amendment

3. For the purposes of paragraphs 1 and 2, 'company' shall mean any form of **limited** company that may be set up under the law of the Member States, a European Company and, where applicable, an SPE.

Amendment 10

Proposal for a regulation Article 7 – paragraph 2

Text proposed by the Commission

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.

Amendment

An SPE shall have its central administration or principal place of business in the Member State in which it has its registered office.

Amendment 11

Proposal for a regulation Article 9 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Where, having regard to objective factors, such as the location of its premises, workforce and equipment, an SPE's economic activity is carried out in the territory of a different Member State from that in which it is registered, it shall be deemed to be registered in the Member State where it effectively carries out its economic activity.

Amendment 12

Proposal for a regulation Article 10 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) a list of shareholders in accordance with Article 15;

Justification

Der Ansatz einer Haftungsbeschränkung zum Null-Tarif und die Aufgabe der Kapitalerhaltungsvorschriften sind völlig kontraproduktiv. Er fördert den Missbrauch zu Lasten Dritter, weil damit das gefährliche Signal ausgesendet wird, dass das unternehmerische Risiko von der Allgemeinheit übernommen wird. Die SPE ohne Mindestkapital ist eine Gesellschaftsform, bei der allein die Gläubiger das Risikokapital zur

Verfügung stellen. Das Mindestkapital, in Österreich für die GmbH 35.000 Euro, dient vor allem als Seriositätsschwelle, indem es den Unternehmensgründern signalisiert: Wer im Rahmen einer Kapitalgesellschaft tätig sein will und die damit verbundene Haftungsbeschränkung in Anspruch nehmen will, muss auch einen Risikobeitrag leisten.

Amendment 13

Proposal for a regulation

Article 10 – paragraph 2 – point g

Text proposed by the Commission

(g) the articles of association of the SPE;

Amendment

(g) the articles of association of the SPE;
including any rights of participation enjoyed by employees;

Amendment 14

Proposal for a regulation

Article 10 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Registration in the register described in Article 9(1) shall be carried out with the participation of a notary.

Amendment 15

Proposal for a regulation

Article 10 – paragraph 4

Text proposed by the Commission

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.

Amendment

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

(a) a control by an administrative or judicial body of the legality of the documents and particulars of the SPE, ***and***

(b) the certification of the documents and particulars of the SPE.

Amendment 16

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 15 000**.

Amendment 17

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. ***The share capital may not be repaid to shareholders while the company is in existence. If the share capital is reduced by losses, it must be replenished before the company can pay out dividends.***

Amendment 18

Proposal for a regulation
Article 21 – paragraph 2 – subparagraph 1

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. 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 19

Proposal for a regulation

Article 26 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The SPE shall have a body responsible for the supervision of the management body (a supervisory board or, in the one-tier system, a non-executive member of management) if its average annual number of employees exceeds 250 (explanation: 250 employees is, in terms of accounting, the size threshold for large corporations). The control body's tasks shall depend on the national provisions of the Member State where the company's registered office is situated.

Justification

Im Widerspruch zum Anspruch der Kommission, nämlich eine europaweit einheitliche Rechtsform zu schaffen, steht, dass aufgrund des hohen Maßes an Vertragsfreiheit, die Corporate Governance, also das Zusammenwirken von Leitung und Kontrolle in den Satzungen ganz unterschiedlich ausgestaltet sein wird, was letztlich dazu führt, dass wir nicht 27 verschiedene SPEs sondern tausende verschiedene SPEs haben werden, die alle nicht vergleichbar sein werden. Der von der Kommission eingeschlagene Weg, nämlich vieles Wichtige der Satzung zu überlassen, ist höchst fragwürdig, weil die Satzung zu jedem Zeitpunkt wieder geändert werden könne. Gläubiger, aber auch Minderheitseigentümer könnten sich daher auf die Bestimmungen in der Satzung nicht verlassen. Es wird befürchtet, dass alle Fortschritte in Richtung Stärkung der Unternehmenskontrolle wieder zu nichte gemacht werden. Daher wird gefordert, dass ab einer bestimmten Größe jedenfalls verpflichtend einen Aufsichtsrat bzw. das Board nicht geschäftsführende Mitglieder haben muss. Auch muss der Aufgabenbereich der Unternehmenskontrolle definiert werden, weil eine effiziente Kontrolle und Beratung der Geschäftsführung wesentlich zu einer positiven nachhaltigen Entwicklung eines Unternehmens beitragen kann. Analog zu den Regelungen zur SE muss auch die Arbeitnehmermitbestimmung gesichert werden.

Amendment 20

Proposal for a regulation

Article 27 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

2. Resolutions on the matters indicated in

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.

points (a), (b), (c), **(e), (h)**, (i), (l), (m) (n), (o) and (p) of paragraph 1 shall be taken by a qualified majority.

Amendment 21

Proposal for a regulation Article 30 – paragraph 2

Text proposed by the Commission

Amendment

2. A person who acts as a director without having been formally appointed shall be considered a director as regards all duties and liabilities to which the latter are subject.

deleted

Amendment 22

Proposal for a regulation Article 34 – paragraph 1

Text proposed by the Commission

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.

1. In the case of SPEs which employ fewer than 50 employees:

- (a) the SPE shall be subject to the rules on employee involvement of the Member State where the SPE's registered office is situated which apply to other similar entities, except that**
- (b) its subsidiaries and branches shall be subject to the rules on employee involvement of the Member State where they are situated which apply to other similar entities.**

Amendment 23

Proposal for a regulation
Article 34 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Where at least a third of the total number of employees of an SPE and its subsidiaries and branches in at least two different Member States so request, or where the total number of employees is 50 or more, Articles 3 to 7 and 11 to 15 of and the Annex to Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees* shall apply, mutatis mutandis.

OJ L 207, 18.8.2003, p. 25.

Amendment 24

Proposal for a regulation
Article 34 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. In the case of a change in the structure of the SPE which significantly affects existing arrangements governing employees' participation rights, Article 38(3) to (6a) shall apply mutatis mutandis. Those provisions shall in particular apply in the case of a transfer of the registered office of an SPE, a change in its administrative arrangements, the closure or downscaling or transfer of subsidiaries or branches of an SPE, the merger of subsidiaries or branches of an SPE, and the acquisition by an SPE of substantial holdings in other companies in so far as this has a significant effect on its overall structure, as well as significant changes in the number of persons employed by an SPE and its subsidiaries.

Amendment 25

Proposal for a regulation

Article 35 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. The registered office of an SPE may be transferred to another Member State in accordance with this Chapter.

Amendment

1. ***Without prejudice to Article 9(1a)***, the registered office of an SPE may be transferred to another Member State in accordance with this Chapter.

Amendment 26

Proposal for a regulation

Article 36 – paragraph 2 – introductory part

Text proposed by the Commission

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:

Amendment

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

Amendment 27

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

The management body ***shall inform the shareholders in good time of*** the opinion of the employee representatives on the transfer.

Amendment 28

Proposal for a regulation

Article 37 – paragraph 3 – subparagraph 1 – point (b)

Text proposed by the Commission

(b) the proposed articles of association for the SPE in the host Member State, as approved by the shareholders;

Amendment

(b) the proposed articles of association, ***and any rules governing employees' rights of participation,*** for the SPE in the host

Member State, as approved by the shareholders;

Amendment 29

Proposal for a regulation Article 38 – paragraph 2

Text proposed by the Commission

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 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.

Amendment

2. Paragraph 1 shall not apply 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.

Amendment 30

Proposal for a regulation Article 38 – paragraph 3

Text proposed by the Commission

3. Where one of the conditions set out in

Amendment

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.*

points (a) or (b) of paragraph 2 is met, *the participation of workers in the SPE and their involvement in the definition of such rights shall be governed by the following rules:*

(a) a special negotiating body representing the employees of the participating companies and concerned subsidiaries or branches shall be created in accordance with the following provisions:

(i) the members of the special negotiating body shall be elected or appointed in proportion to the number of employees employed in each Member State by the participating companies and subsidiaries or branches concerned, by allocating in respect of a Member State one seat per portion of employees employed in that Member State which equals 10%, or a fraction thereof, of the number of employees employed by the participating companies and subsidiaries or branches concerned in all the Member States taken together;

(ii) Member States shall determine the method to be used for the election or appointment of the members of the special negotiating body who are to be elected or appointed in their territory. They shall take the necessary measures to ensure that, as far as possible, such members include at least one member representing each participating company which has employees in the Member State concerned. Such measures must not increase the overall number of members. Member States may provide that such members may include representatives of trade unions whether or not they are employees of a participating company or subsidiary or branch concerned. Without prejudice to national legislation and/or practice laying down thresholds for the establishment of a representative body, Member States shall provide that employees in undertakings or establishments in which there are no employees' representatives through no fault of their own have the right to elect or appoint members of the special negotiating body.

(b) The special negotiating body and the competent organs of the participating companies shall determine, by written agreement, arrangements for the involvement of employees within the SPE.

(c) Subject to subparagraph e), the special negotiating body shall take decisions by an absolute majority of its members, provided that such a majority also represents an absolute majority of the employees. Each member shall have one vote. However, should the result of the negotiations lead to a reduction of participation rights, the majority required for a decision to approve such an agreement shall be the votes of two-thirds of the members of the special negotiating body representing at least two-thirds of the employees, including the votes of members representing employees employed in at least two Member States.

Reduction of participation rights means a proportion of members of the organs of the SPE within the meaning of Article 2(k) of Directive 2003/72/EC, which is lower than the highest proportion existing within the participating companies.

(d) For the purpose of the negotiations, the special negotiating body may request experts of its choice, for example representatives of appropriate Community-level trade union organisations, to assist it with its work. Such experts may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body, where appropriate, to promote coherence and consistency at Community level. The special negotiating body may decide to inform the representatives of appropriate external organisations, including trade unions, of the start of the negotiations.

(e) The special negotiating body may decide by the majority set out below not to open negotiations or to terminate negotiations already opened, and to rely on the rules on information and consultation of employees in force in the home Member State. The majority required to decide not to open or to terminate negotiations shall be the votes of two-thirds of the members representing at least two-thirds of the employees, including the votes of members representing employees employed in at least two Member States. The special negotiating body shall be reconvened at the written request of at least 10% of the employees of the SPE, its subsidiaries and branches, or their representatives, at the earliest two years after the abovementioned decision, unless the parties agree to negotiations being reopened sooner. If the special negotiating body decides to reopen negotiations with the management but no agreement is reached as a result of those negotiations, the participation

arrangements in the home Member State shall prevail.

(f) Any expenses relating to the functioning of the special negotiating body and to negotiations in general shall be borne by the participating companies so as to enable the special negotiating body to carry out its task in an appropriate manner.

Amendment 31

Proposal for a regulation Article 38 – paragraph 4

Text proposed by the Commission

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.

Amendment

4. *The competent organs of the participating companies and the special negotiating body shall negotiate in a spirit of cooperation with a view to reaching an agreement on arrangements for the involvement of the employees within the SPE. Without prejudice to the autonomy of the parties, the agreement between the management body of the SPE and the special negotiating body shall specify:*

(a) the scope of the agreement;
(b) the composition, number of members and allocation of seats on the representative body which will be the discussion partner of the competent organ of the SPE in connection with arrangements for the information and consultation of the employees of the SPE and its subsidiaries and branches;

(c) the functions and the procedure for informing and consulting the representative body;

(d) the frequency of meetings of the representative body;

(e) the financial and material resources to be allocated to the representative body;

(f) where, during negotiations, the parties decide to establish one or more information and consultation procedures instead of a representative body, the arrangements for implementing those procedures;

(g) where, during negotiations, the parties decide to establish arrangements for participation, the substance of those arrangements including (if applicable) the number of members in the SPE's administrative or supervisory body which the employees will be entitled to elect, appoint, recommend or oppose, the procedures for electing, appointing, recommending or opposing those members by the employees, and their rights;

(h) the date of entry into force of the agreement and its duration, cases where the agreement should be renegotiated and the procedure for its renegotiation.

Amendment 32

Proposal for a regulation Article 38 – paragraph 5

Text proposed by the Commission

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.***

Amendment

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.

Amendment 33

**Proposal for a regulation
Article 38 – paragraph 6 a (new)**

Text proposed by the Commission

Amendment

6a. The members of the special negotiating body, the members of the representative body, any employees' representatives exercising functions under the information and consultation procedure and any employees' representatives in the supervisory or administrative body of an SPE who are employees of the SPE, its subsidiaries or branches or of a participating company shall, in the exercise of their functions, enjoy the same protection and guarantees provided for employees' representatives by the national legislation and/or practice in force in their country of employment. This shall apply in particular to attendance at meetings of the special negotiating body or representative body, any other meeting under the agreement referred to in Article 38(4)(f) or any meeting of the administrative or supervisory body, and to the payment of wages for members employed by a participating company or the SPE or its subsidiaries or branches during any period of absence necessary for the performance of their duties.

Amendment 34

**Proposal for a regulation
Article 38 a (new)**

Text proposed by the Commission

Amendment

Article 38a

Misuse of procedures

Member States shall take appropriate measures in accordance with Community law in order to prevent the misuse of an SPE for the purpose of depriving

*employees of rights of employee
involvement or withholding such rights.*

Amendment 35

Proposal for a regulation Article 38 b (new)

Text proposed by the Commission

Amendment

Article 38b Compliance

1. Every Member State shall ensure that the management of branches of an SPE and the supervisory or administrative bodies of subsidiaries and of participating companies which are situated within its territory and the employees' representatives or, as the case may be, the employees themselves fulfil the obligations laid down by this Regulation, regardless of whether the SPE has its registered office within that territory.

2. Member States shall provide for appropriate sanctions to be applied in the event of failure to comply with this Regulation. In particular, they shall ensure that administrative or legal procedures are available to enable the obligations deriving from this Regulation to be enforced.

Amendment 36

Proposal for a regulation Article 38 c (new)

Text proposed by the Commission

Amendment

Article 38c

Link between this Regulation and other provisions

1. Where an SPE is a Community-scale undertaking or a controlling undertaking of a Community-scale group of undertakings within the meaning of

Directive 94/45/EC or of Directive 97/74/EC extending the application of that Directive to the United Kingdom, the provisions of these Directives and the provisions transposing them into national law shall not apply to them or to their subsidiaries. However, where the special negotiating body decides in accordance with Article 38(3) (e) not to open negotiations or to terminate negotiations already opened, Directive 94/45/EC or Directive 97/74/EC and the provisions transposing them into national law shall apply.

2. This Regulation is without prejudice to:
(a) any existing rights of involvement of employees provided for by national legislation and/or practice in the Member States and enjoyed by employees of the SPE and its subsidiaries and branches, other than participation in the bodies of the SPE;

(b) the provisions on participation in the bodies laid down by national legislation and/or practice applicable to the subsidiaries of the SPE.

3. In order to preserve the rights referred to in paragraph 3, Member States may take the necessary measures to guarantee that the structures of employee representation in participating companies which will cease to exist as separate legal entities are maintained after the registration of the SPE.

PROCEDURE

Title	Statute for a European private company
References	COM(2008)0396 – C6-0283/2008 – 2008/0130(CNS)
Committee responsible	JURI
Opinion by Date announced in plenary	EMPL 9.10.2008
Drafts(wo)man Date appointed	Harald Ettl 9.9.2008
Discussed in committee	6.10.2008 4.11.2008
Date adopted	5.11.2008
Result of final vote	+: 28 -: 2 0: 14
Members present for the final vote	Jan Andersson, Iles Braghetto, Philip Bushill-Matthews, Alejandro Cercas, Ole Christensen, Derek Roland Clark, Luigi Cocilovo, Jean Louis Cottigny, Jan Cremers, Proinsias De Rossa, Harald Ettl, Richard Falbr, Carlo Fatuzzo, Ilda Figueiredo, Joel Hasse Ferreira, Stephen Hughes, Karin Jöns, Sajjad Karim, Jean Lambert, Bernard Lehideux, Elizabeth Lynne, Thomas Mann, Jan Tadeusz Masiel, Elisabeth Morin, Juan Andrés Naranjo Escobar, Csaba Óry, Siiri Oviir, Marie Panayotopoulos-Cassiotou, Pier Antonio Panzeri, Elisabeth Schroedter, José Albino Silva Peneda, Jean Spautz, Gabriele Stauner, Ewa Tomaszewska, Anne Van Lancker, Gabriele Zimmer
Substitute(s) present for the final vote	Françoise Castex, Gabriela Crețu, Anna Ibrisagic, Rumiana Jeleva, Claude Turmes
Substitute(s) under Rule 178(2) present for the final vote	Giles Chichester, Viktória Mohácsi, Silvia-Adriana Țicău