

Editorial

The European Private Company: on the agenda (again)

Since the adoption of the SE legislation in 2001 the idea of creating a European company form targeted at small and medium-sized enterprises (SMEs) has been on the political agenda. In 2002 a High Level Group of Company Law Experts organized by the European Commission proposed the creation of the European Private Company, or *Societas Privata Europaea* (“SPE”), as a complementary form to the European Company. This proposal was adopted by the Commission in its 2003 communication on Modernising Company Law and Enhancing Corporate Governance in the European Union. In 2008 this was followed up by a proposal for a Council Regulation on the Statute for a European private company (SPE). The proposal however quickly ran into trouble as it was criticized heavily from many sides.

Among the strongest critics of the SPE proposal have been the ETUC and its member trade unions, who for good reason fear that this legal form could be used by companies to avoid national rules on worker involvement. One key issue is whether SPEs would be allowed to register in a different country (“host country”) than the country in which their head office is located (“home country”). If a separation of host and home country is allowed, the laws of the host country could have precedence over the laws of the home country in important areas such as worker participation. Thus the SPE could offer a vehicle for companies in countries with strong worker participation to “escape” by registering as an SPE in a country with weak or no worker participation requirements. Although some attempt has been made in revised versions of the proposal to provide safeguards for worker participation arrangements, these safeguards have been seen by trade unions as too weak for protecting many types of existing arrangements. Strangely enough, although the SPE is supposed to be targeted at SMEs, official proposals

have lacked a “cap” on the number of employees the SPE could have. Thus in principle very large companies would also be allowed to register as SPEs.

Although the Swedish and Belgian Presidencies of the Council of the EU both submitted revised proposals for the SPE, these revisions were also not able to gain sufficient support from Member States. In addition to the issue of worker involvement, the issues of separation of home and host country, minimum capital requirements and taxation issues have also been quite controversial. This has not discouraged the current Hungarian Presidency from trying again by issuing a new proposal for compromise on controversial points. However, the new proposal has reportedly also failed to gain sufficient support, despite efforts by the German government to broker a compromise.

The ETUC has been clear on their demands regarding the SPE: this should not be established as a vehicle which allows companies to “escape” their national industrial relations systems and to undermine Social Europe. In March of this year the ETUC issued a press release stating concern over the Hungarian proposal¹ and in April the ETUC executive committee approved a resolution calling for a minimum standard on worker information, consultation and participation which would apply to all European company legal forms such as the SPE.² Currently the highest standard at the European level for protecting and enabling worker involvement is defined by the SE legislation. Consistent with the principle of Social Europe, EU decision makers would be well advised to promote and respect such minimum standards in any further efforts to promote the SPE.

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¹ ETUC Press release 16 March 2011 “New Proposal on the European Private Company a cause of concern”, available at: <http://www.etuc.org/a/8484>

² Resolution approved by the ETUC executive committee on 28 April 2011: “Strengthening worker involvement: minimum standards for information, consultation and participation in Europe”.