

# EUROPEAN PARLIAMENT

2004



2009

---

*Committee on Economic and Monetary Affairs*

**2008/0130(CNS)**

3.12.2008

## **OPINION**

of the Committee on Economic and Monetary 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 – C6-0123/2008 – 2008/0130(CNS))

Rapporteur: Donata Gottardi

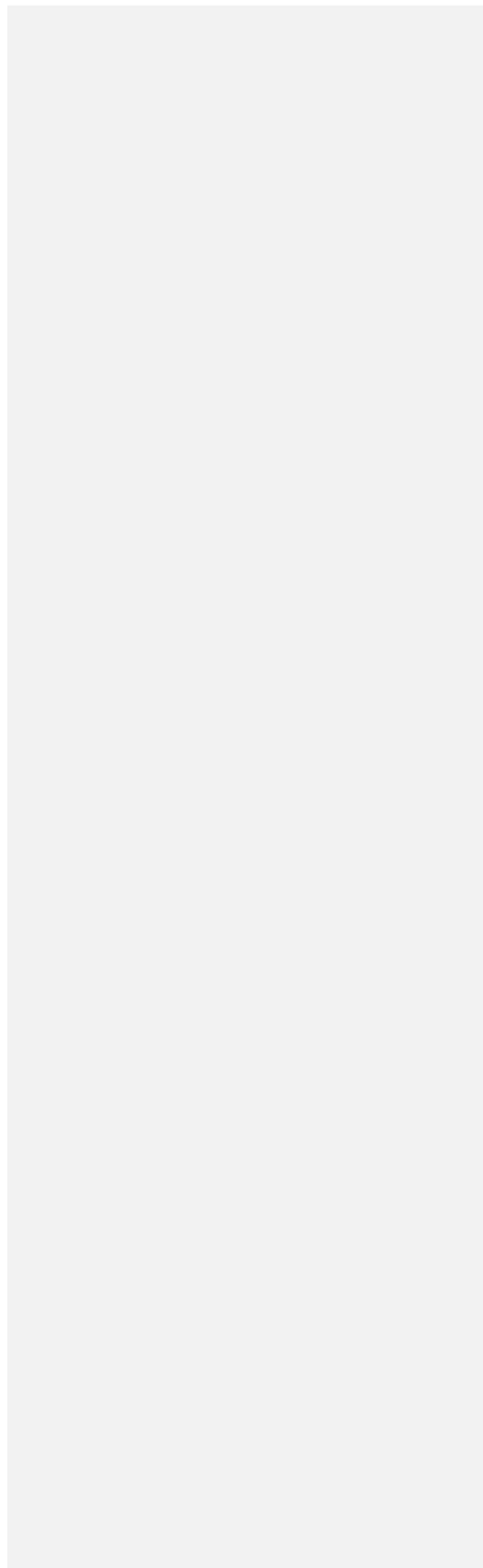
AD\753981EN.doc

PE414.201v02-00

**EN**

**EN**

PA\_Legam



## SHORT JUSTIFICATION

The Commission proposal for a European Private Company Statute (Societas Privata Europaea – SPE) is welcome as it offers possibilities for small and medium-sized enterprises (SMEs) to expand their business across Member States in the European Union. The proposal forms part of a package of measures designed to assist SMEs, referred to as the Small Business Act for Europe (SBA). The objective of the SBA is to make it easier for SMEs to do business in the Single Market and consequently to improve their market performance. The SPE is one of the priority initiatives of the Commission's 2008 Work Programme<sup>1</sup>.

Your draftsman agrees with the approach of the Commission proposal, according to which the creation of a SPE is not subject to a cross-border requirement (e.g. shareholders from different Member States or evidence of cross-border activity). Entrepreneurs usually set up businesses in their own Member State before expanding to other countries. An initial cross-border requirement would, therefore, significantly reduce the potential of the instrument.

Nevertheless, your draftsman would like to point out some deficiencies in the proposal put forward by the Commission. Firstly the approach chosen by the Commission entail that companies, including SMEs are not offered a complete European solution. In many instances the Commission's proposal refers back to national legislation. Such a partial approach to harmonisation could actually dampen the interest of companies, including SMEs, in using the SPE. If an SME wanted to expand its business into several Member States through setting up an SPE it would not be enough for it to know European law but also the law of every Member State into which it wants to expand its business. Eventually this proposal's contribution to growth and completion of the internal market may be very limited. To be viable and meaningful, the SPE regime should be configured as a proper 28th regime available for all SMEs wishing to operate in a Member State as well as in whole European Union to seize the benefits and potential of the Internal Market.

Secondly, for the SPE to be a real economically interesting alternative the question of taxation will have to be addressed at EU level. This is a lesson learned from the experience with the European Company Statute (Societas Europaea – SE). Your draftsman considers that the proposal for a European Private Company must be tax neutral for Member States. Therefore she considers that there is a need to define a common tax regime specific to the SPE in order to overcome burdens and costs and of compliance with national tax systems, to guarantee a level playing field to all SPE, to avoid distortion of competition and harmful tax competition.

Thirdly, it is important to ensure disclosure and information at European level about SPEs established within the EU, in order to guarantee consistency between the specific regime of the SPE and the appropriate dimension on the Internal Market, to create transparency for the market and to help coordination among national authorities.

---

<sup>1</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions: "Commission Legislative and Work Programme 2008" – COM(2007)0640.

Fourthly, it is necessary to foresee a higher minimum share capital requirement for the SPE as a means guarantee creditors. Since a minimum capital may not be sufficient to guarantee the creditors it would be useful to foresee also a mandatory "solvency certificate".

Fifthly, since the decision to transfer the seat of the company should be taken primarily on economic and legal grounds there is a need for setting out clearly the decision making procedure for taking such decisions. This has to be complemented by a complete set of rules regarding transformation, merger and division, dissolution, nullity as well as of accounting for the SPE to be viable and attractive for the small business within the Internal Market.

## AMENDMENTS

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

### Amendment 1

#### Proposal for a regulation Recital 2 a (new)

*Text proposed by the Commission*

*Amendment*

***(2a) The regime for private companies (SPE regime) should be viable and simple, appropriate and consistent with the objectives, and benefit from the advantages, of the internal market. The regime should include a specific taxation and accounting scheme and specific rules on liquidation, insolvency, transformation, mergers, divisions, dissolution and nullity in order to leave as few matters as possible to national company law, thereby overcoming the burdens and costs associated with compliance with different national laws and the distortions of competition created thereby.***

#### *Justification*

*There is a need to define a common comprehensive regime specific to the SPE in order to overcome burdens and costs and of compliance with national tax systems, to guarantee a level playing field to all SPE, to avoid distortions of competition. To be viable the SPE should be a fully 28th regime system allowing for harmonization and consistency within the IM avoiding as much as possible reference to different MS national laws. Moreover a single and simple European tax regime will render the SPE form and Statute more attractive for the*

*small businesses.*

## **Amendment 2**

### **Proposal for a regulation Recital 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***(2b) In order to ensure uniformity of the SPE regime, the Commission should, by 31 December 2010, put forward specific legislative proposal for an accounting and taxation scheme, encompassing a common tax base and a system of consolidation of profit and losses..***

#### *Justification*

*The SPE regime should be viable, consistent with the objectives and advantages of the Internal Market and attractive for the small business. For this purpose there is a need to define a common accounting and tax regime specific to the SPE in order to overcome costs and of compliance with national systems, to guarantee a level playing field to all SPE, to avoid distortion of competitions, harmful tax competition among MS and opportunistic behaviour (for instance, in terms of transfer of seat).*

## **Amendment 3**

### **Proposal for a regulation Recital 3**

*Text proposed by the Commission*

*Amendment*

(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

***(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 (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

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.

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.

#### *Justification*

*The recitals should stress explicitly the significance of business law harmonisation for the development of small and medium-sized enterprises and the growth of the internal market.*

#### **Amendment 4**

##### **Proposal for a regulation Recital 4**

###### *Text proposed by the Commission*

***(4) In order to enable businesses to reap the 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.***

###### *Amendment*

***(4) Until there is comprehensive body of Community company law, the statute of the SPE should refer to national law in regard to areas such as insolvency, employment, and tax. SMEs, in particular, need to know which law governs those areas. As a matter of clarity and transparency, the relevant law should be the law of the Member State of the SPE's central administration and principal place of business. Business partners normally expect that all matters not yet covered by the statute of the SPE are governed by the law of the Member State in which the SPE has its registered office. Nonetheless, the SPE should be able to transfer its registered office from one Member State to another when simultaneously transferring its central administration.***

## Amendment 5

### Proposal for a regulation

#### Recital 6

##### *Text proposed by the Commission*

(6) To ensure a high degree of uniformity of the SPE, as many matters pertaining to the company form as possible should be governed by this Regulation, either through substantive rules or by reserving matters to the articles of association of the SPE. It is therefore appropriate to provide for a list of matters, to be set out in an Annex, in respect of which the shareholders of the SPE are obliged to lay down rules in the articles of association. In relation to those matters only Community law should apply, and consequently shareholders should be able to set out rules to regulate those matters, which are different from the rules prescribed by the law of the Member State where the SPE is registered, in relation to national forms of private limited-liability companies. National law should apply to matters where this is provided for by this Regulation and to all other matters that are not covered by the articles of this Regulation, such as insolvency, employment and tax, or are not reserved by it to the articles of association.

##### *Amendment*

(6) To ensure a high degree of uniformity of the SPE, as many matters pertaining to the company form as possible should be governed by this Regulation, either through substantive rules or by reserving matters to the articles of association of the SPE. It is therefore appropriate to provide for a list of matters, to be set out in an Annex, in respect of which the shareholders of the SPE are obliged to lay down rules in the articles of association. In relation to those matters only Community law should apply, and consequently shareholders should be able to set out rules to regulate those matters, which are different from the rules prescribed by the law of the Member State where the SPE is registered, in relation to national forms of private limited-liability companies. National law should apply to matters where this is provided for by this Regulation and to all other matters that are not covered by the articles of this Regulation, such as insolvency, employment and tax, or are not reserved by it to the articles of association ***until the definition at Community level of a complete set of rules specific to SPEs covering those fields has been achieved.***

##### *Justification*

*See the content of the justification to the previous amendments to recitals 2 bis and ter new.*

## Amendment 6

### Proposal for a regulation

#### Recital 7

##### *Text proposed by the Commission*

(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.

##### *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 ***until the definition at Community level of a complete set of rules specific to SPEs covering those fields has been achieved.***

##### *Justification*

*See the content of the justification to the previous amendments to recitals 2 bis and ter new.*

## Amendment 7

### 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 Directive 68/151/EEC of 9 March 1968 on the co-ordination of safeguards which, for the protection of the

##### *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 verification, which ***has to*** take place before registration. For the purposes of registration, it is appropriate to use the registries designated by First Council Directive 68/151/EEC of 9 March 1968 on the co-ordination of safeguards which, for the protection of the interests of members



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.

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.

*Justification*

*Verification after registration would create legal uncertainty and different problems resulting in the registration of the company in the register.*

**Amendment 8**

**Proposal for a regulation  
Recital 8 a (new)**

*Text proposed by the Commission*

*Amendment*

***(8a) 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 disclosing, collecting 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.***

*Justification*

*It is important to guarantee disclosure and information at European level about SPEs established within the EU through a database and a website, in order to guarantee consistency between the specific regime of the SPE and the dimension of the Internal Market, to create transparency for the market and to help coordination among national authorities.*

**Amendment 9**

**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

(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.

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 **and** the management body of the SPE **should be required** to sign a solvency certificate.

#### *Justification*

*In order to strengthen the provisions of the Commission proposal (as the minimum share capital foreseen by the articles of association of a SPE might not be enough to guarantee the creditors) it is useful to foresee a mandatory "solvency certificate".*

#### **Amendment 10**

##### **Proposal for a regulation Recital 14**

###### *Text proposed by the Commission*

(14) Competent national authorities should monitor the completion and legality of the transfer of the registered office of an SPE to another Member State. The timely access of shareholders, creditors and employees to the transfer proposal and to the report of the management body should be ensured.

###### *Amendment*

(14) Competent national authorities should monitor the completion and legality of the transfer of the registered office of an SPE to another Member State. The timely access of shareholders, creditors and employees to the transfer proposal, **based on a prior transfer plan, which should be tax neutral and explain the economic and legal grounds of the transfer proposal,** and to the report of the management body should be ensured.

#### *Justification*

*The decision to transfer the seat of the company should be taken primarily on economic and legal grounds – and not for opportunistic reasons or to avoid taxation – therefore a business transfer plan should be set out clearly and prior to the decision procedure.*

#### **Amendment 11**

**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, ***which is not balanced by a full claim for compensation or reimbursement;***

*Justification*

*Clarification.*

**Amendment 12**

**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 dimension.***

***A cross-border dimension exists where***

***– the SPE has a corresponding business objective, and/or***

***– purpose shall be to be materially active in more than one Member State, and/or for more than one third of its shares to be held by shareholders in one or more Member States.***

**Amendment 13**

**Proposal for a regulation**

**Article 3 – paragraph 1 – point e b (new)**

*Text proposed by the Commission*

*Amendment*

***(eb) its objectives shall be clearly stated and shall comprise the production of, or trade in, goods, or the provision of services.***

*Justification*

*The proposed amendment shall ensure that an SPE will be used for the material purposes of producing goods, trading in goods or rendering services according to the aim of advancing cross-border-activities of SMEs. The proposed amendment intends to prevent the formation of shelf companies and companies purely established for the purpose of regime shopping and circumvention of legal safeguards of the Member States.*

**Amendment 14**

**Proposal for a regulation**

**Article 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 4a***

***Taxation scheme***

***The Commission shall put forward, by 31 December 2010, a legislative proposal for a taxation scheme specific to SPEs, based on a common tax base and a system of consolidation of profit and losses.***

*Justification*

*The SPE regime should be viable, simple and consistent with the objectives and advantages of the Internal Market. There is a need to define a common tax regime specific to the SPE in order to overcome burdens and costs and of compliance with national tax systems, to guarantee a level playing field to all SPE, to avoid distortion of competition and harmful tax competition. To be viable the SPE should be a fully 28th regime system allowing for harmonization and consistency within the IM avoiding as much as possible reference to different MS national laws. Moreover a single and simple European tax regime will render the SPE form and Statute more attractive for the small businesses.*

## Amendment 15

### Proposal for a regulation Article 4 b (new)

*Text proposed by the Commission*

*Amendment*

#### *Article 4b*

##### *Accounting scheme*

***The Commission shall put forward, by 31 December 2010, a legislative proposal for an accounting scheme based on accounting rules specific to SPEs.***

#### *Justification*

*The SPE regime should be viable, simple and consistent with the objectives and advantages of the Internal Market. There is a need to define a common accounting system – complementary to a common tax regime – specific to the SPE in order to overcome burdens and costs and of compliance with national systems, to guarantee a level playing field to all SPE and to avoid distortion of competition. To be viable the SPE should be a fully 28th regime system allowing for harmonization and consistency within the IM avoiding as much as possible reference to different MS national laws. Moreover a single and simple European accounting and tax regime will render the SPE more attractive for the small businesses.*

## Amendment 16

### Proposal for a regulation Article 4 c (new)

*Text proposed by the Commission*

*Amendment*

#### *Article 4c*

##### *Database*

***Without prejudice to Article 9(1) and Article 46(2), the Commission shall set up and coordinate a database for SPEs, available on a public website, for the purpose of disclosing, collecting and disseminating information and particulars relating to SPEs, concerning, in particular:***

***(a) their registration;***

***(b) their registered office, central administration or principal place of***

- business in the Community and, where appropriate, their branches;*
- (c) their solvency certificates;*
  - (d) any the transfer proposal or transfer of their registered office;*
  - (e) any registration in the host Member State or removal from the register in the home Member States;*
  - (f) any transformation, merger or division;*
  - (g) any dissolution.*

*Justification*

*It is important to guarantee disclosure and information at European level about SPEs established within the EU, in order to guarantee consistency between the specific regime of the SPE and the appropriate dimension on the Internal Market, to create transparency for the market and to help coordination among national authorities.*

**Amendment 17**

**Proposal for a regulation**  
**Article 7**

*Text proposed by the Commission*

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.***

*Amendment*

An SPE shall have its registered office and its central administration or principal place of business in ***a single Member State***.

*Justification*

*The possibility of separating the place of the registered office and the place of the central administration of an SPE brings with it the potential for abuse to the disadvantage of the company's creditors and permits circumvention of social and legal safeguards in place in the Member States. In particular, co-determination can be circumvented by choosing a registered office in a Member State that does not provide for employee participation.*

**Amendment 18**

**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.

*Justification*

*Diese Bestimmung orientiert sich am Acquis communautaire, wie insbesondere an Art 7 SE-VO.*

*Durch die Einführung gemeinschaftsrechtlicher Gesellschaftsformen sind Beschränkungen, wie diese vor der EuGH-Judikatur zu Centros, Inspire-Art usw. bestanden, weggefallen. Daher sollte es bei der Regelung wie in Art. 7 der SE-VO bleiben, zumal auch eine Sitzverlegung in Kapitel VII der SPE-Verordnung geregelt ist.*

*Für eine Trennung der Sitze kann es bei Neugründung keinen anderen Grund geben, als unliebsame Bestimmungen eines Mitgliedsstaates, in der die tatsächliche Geschäftsausübung erfolgen soll, zu entkommen. Das SPE-Statut soll aber gerade die Gründung einer Gesellschaft nach weitgehend gleichen Rechtsvorschriften in allen Mitgliedsstaaten ermöglichen.*

**Amendment 19**

**Proposal for a regulation**  
**Article 7 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***The registered office of the SPE and the central administration or principal place of business shall be disclosed in the database referred to in Article 4c and on the SPE's website.***

*Justification*

*It is important to guarantee disclosure at European level for the SPE established in the EU in order to guarantee consistency between the specific regime of the SPE and the appropriate dimension on the Internal Market.*

**Amendment 20**

**Proposal for a regulation**

**Article 10 – paragraph 2 – introductory part**

*Text proposed by the Commission*

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**:

*Amendment*

2. Member States shall require **only the following** particulars and documents to be supplied upon application for the registration of an SPE:

*Justification*

*Clarification.*

**Amendment 21**

**Proposal for a regulation**

**Article 10 – paragraph 2 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

**(ba) a description of its cross-border characteristics, in accordance with Article 3(1)(ea);**

*Justification*

*The draft contains no cross-border requirement for the establishment of an SPE. However, such a requirement is necessary for Community legislation based on Article 308 of the EC Treaty. The cross-border requirement should avoid bureaucratic obstacles without inviting circumvention at the same time.*

**Amendment 22**

**Proposal for a regulation**

**Article 10 – paragraph 2 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

**(ba) the business objectives of the SPE;**

*Justification*

*The Commission proposal says nothing about the aims which an SPE should be designed to achieve. The self-image and philosophy of any company, including an SPE, depend crucially on the company's business objective.*



### Amendment 23

#### Proposal for a regulation

#### Article 10 – paragraph 2 – point g a (new)

*Text proposed by the Commission*

*Amendment*

***(ga) the number of employees of the SPE;***

*Justification*

*This information is relevant the size of the company and the number of employees determine specific and differentiated treatment and provisions according to national company laws when applicable.*

### Amendment 24

#### Proposal for a regulation

#### Article 10 – paragraph 2 – point h a (new)

*Text proposed by the Commission*

*Amendment*

***(ha) the business objective.***

*Justification*

*This is necessary to check if the company name is available for registration or if the company is the subject of special permissions. The object of the company restricts also the competence of the director – with effects on the liability of the directors.*

### Amendment 25

#### Proposal for a regulation

#### Article 10 – paragraph 4 – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***Member States shall be free to decide which of the above requirements must be met for registration purposes.***

**Commented [srr1]:** if this duplicates Amendment 22, it should simply be deleted

## Amendment 26

### Proposal for a regulation Article 10 – paragraph 5

*Text proposed by the Commission*

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.

*Amendment*

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

*Justification*

*The changes concerning the number of the SPE's employees should be done only once a year.*

## Amendment 27

### Proposal for a regulation Article 10 – paragraph 6 a (new)

*Text proposed by the Commission*

*Amendment*

***6a. Documents and particulars of the registration of an SPE shall be disclosed in the database referred to in Article 4c and on the SPE's website.***

*Justification*

*It is important to guarantee disclosure at European level for the SPE established in the EU in order to guarantee consistency between the specific regime of the SPE and the appropriate dimension on the Internal Market.*

## Amendment 28

### Proposal for a regulation

#### Article 11 – paragraph 2 – point b

*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.

*Justification*

*It is important to provide for an appropriate system of disclosure able to give relevant information about a SPE.*

## Amendment 29

### 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.***

*Justification*

*For business partners it is important to know who is a member of the executive management body and who is authorised by the company.*

## Amendment 30

### Proposal for a regulation

#### Article 12

*Text proposed by the Commission*

*Amendment*

Where acts were performed on behalf of an SPE before its registration, the SPE may assume the obligations arising out of such acts after its registration. Where the SPE does not assume those obligations, the persons who performed those acts shall be

Where acts were performed on behalf of an SPE before its registration, the SPE may assume the obligations arising out of such acts after its registration. Where the SPE does not assume those obligations ***within one month of its registration***, the persons

jointly and severally liable, without limit.

who performed those acts shall be jointly and severally liable, without limit.

*Justification*

*Legal safety reasons.*

**Amendment 31**

**Proposal for a regulation  
Article 14 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. The shares *of the* SPE shall be entered in the *list of shareholders*.

1. The *amount and nature of shareholders'* shares *in the SPE* shall be entered *onto* the *register*.

*Justification*

*If shareholders were merely recorded on a list to be kept by the management body, this would mark a considerable step backwards. Registration of shareholdings, as well as the shareholders as such, is the only way to provide an accurate picture of who is really behind a company.*

**Amendment 32**

**Proposal for a regulation  
Article 14 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

3. Subject to Article 27, the adoption of an amendment to the articles of association of the SPE which varies the rights attached to a class of shares (including any change to the procedure for varying the rights attached to a class of share) shall require the consent of a majority of not less than two-thirds of the voting rights attached to the shares issued in that class.

3. Subject to Article 27, the adoption of an amendment to the articles of association of the SPE which varies the rights attached to a class of shares (including any change to the procedure for varying the rights attached to a class of share) shall require the consent of a majority of not less than two-thirds of the voting rights attached to the shares issued in that class. *The articles of association of the SPE may require a higher majority threshold.*

*Justification*

*Better protection of shareholders' rights.*

**Amendment 33**

**Proposal for a regulation**

**Article 14 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. Member States may provide that the share ownership is to be disclosed in a public register.***

*Justification*

*For reasons of better transparency, Member States should be able to provide for the shares to be disclosed by a public register instead of only in the private list of shareholders. The shareholder list is managed only by the company itself and hence subject to manipulation. Without a simple and reliable verification of ownership structures by means of a public register unlawful wind-ups of companies might occur if creditors have no recourse to the shareholders for documents and insolvency applications.*

**Amendment 34**

**Proposal for a regulation**

**Article 15 – paragraph 1 – introductory part**

*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:***

***1. Register entries concerning the shareholders and their holdings shall contain at least the following:***

*Justification*

*See Amendment 7 to Article 14(1).*

**Amendment 35**

**Proposal for a regulation**

**Article 15 – paragraph 1 – point g a (new)**

*Text proposed by the Commission*

*Amendment*

***(ga) the identification of the former owner of the shares in the event of a transfer.***

*Justification*

*Transparency and clarity reasons.*

**Amendment 36**

**Proposal for a regulation**

**Article 15 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

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.

2. The ***register*** shall, unless proven otherwise, constitute evidence of the ***accuracy*** of the ***particulars*** listed in ***points (a) to (ga)*** of paragraph 1.

*Justification*

*See Amendment 7 to Article 14(1).*

**Amendment 37**

**Proposal for a regulation**

**Article 15 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

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.

3. The ***register*** may be inspected by the shareholders or third parties on request.

*Justification*

*See Amendment 7 to Article 14(1).*

## Amendment 38

### Proposal for a regulation Article 15 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

**3a. Member States may provide for disclosure of the list of shareholders in a public register.**

*Justification*

*For reasons of better transparency, Member States should be able to provide for the shareholders to be disclosed by a public register instead of only in the private list of shareholders. The shareholder list is managed only by the company itself and hence subject to manipulation. Without a simple and reliable verification of ownership structures by means of a public register unlawful wind-ups of companies might occur if creditors have no recourse to the shareholders for documents and insolvency applications.*

## Amendment 39

### Proposal for a regulation Article 16 – paragraph 3

*Text proposed by the Commission*

*Amendment*

**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.**

**3. On being informed by a shareholder of a share transfer, the management body shall, without delay, notify the change for entry onto the register.**

*Justification*

*See Amendment 7 to Article 14(1). This amendment arises from the proposal that shareholders should not only be recorded on a company list, but also entered in the register.*

## Amendment 40

**Proposal for a regulation**

**Article 16 – paragraph 4 – point b**

*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 *onto the register, unless the third party concerned has been informed before that date that the transfer has been effected*.

*Justification*

*The time at which a transfer of shares becomes effective should be clearly laid down in the regulation. Instead of being listed under the arrangement proposed by the Commission, shareholders should, for reasons of legal certainty, be entered in the register.*

**Amendment 41**

**Proposal for a regulation**

**Article 18 – paragraph 1 – introductory part**

*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:

*Amendment*

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, *inter alia*, of one or more of the following events:

*Justification*

*It should be clear that the enumeration of events is not exhaustive.*

**Amendment 42**

**Proposal for a regulation**

**Article 19 – paragraph 2**

*Text proposed by the Commission*

2. The capital of the SPE shall be fully subscribed.

*Amendment*

2. The capital of the SPE shall be fully subscribed. *Shares issued for cash shall be paid up, at the time of subscription, at a rate of not less than 25 % of their nominal*



***value. The remainder shall be paid up in one or more instalments by decision of the management or administrative board within not more than five years of registration of the SPE.***

*Justification*

*The purpose of the SPE legal form is to enable SMEs to be set up more easily within the EU and hence benefit to the full from the single market. The minimum capital level and the paying-up arrangements can facilitate SME start-ups, especially in Member States where, given the standard of living, a large sum would be hard to raise.*

**Amendment 43**

**Proposal for a regulation  
Article 19 – paragraph 3**

*Text proposed by the Commission*

***3. The shares of the SPE do not need to be fully paid on issue.***

*Amendment*

***3. The minimum capital of the SPE specified in paragraph 4 must be fully paid up by means of shares issued for cash. Before the SPE is registered, the amount in question must, as must be proven by the appropriate evidence, be paid into an account which the management body shall be free to use for the benefit of the SPE.***

*Justification*

*See Amendment to Article 19(4).*

**Amendment 44**

**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 of the SPE require that the management body sign a solvency statement as provided for in Article 21.***

*Where the articles of association make no such provision, the capital of the SPE shall be at least EUR 10 000.*

#### **Amendment 45**

##### **Proposal for a regulation Article 20 – paragraph 1**

*Text proposed by the Commission*

1. Shareholders *must* pay the agreed consideration in cash or provide the agreed consideration in kind in accordance with the articles of association of the SPE.

*Amendment*

1. Shareholders *shall* pay the agreed consideration in cash or provide the agreed consideration in kind in accordance with the articles of association of the SPE. ***The value of the consideration in kind must be proved.***

#### **Amendment 46**

##### **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 *passed*.

*Justification*

*To protect creditors, the management body should invariably be obliged to issue a solvency certificate when a distribution is to be made.*

#### Amendment 47

##### Proposal for a regulation

##### Article 21 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**2a. Solvency certificates shall be disclosed in the database referred to in Article 4c and on the SPE's website.**

*Justification*

*It is important to guarantee disclosure at European level of information concerning the SPEs established in the EU.*

#### Amendment 48

##### Proposal for a regulation

##### Article 25 – paragraph 2

*Text proposed by the Commission*

*Amendment*

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

2. The management body shall **be responsible for keeping** the books of the SPE. The bookkeeping of the SPE shall be governed by the applicable national law.

*Justification*

*It is only necessary to ensure that the management body is responsible for bookkeeping. That means that for inspection of the books the addressee is the management body. But outsourcing of bookkeeping must be possible.*

#### Amendment 49

##### Proposal for a regulation

##### Article 26 – paragraph 1

*Text proposed by the Commission*

*Amendment*

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

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.

the shareholders. ***The shareholders may limit the power of director(s) by resolution.***

*Justification*

*Clarification.*

**Amendment 50**

**Proposal for a regulation**

**Article 29 – paragraph 1 – subparagraph 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 **10%** 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.

*Justification*

*An SPE will have only some shareholders compared to a Societas Europaea. Therefore it is justified if the right to request the management body to submit a proposal for a resolution to the shareholders is 10%.*

**Amendment 51**

**Proposal for a regulation**

**Article 30 – paragraph 3**

*Text proposed by the Commission*

3. A person who is disqualified under national law from serving as a director of a company by a judicial or administrative decision of a Member State may not become or serve as a director of an SPE.

*Amendment*

3. A person who is disqualified under national law from serving as a director of a company by a judicial or administrative decision of a Member State may not become or serve as a director of an SPE. ***National rules relating to the disqualification of persons as directors shall be applicable.***

*Justification*

*In national law persons are also disqualified due to a judicial decision, e.g. fraud etc.*

## Amendment 52

### 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. ***Taking into account Article 9(1)***, the registered office of an SPE may be transferred to another Member State, ***where it effectively carries out its economic activity***, in accordance with this Chapter.

*Justification*

*Article 35 needs to be in line with Article 9(1).*

## Amendment 53

### Proposal for a regulation

#### Article 35 – paragraph 1 – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***The transfer of the registered office of an SPE shall be preceded by issuing a transfer plan, which shall be based on economic and legal grounds and shall be tax neutral.***

*Justification*

*It is important to clarify that the transfer of seat of a SPE should be a decision based on economic and legal grounds and not with the purpose to avoid taxation.*

## Amendment 54

### Proposal for a regulation

#### Article 36 – paragraph 1 – point b a (new)

*Text proposed by the Commission*

*Amendment*

***(ba) a tax neutral transfer plan setting out the economic and legal grounds for the***

***transfer proposal;***

*Justification*

*The decision to transfer the seat of the company should be taken primarily on economic and legal grounds – and not for opportunistic reasons – therefore such aspects should be set out clearly and prior to the decision procedure.*

**Amendment 55**

**Proposal for a regulation**

**Article 36 – paragraph 2 – point b**

*Text proposed by the Commission*

(b) disclose the transfer proposal.

*Amendment*

(b) disclose the transfer proposal ***including the transfer plan referred to in paragraph 1(ba).***

*Justification*

*The disclosure of the transfer proposal should include the transfer plan to be meaningful.*

**Amendment 56**

**Proposal for a regulation**

**Article 36 – paragraph 2 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***The transfer proposal, including the transfer plan, shall be disclosed in the database referred to in Article 4c and on the SPE's website.***

*Justification*

*It is important to guarantee disclosure at European level of information concerning the SPEs established in the EU.*

## Amendment 57

### Proposal for a regulation

#### Article 36 – paragraph 3 – subparagraph 1

##### *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 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, employees **and the local community**. 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.

##### *Justification*

*The report should also cover implication for the local community.*

## Amendment 58

### Proposal for a regulation

#### Article 37 – paragraph 7 a (new)

##### *Text proposed by the Commission*

##### *Amendment*

***7a. The entries onto the register of the host Member State and any removals from the register of the home Member State shall be disclosed in the database referred to in Article 4c and on the SPE's website.***

##### *Justification*

*It is important to guarantee disclosure at European level of information concerning the SPEs established in the EU.*

## Amendment 59

### Proposal for a regulation Article 39

#### *Text proposed by the Commission*

The transformation, merger and division of the SPE shall be governed by the applicable national law.

#### *Amendment*

***Until the definition at Community level of a complete set of rules specific to the SPE,*** the transformation, merger and division of the SPE shall be governed by the applicable national law.

***The transformation, merger and division of the SPE shall be disclosed in the database referred to in Article 4 and on the SPE's website.***

#### *Justification*

*The definition of a SPE Statute at European level should be accompanied with a complete set of rules specific to the SPE (that means also in the field of transformation merger and division, dissolution, nullity as well as of accounting and taxation) to be viable and attractive for the small business within the Internal Market. It is also important to guarantee disclosure at European level of information concerning the SPEs established in the EU.*

## Amendment 60

### Proposal for a regulation Article 40 – paragraph 3

#### *Text proposed by the Commission*

3. Liquidation, insolvency, suspension of payments and similar procedures shall be governed by the applicable national law and by Council Regulation (EC) No 1346/2000.

#### *Amendment*

***3. Until the definition at Community level of a complete set of rules specific to the SPE,*** liquidation, insolvency, suspension of payments and similar procedures shall be governed by the applicable national law and by Council Regulation (EC) No 1346/2000.

#### *Justification*

*The definition of a SPE Statute at European level should be accompanied with a complete set of rules specific to the SPE (that means also in the field of liquidation, insolvency, transformation merger and division, dissolution, nullity as well as of accounting and taxation) to be viable and attractive for the small business within the Internal Market.*



## Amendment 61

### Proposal for a regulation Article 40 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

***4a. Any dissolution of the SPE shall be disclosed in the database referred to in Article 4c and on the SPE's website.***

*Justification*

*It is important to guarantee disclosure at European level of information concerning the SPEs established in the EU.*

## Amendment 62

### Proposal for a regulation Article 41

*Text proposed by the Commission*

*Amendment*

The nullity of the SPE shall be governed by the provisions of the applicable national law implementing Article 11(1) of Directive 68/151/EEC, points (a), (b), (c) and (e), except for the reference in point (c) to the objects of the company, of Article 11(2) and Article 12 of that Directive.

***Until the definition at Community level of a complete set of rules specific to the SPE,*** the nullity of the SPE shall be governed by the provisions of the applicable national law implementing Article 11(1) of Directive 68/151/EEC, points (a), (b), (c) and (e), except for the reference in point (c) to the objects of the company, of Article 11(2) and Article 12 of that Directive.

*Justification*

*The definition of a SPE Statute at European level should be accompanied with a complete set of rules specific to the SPE (that means also in the field of nullity, liquidation, insolvency, transformation merger and division, dissolution as well as of accounting and taxation) to be viable and attractive for the small business within the Internal Market.*

## Amendment 63

### 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.

#### *Justification*

*It is more appropriate for SPEs having their registered office in territory of a MS with a national currency different from the Euro to foresee the possibility to express its capital both in the national currency and in Euro.*

## Amendment 64

### 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. **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.**

#### *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 union (EMU) does not apply.

#### *Justification*

*It is more appropriate for SPEs having their registered office in territory of a MS with a national currency different from the Euro to foresee the possibility to prepare and publish its*

annual and, where applicable, consolidated accounts both in the national currency and in euro.

## Amendment 65

### Proposal for a regulation Article 45

#### *Text proposed by the Commission*

Member States shall notify the form of private limited-liability companies 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, **including the consequences under national law of any failure to comply with any provision of this Regulation and any additional provisions of national law that apply to an SPE.**

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

**Member States shall also maintain web pages that list SPEs registered in their territory, and any court judgements relating to the operation of SPEs in their territory. The Commission shall maintain a web page with links to such national web pages.**

## Amendment 66

### Proposal for a regulation Article 46 – paragraph 2

#### *Text proposed by the Commission*

2. The authorities referred to in paragraph 1 shall cooperate with each other to ensure that the documents and particulars of the SPEs listed in Article 10(2) are also accessible through the registers of all other Member States.

#### *Amendment*

2. The authorities referred to in paragraph 1 shall cooperate with each other to ensure that the documents and particulars of the SPEs listed in Article 10(2) are also accessible through the registers of all other Member States, **the database referred to in Article 4c, and the SPEs' websites.**

*Justification*

*It is important to guarantee a proper cooperation among national authorities and commission to make information concerning SPEs available in the registers of MS and the EU database and website for SPEs.*

**Amendment 67**

**Proposal for a regulation  
Article 47 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 47a**

**Commission proposal**

***The Commission shall submit a proposal  
for a comprehensive body of Community  
company law by 31 December 2010.***

*Justification*

*The Commission is called upon to present a proposal for harmonisation of company law in areas not yet harmonised in order to further sustainable and steady growth of the internal market.*

## PROCEDURE

<b>Title</b>	Statute for a European private company	
<b>References</b>	COM(2008)0396 – C6-0283/2008 – 2008/0130(CNS)	
<b>Committee responsible</b>	JURI	
<b>Opinion by</b> Date announced in plenary	ECON 2.9.2008	
<b>Drafts(wo)man</b> Date appointed	Donata Gottardi 8.7.2008	
<b>Discussed in committee</b>	4.11.2008	1.12.2008
<b>Date adopted</b>	2.12.2008	
<b>Result of final vote</b>	+: 26 -: 1 0: 0	
<b>Members present for the final vote</b>	Mariela Velichkova Baeva, Paolo Bartolozzi, Zsolt László Becsey, Sebastian Valentin Bodu, Sharon Bowles, Udo Bullmann, David Casa, Manuel António dos Santos, Christian Ehler, Jonathan Evans, José Manuel García-Margallo y Marfil, Jean-Paul Gauzès, Robert Goebbels, Donata Gottardi, Louis Grech, Othmar Karas, Wolf Klinz, Andrea Losco, Astrid Lulling, Gay Mitchell, Sirpa Pietikäinen, John Purvis, Peter Skinner, Margarita Starkevičiūtė, Ivo Strejček, Sahra Wagenknecht	
<b>Substitute(s) present for the final vote</b>	Harald Ettl	