

## History of the European Private Company (SPE) statute

This table provides an overview of the continuing discussions on the adoption of a European legal statute for small and medium-sized companies in Europe, the so-called European Private Company or SPE (*Societas Privata Europaea*). So far, no political consensus has been reached on legislative measures, as there are deep controversies on four key issues: the required cross-border component (CB); the amount of the minimum capital requirement (MCR); the possibility of having the registered office and the headquarters in different Member States (Split); and the rules governing worker participation, especially at board-level (WP).

Date	History of the European Private Company statute	Document
1973	<p><b>The Paris Chamber of Commerce issued the first known call for a European Private Company statute</b></p> <p>A book called <i>Pour une SARL européenne</i> by Jeanne Boucourechliev for the CREDA (Centre de Recherche sur le Droit des Affaires of the Chamber of Commerce of Paris) was published. This study aimed at showing that a European Private Company (a European form of private limited liability company) is better adapted than a European Company (SE) to the merger of enterprises within the European Union, since such a statute would create a common juridical context in Europe, which could ease the integration of the European economy.</p>	<p>Boucourechliev J. (1973) <i>Pour une S.A.R.L. européenne</i>, Paris: Presses universitaires de France</p> <p><a href="http://www.creda.ccip.fr/etudes/1973-SARL-europeenne/SARL-europeenne-presentation.html">http://www.creda.ccip.fr/etudes/1973-SARL-europeenne/SARL-europeenne-presentation.html</a></p>
1997	<p><b>Proposal for an SPE by an international pool of scholars</b></p> <p>At the initiative of academics and businesses, coordinated by the Chamber of Commerce of Paris and with the support of industrialist federations, an international group of academics (led by Jeanne Boucourechliev and Peter Hommelhoff) developed a research project to study the need for a European private company and drafted a plan.</p> <p><b>CB:</b> No.  <b>MCR:</b> 25,000 euros.  <b>Split:</b> Not allowed.  <b>WP:</b> National law of the State where the SPE is registered.</p>	<p>Boucourechliev, J. (ed.) (1997) <i>Propositions pour une société fermée européenne</i>, Luxembourg: Office des publications officielles des Communautés européennes</p> <p><a href="http://bookshop.europa.eu/fr/propositions-pour-une-soci-t-ferm-e-europ-enne-pbC10897953/">http://bookshop.europa.eu/fr/propositions-pour-une-soci-t-ferm-e-europ-enne-pbC10897953/</a></p>

<p>October 2001</p>	<p><b>Adoption of the European Company statute (SE)</b></p> <p>A Regulation and a Directive were necessary in order to implement a framework for public limited companies.</p> <p><b>CB:</b> Yes.  <b>MCR:</b>120,000 euros.  <b>Split:</b> Not allowed.  <b>WP:</b> Involvement of employees fixed by a Directive: setting up of a special negotiating body as a general rule, presence of standard rules in case negotiations fail.</p>	<p>Council Regulation 2157/2001</p> <p><a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:294:0001:0021:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:294:0001:0021:EN:PDF</a></p> <p>Council Directive 2001/86/EC</p> <p><a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:294:0022:0032:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:294:0022:0032:EN:PDF</a></p>
<p>March 2002</p>	<p><b>The Economic and Social Committee (EESC) initiative for a ‘European Company statute for SMEs’</b></p> <p>At its own initiative, the European Economic and Social Committee pushed for a suitable tool for SMEs, namely a European Statute for Private Companies.</p> <p><b>CB:</b> A European dimension is necessary, even when economic activity is planned for the European level only in the future.  <b>MCR:</b> 15,000 euros.  <b>Split:</b> Not allowed.  <b>WP:</b> For cross-border participation, a ‘realistic and pragmatic approach’ is necessary along with ‘the rules drawn up in this area for the European Company’ (‘maintaining acquired rights while avoiding an excessively cumbersome system’)</p>	<p>Opinion 2002/C 125/19</p> <p><a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2002:125:0100:0104:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2002:125:0100:0104:EN:PDF</a></p>

<p>November 2002</p>	<p><b>The SPE in the Report of the High Level Group of company law experts (the so-called Winter group) on a Modern Regulatory Framework for Company Law in Europe</b></p> <p>The group noted that ‘the desire to have an EPC statute to serve the needs of SMEs in Europe has been clearly and repeatedly expressed’. Without going into detail, the Report highlighted ‘one issue that inevitably will have to be addressed in any proposal regulating the EPC’: information, consultation and, where applicable, participation of employees. Indeed, some concerns could arise if the rules in this field depended on the national laws applicable in the Member State where the SPE is registered because some companies ‘could avoid application of, in particular, national participation rules’. Hence, ‘if companies participating in the formation of an EPC already apply a form of participation, a negotiating group of employees should determine the conditions under which these could be extended. If no such rules existed and the number of employees was below a threshold of 250, as laid down in the Commission’s Recommendation on the definition of SMEs, there should be no obligation to negotiate’. In addition, the Group recommended as minimum requirement for the formation of an SPE a European dimension, that is, economic activities in more than one Member State.</p>	<p>Report of the High Level Group of Company Law Experts on a Modern Regulatory Framework for Company Law in Europe</p> <p><a href="http://ec.europa.eu/internal_market/company/docs/modern/report_en.pdf">http://ec.europa.eu/internal_market/company/docs/modern/report_en.pdf</a></p>
<p>May 2003</p>	<p><b>European Commission: the SPE as a new instrument for common European company law mechanisms</b></p> <p>Following the recommendations of the Winter group, the Commission decided in its programme ‘Modernising Company Law and Enhancing Corporate Governance in the European Union – A Plan to Move Forward’ to launch a feasibility study including ‘an in-depth analysis of the legal, tax and social policy regimes relevant to SMEs’ within the Single Market, with a view to presenting a proposal for an EPC statute.</p>	<p>COM (2003) 284 final</p> <p><a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2003:0284:FIN:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2003:0284:FIN:EN:PDF</a></p>
<p>July</p>	<p><b>Adoption of the Statute for a European</b></p>	<p>Council Regulation (EC) 1435/2003</p>

2003	<p><b>Cooperative Society</b></p> <p>Similar to the case of the European Company, the framework for the European Cooperative Society was created by a Regulation and a Directive.</p> <p><b>CB:</b> Yes.  <b>MCR:</b> 30,000 euros.  <b>Split:</b> Not allowed.  <b>WP:</b> Involvement of employees fixed by a Directive: setting up of a special negotiating body as a general rule, presence of standard rules in case negotiations fail.</p>	<p><a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:207:0001:0024:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:207:0001:0024:EN:PDF</a></p> <p>Council Directive (EC) 2003/72/EC</p> <p><a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:207:0025:0036:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:207:0025:0036:EN:PDF</a></p>
December 2005	<p><b>Feasibility study for the European statute for SMEs</b></p> <p>The feasibility study saw extending the current system of employees' rights at the EU level as an undue burden and argued that the SPE shouldn't have its own set of employee rights. The study defended this idea by arguing that harmonisation and full implementation of current EU directives are more important for social matters. Hence, employee participation should refer to national law.</p>	<p>Feasibility study for a European Statute for SMEs</p> <p><a href="http://ec.europa.eu/enterprise/policies/sme/files/craft/doc/spe_feasibility_executive_summary_2005_en.pdf">http://ec.europa.eu/enterprise/policies/sme/files/craft/doc/spe_feasibility_executive_summary_2005_en.pdf</a></p>
February 2007	<p><b>European Parliament: Resolution for the adoption of a European Private Company statute</b></p> <p>The European Parliament called on the European Commission to submit a legislative proposal in 2007 on the Statute for a European Private Company. Moreover, the European Parliament made some recommendations for the features of such a Statute.</p> <p><b>CB:</b> –  <b>MCR:</b> 10,000 euros.  <b>Split:</b> Not allowed.  <b>WP:</b> Necessity of using the relevant <i>acquis communautaire</i> and safeguarding pre-existing employee participation rights.</p>	<p>P6_TA(2007)0023</p> <p><a href="http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P6-TA-2007-0023+0+DOC+PDF+V0//EN">http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P6-TA-2007-0023+0+DOC+PDF+V0//EN</a></p>

November 2007	<p><b>European Business Test Panel (EBTP): European survey on European Private Company</b></p> <p>Before proposing new legislation, the European Commission wanted to collect the opinion of some European companies regarding the possible introduction of a European Private Company statute.</p> <p>76% of the companies participating in the study defended the option for the SPE to have its registered office and its headquarters in different Member States. Regarding employee participation rights, 53% believed that the SPE should have its own rules, whereas 37% of the respondents believed that these rights should depend on the applicable national law.</p>	<p>European Business Test Panel (EBTP): European survey on European Private Company</p> <p><a href="http://ec.europa.eu/yourvoice/ebtp/docs/epc_report_en.pdf">http://ec.europa.eu/yourvoice/ebtp/docs/epc_report_en.pdf</a></p>
December 2007	<p><b>European Commission: Results of the public consultation on a Statute for European Private Company</b></p> <p>This consultation showed that such a statute was seen by about three-quarters of the respondents as a potential benefit which would reduce the costs and legal uncertainty associated with the diversity of company law forms and regimes within the Single Market.</p> <p><b>CB:</b> –</p> <p><b>MCR:</b> ‘Minimum capital should be kept low’.</p> <p><b>Split:</b> Almost three-quarters of the respondents thought that the SPE should be allowed to have its registered office and its headquarters in different Member States.</p> <p><b>WP:</b> Respondents supported in equal members a uniform EU standard on employee participation in contrast to a reference to the national legislation of the Member State in which the SPE has its seat. Many respondents considered the participation rules in the SE statute as being too complex for SMEs.</p>	<p>Synthesis of the comments on the consultation document of the Internal Market and Services Directorate-General on a possible statute for a European Private Company</p> <p><a href="http://ec.europa.eu/internal_market/company/docs/epc/consultation_report.pdf">http://ec.europa.eu/internal_market/company/docs/epc/consultation_report.pdf</a></p>
December 2007	<p><b>European Commission: the SPE could substitute for the Directive on the cross-border transfer of registered office</b></p> <p>In the Impact assessment on the Directive on the cross-border transfer of registered office, the</p>	<p>SEC(2007) 1707</p> <p><a href="http://ec.europa.eu/internal_market/company/docs/shareholders/ia_transfer_122007_part1">http://ec.europa.eu/internal_market/company/docs/shareholders/ia_transfer_122007_part1</a></p>

	<p>prospect for the adoption of a Statute for a European Private Company is one of the reasons (because it is an alternative means) for the European Commission not to act in this field since such a statute would include a possibility to transfer the registered office of an SPE. As ‘no action’ is recommended in this Impact assessment, Member States continue to choose between the ‘real seat’ approach (registered office and head office in the same State) and the ‘State of incorporation’ approach (possibility of dividing the registered office and the head office in several member States). In case of a possibility for a company to transfer the registered office, the document noted concerning employee participation rights that ‘further safeguards seem necessary at the EU level ensuring that no loss/diminishing of existing employees’ participation rights after the transfer occurs’. As for the required minimum capital, the impact assessment mentioned the necessity of ‘further safeguards’ ‘at the EU level and in the Member States’ laws’ to protect creditors.</p>	_en.pdf
June 2008	<p><b>European Commission: the SPE in the ‘Small Business Act’ for Europe</b></p> <p>As policy for SMEs, the European Commission announced a Regulation providing for a European Private Company (SPE) as a legislative proposal. With such a statute, an enterprise could be created and operate according to the same uniform principles in all Member States.</p>	<p>COM(2008) 394 final</p> <p><a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0394:FIN:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0394:FIN:EN:PDF</a></p>
June 2008	<p><b>European Commission: Proposal for a European Private Company statute</b></p> <p>The European Commission presented a proposal for a Regulation on the Statute for a European Private Company statute to ‘enhance the competitiveness of SMEs by facilitating their establishment and operation in the Single Market’. In order to be adapted to the specific needs of the SMEs that operate across the Member States, the European Commission aimed to establish a statute following uniform, simple, flexible company law provisions within the Single Market.</p>	<p>COM(2008) 396/3</p> <p><a href="http://ec.europa.eu/internal_market/company/docs/epc/proposal_en.pdf">http://ec.europa.eu/internal_market/company/docs/epc/proposal_en.pdf</a></p>

	<p><b>CB:</b> No.  <b>MCR:</b> 1 euro.  <b>Split:</b> Allowed.  <b>WP:</b> National rules of Member States of the place of incorporation of an SPE, combined with specific rules in the case of cross-border mergers (Directive on cross-border mergers) and seat transfers in the SPE Statute inspired by the SE Directive if 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.</p>	
October 2008	<p><b>Comments and proposals on the SPE regulation by an expert group on European company law</b></p> <p>The group, called the ‘Arbeitskreis Europäisches Unternehmensrecht’, welcomed the project of the European Commission but made some comments and recommendations. The ‘Arbeitskreis Europäisches Unternehmensrecht’ (<a href="http://www.akeur.eu">www.akeur.eu</a>) is an independent expert group on European company law.</p> <p>Concerning the minimum capital requirement, the Group recommended the introduction of ‘minimum capital in a moderate amount (for example, 10,000 euros)’ in order to ‘contribute to establishing the reputation of the new legal form’. The Group supported, based on the judgments of the European Court of Justice, allowing the registered office to be in a different Member State than the central administration. As for employee participation, the Group mentioned that, if the rules on employee participation depend on the law of the Member State where the registered office is located and if the registered office and central administration are in different Member States, ‘the employees could be deprived of their participation rights’. So, according to the Group, ‘it should be ensured that the employees are neither more nor less favorably placed by the use of an SPE than by the use of a national legal form’. The Group affirmed that the ‘negotiation solution introduced for the European Company and cross-border mergers may be an appropriate means of balancing the conflicting interests and diverse national cultures for the SPE’. However, negotiations</p>	<p><a href="http://www.europeanprivatecompany.eu/working_papers/download/Comments-EUAK-EPG.pdf">http://www.europeanprivatecompany.eu/working_papers/download/Comments-EUAK-EPG.pdf</a></p>

	<p>should be started only 'where national participation rights are involved' in order not to prevent or delay the formation of the SPE.</p>	
November 2008	<p><b>European Commission: SPE in the European Economic Recovery Plan</b></p> <p>In order to cope with the economic crisis, the European Union is implementing an Economic Recovery Plan. This Plan calls for acceleration of the adoption of the European Private Company statute proposal to 'facilitate the cross-border business activities of SMEs and to allow them to work under a single set of corporate rules across the EU'. This document mentions that the capital requirement of the SPE should be limited to 1 euro.</p>	<p>COM(2008) 800 final</p> <p><a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0800:FIN:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0800:FIN:EN:PDF</a></p>
December 2008	<p><b>Council: compromise proposal of the French Presidency</b></p> <p>The French Presidency was the first to concern itself with the SPE project.</p> <p><b>CB:</b> No.  <b>MCR:</b> 1 euro.  <b>Split:</b> Seat of the SPE governed by national law in accordance with Community law.  <b>WP:</b> National rules of Member States of the place of incorporation of an SPE, combined with specific rules in the case of cross-border mergers (Directive on cross-border mergers) and seat transfers in the SPE Statute inspired by the SE Directive if 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.</p>	<p>Interinstitutional File 2008/0130 (CNS)</p> <p>Document number 17152/08</p> <p><a href="http://register.consilium.europa.eu/pdf/en/08/st17/st17152.en08.pdf">http://register.consilium.europa.eu/pdf/en/08/st17/st17152.en08.pdf</a></p>
March 2009	<p><b>European Parliament: Resolution on the proposal of the European Commission</b></p> <p>According to the consultation procedure, the European Parliament adopted in March 2009 a Resolution with some amendments on the proposal by the European Commission for a European Private Company statute.</p> <p><b>CB:</b> Yes (a cross-border business intention or</p>	<p>P6_TA(2009)0094</p> <p><a href="http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P6-TA-2009-0094+0+DOC+PDF+Vo//EN">http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P6-TA-2009-0094+0+DOC+PDF+Vo//EN</a></p>



	<p>corporate object, the objective of being significantly active in more than one Member State, establishments in different Member States or a parent company registered in another Member State).</p> <p><b>MCR:</b> 1 euro, but 8,000 euros if the articles of association do not contain the requirement that the executive management body sign a solvency certificate.</p> <p><b>Split:</b> Allowed.</p> <p><b>WP:</b> General provision: Employees' rights of participation governed by the legislation of the Member State in which the SPE has its registered office.</p> <p>Application of the Directive of the European Company (2001/86/EC) and the Directive on the cross-border merger of limited liability companies (2005/56/EC) with some conditions:</p> <ul style="list-style-type: none"> <li>• the SPE employs in total more than 1,000 employees and more than one-quarter (25%) of the total workforce habitually works in a Member State or Member States which provide for a greater level of employee participation than the Member State in which the SPE has its registered office;</li> <li>• the SPE employs in total between 500 and 1,000 employees and more than one-third (33.5%) of the total workforce ...</li> <li>• the SPE founded by transformation of an existing company, merger of existing companies or division of an existing company and employs in total fewer than 500 employees, and more than one-third (33.5%) of the total workforce ...</li> <li>• the SPE founded <i>ex nihilo</i> and employs in total fewer than 500 employees, and more than half (50%) of the total workforce ...</li> </ul>	
<p>March 2009</p>	<p><b>European Parliament: Call for a consultation with the social partners</b></p> <p>The European Parliament adopted a Resolution on employee participation in companies with a European statute and other accompanying measures. The MEPs call on 'the European Commission, on the basis of</p>	<p>P6_TA(2009)0131</p> <p><a href="http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P6-TA-2009-">http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P6-TA-2009-</a></p>

	<p>Article 138 of the EC Treaty, to initiate a consultation with the social partners, with a view to evaluating and where necessary streamlining, creating or reinforcing the provisions for employees' participation in the internal market', all especially in the context of the discussion on the SPE. In the same way, they ask the European Commission 'to assess the impact of the existing European company statutes and relevant rulings of the European Court of Justice (for example, 'Daily Mail and General Trust', 'Sevic Systems', 'Inspire Art', 'Überseering' and 'Cartesio') as regards employee participation in boards of companies and possible avoidance or circumvention of the relevant national provisions'. The European Commission answered that Article 308 of the EC Treaty prevents the SPE from being considered a social policy initiative, so there is no reason to initiate a specific consultation with the social partners.</p>	<p><a href="#">0131+0+DOC+PDF+Vo//EN</a></p> <p>Follow-up to the European Parliament resolution on employee participation in companies with a European statute and other accompanying measures, adopted by the Commission on 17 June 2009</p> <p><a href="http://www.europarl.europa.eu/oeil/DownloadSP.do?id=16907&amp;num_rep=7856&amp;language=en">http://www.europarl.europa.eu/oeil/DownloadSP.do?id=16907&amp;num_rep=7856&amp;language=en</a></p>
<p>April 2009</p>	<p><b>Council: Compromise proposal of the Czech Presidency</b></p> <p>After the failure of the French Presidency to find a compromise, the Czech Presidency continued working on this topic with a new compromise proposal.</p> <p><b>CB:</b> No.  <b>MCR:</b> 1 euro.  <b>Split:</b> Recital (4): 'the seat of an SPE should be governed by national law, in accordance with Community law', no reference in the articles.  <b>WP:</b> General provision: employees' rights of participation governed by the legislation of the Member State in which the SPE has its registered office.  Under certain conditions, there shall be negotiations for arrangements for employee participation between the representatives of employees and the management body of the SPE (on the same model as the Directive of the SE).    If the Member State where the SPE has its registered office does not provide for at least the same level of participation rights for employees as the other Member State or Member States where the other employees work, the conditions</p>	<p>Interinstitutional File 2008/0130 (CNS)</p> <p>Document number 9065/09</p> <p><a href="http://register.consilium.europa.eu/pdf/en/09/st09/st09065.en09.pdf">http://register.consilium.europa.eu/pdf/en/09/st09/st09065.en09.pdf</a></p>

	<p>under which negotiations start are:</p> <ul style="list-style-type: none"> <li>• more than 500 employees of an SPE representing at least three-quarters of the total number of its employees habitually work in a Member State or Member States different from the Member State where the SPE has its registered office;</li> <li>• for a transfer of registered office, at least one-third of the employees work in the home Member State.</li> </ul> <p>In case negotiations fail, the standard rules shall be those of the Member State where most of the employees are situated.</p> <p>‘Member States may, if following prior negotiations the standard rules for employee participation apply and notwithstanding these rules, limit the proportion of employee representatives in the administrative board of the SPE’.</p>	
<p>November 2009</p>	<p><b>Council: First compromise proposal of the Swedish Presidency</b></p> <p>Sweden wanted to continue the attempt to find a compromise on this topic.</p> <p><b>CB:</b> Yes (an intention to do business in a Member State other than the one in which the SPE is registered; a cross-border business objective set out in the articles of association of the SPE; a branch or a subsidiary registered in a Member State other than the one in which the SPE is registered; or a member or members resident or registered in more than one Member State or in a Member State other than the one in which the SPE is registered).</p> <p><b>MCR:</b> 1 euro but option enabling Member States to require for the SPEs registered in their territory up to 6,000 euros as minimum capital.</p> <p><b>Split:</b> In addition to Recital (4), Paragraph 2 of the Article 7: ‘A Member State may oblige an SPE registered in its territory to have its central administration and/or its principal place of</p>	<p>Interinstitutional File 2008/0130 (CNS)</p> <p>Document number 15355/09</p> <p><a href="http://register.consilium.europa.eu/pdf/en/09/st15/st15355-ado1.en09.pdf">http://register.consilium.europa.eu/pdf/en/09/st15/st15355-ado1.en09.pdf</a></p>

business in the same Member State or in the same place as its registered office’.

**WP:** General provision: employees’ rights of participation governed by the legislation of the Member State in which the SPE has its registered office.

Under certain conditions, there shall be negotiations for arrangements for employee participation between the representatives of employees and the management body of the SPE (on the same model as the Directive of the SE).

For negotiations to start, some conditions must be met:

- The SPE for a continuous period of three months after its registration has ‘between 600 and 1,000 employees, and at least 1/2 of its employees habitually working in a Member State that provides for a higher level of participation rights for employees than is provided for those employees in the Member State where the SPE has its registered office’ or ‘more than 1,000 employees and at least 500 of its employees habitually work in a Member State that provides for a higher level of participation rights for employees than is provided for those employees in the Member State where the SPE has its registered office’.
- In the case of the transfer of the registered office of an SPE, at least 1/3 of its employees habitually work in the Home Member State; and the employees in the Home Member State were provided with a higher level of participation rights than is provided for those employees in the Host Member State.

In case negotiations fail, the standard rules are those of the Member State concerned providing for the highest level of participation rights.

‘Member States may, where the standard rules for employee participation apply and notwithstanding these rules, limit the proportion of employee representatives in the administrative

	<p>or supervisory board of the SPE to one-third.’</p> <p>The ‘before-and-after’ principle added: if a transnational employee participation system applies in the SPE at the time of the transfer, it shall continue to apply after the transfer if nothing else is agreed upon between the management and the special negotiating body.</p> <p>Paragraph 4 of the Article 35 added: ‘Member States shall take appropriate measures in conformity with Community law with a view to preventing the misuse of an SPE for the purpose of depriving employees of their right to employee participation or withholding such a right.’</p>	
November 2009	<p><b>Council: Second compromise proposal of the Swedish Presidency</b></p> <p>After a COREPER meeting on 13 November 2009, Sweden revised its proposal.</p> <p><b>CB:</b> No change.  <b>MCR:</b> No change.  <b>Split:</b> Article 7: ‘For a period of three years after the date of application of the Regulation, the Member State in which the SPE has its central administration and its principal place of business may require the SPE to also have its registered office in that Member State, thereafter national law shall apply’.  <b>WP:</b> No change.</p>	<p>Interinstitutional File 2008/0130 (CNS)</p> <p>Document number 16155/09</p> <p><a href="http://register.consilium.europa.eu/pdf/en/09/st16/st16155-ado1.en09.pdf">http://register.consilium.europa.eu/pdf/en/09/st16/st16155-ado1.en09.pdf</a></p>
November 2009	<p><b>Council: Third compromise proposal of the Swedish Presidency</b></p> <p>This political agreement followed the discussion in the Permanent Representatives Committee on 25 November and in view of the meeting of the Competitiveness Council on 3–4 December 2009.</p> <p><b>CB:</b> No change.  <b>MCR:</b> Member States can fix a minimum capital requirement of up to 8,000 euros (instead of 6,000). After two years, the Commission will review the effect of permitting Member States to set different minimum capital requirements</p>	<p>Interinstitutional File 2008/0130 (CNS)</p> <p>Document number 16115/09</p> <p><a href="http://register.consilium.europa.eu/pdf/en/09/st16/st16115-ado1.en09.pdf">http://register.consilium.europa.eu/pdf/en/09/st16/st16115-ado1.en09.pdf</a></p>

within the limit of 8,000 euros.

**Split:** For a transitional period of two years from the date of application of the Regulation, SPEs would be obliged to have their registered office and their central administration and/or principal place of business in the same Member State. Thereafter, national law would apply.

**WP:** General provision: Employees' rights of participation governed by the legislation of the Member State in which the SPE has its registered office.

Under certain conditions, there shall be negotiations on arrangements for employee participation between the representatives of employees and the management body of the SPE (on the same model as the SE Directive).

For negotiations to start, some conditions must be met:

- The SPE for a continuous period of three months after its registration has 'at least 500 employees, and at least 1/2 of its employees habitually work in a Member State that provides for a higher level of participation rights for employees than is provided for those employees in the Member State where the SPE has its registered office'.
- In the case of the transfer of the registered office of an SPE, at least 1/3 of its employees habitually work in the Home Member State; and the employees in the Home Member State were provided with a higher level of participation rights than is provided for those employees in the Host Member State.

In case negotiations fail, the standard rules are those of the Member State providing for the highest level of participation rights.

'Before-and-after' principle: if a transnational employee participation system applies in the SPE at the time of the transfer, it shall continue to apply after the transfer if nothing else is agreed upon between the management and the special

	<p>negotiating body.</p> <p>‘Member States may, where the standard rules for employee participation apply and notwithstanding these rules, limit the proportion of employee representatives in the administrative or supervisory board of the SPE to one-third’.</p> <p>Preservation of Paragraph 4 of Article 34: ‘Member States shall take appropriate measures in conformity with Community law with a view to preventing the misuse of an SPE for the purpose of depriving employees of their right to employee participation or withholding such a right.’</p> <p>Additionally, Recital (16c): ‘This Regulation does not impose any obligation on Member States to introduce rules on employee participation for the private limited-liability companies listed in Annex II’.</p>	
December 2009	<p><b>Impact of the entry into force of the Treaty of Lisbon</b></p> <p>The SPE is now dealt with under Article 352 TFUE rather than Article 308EC. There is also a change from the consultation procedure to the consent procedure. On this basis, the European Parliament must give its consent to the SPE project.</p>	<p>COM(2009) 665 Final</p> <p><a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0665:FIN:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0665:FIN:EN:PDF</a></p>
March 2011	<p><b>Council: First compromise proposal of the Hungarian Presidency</b></p> <p>After the failure of the preceding Presidencies, Hungary tried to find a compromise with a new proposal.</p> <p><b>CB:</b> Yes (an intention to do business in a Member State other than the one in which the SPE is registered; a cross-border business objective laid down in the articles of association of the SPE; a branch or a subsidiary registered in a Member State other than the one in which the SPE is registered; or a member or members resident or registered in more than one Member State or in a Member State other than the one in which the SPE is registered).</p>	<p>Interinstitutional File 2008/0130 (CNS)</p> <p>Document number 8084/11</p> <p><a href="http://register.consilium.europa.eu/pdf/en/11/sto8/sto8084.en11.pdf">http://register.consilium.europa.eu/pdf/en/11/sto8/sto8084.en11.pdf</a></p>

**MCR:** 1 euro but Member States can set a higher minimum capital requirement for the SPE of up to 8,000 euros for SPEs registered in their territory.

Two years after the date of application of this Regulation, the European Commission shall analyse the effect of permitting Member States to set different minimum capital requirements (within the limit).

**Split:** Transitional period of three years from the date of application of the Regulation, during which SPEs would be obliged to have their registered office and their central administration and/or principal place of business in the same Member State. After that period, national law would apply.

**WP:** General provision: employees' rights of participation governed by the legislation of the Member State in which the SPE has its registered office.

Under certain conditions, there shall be negotiations on arrangements for employee participation between the representatives of employees and the management body of the SPE (on the same model as the SE Directive).

To start negotiations, some conditions are necessary:

- for a continuous period of three months after the registration of the SPE, 1/2 of its employees, but not less than 500, habitually work in a Member State that provides for a higher level of participation rights for employees than is provided for those employees in the Member State where the SPE has its registered office;
- in the case of the transfer of the registered office of an SPE, at least 1/3 of its employees, but not less than 500, habitually work in the Home Member State; and the employees in the Home Member State were provided with a higher level of participation rights than is provided for those employees in the Host



	<p>Member State.</p> <p>In case negotiations fail, the standard rules are those of the Member State concerned providing for the highest level of participation rights. Moreover, a sentence is inserted clarifying that the provisions of the draft Regulation are without prejudice to the rights of employees concerning information and consultation in accordance with national provisions, and related EU legislation.</p> <p>‘Member States may, where the standard rules for employee participation apply and notwithstanding these rules, limit the proportion of employee representatives in the administrative or supervisory board of the SPE to one-third.’</p> <p>Preservation of the ‘before-and-after’ principle of Recital (16c) and of Paragraph 4 of Article 35.</p>	
<p>May 2011</p>	<p><b>Council: Second compromise proposal of the Hungarian Presidency</b></p> <p>In the run-up to a meeting of the Competitiveness Council at the end of May 2011, the Hungarian Presidency presented a new proposal for the Permanent Representatives Committee.</p> <p><b>CB:</b> No change.</p> <p><b>MCR:</b> No change but the presence of the ‘provisions on minimum capital’ in the review clause in Article 48.</p> <p><b>Split:</b> Suppression of paragraph 1a on whether SPEs should have their registered office and their central administration and/or principal place of business in the same Member State, and introduction of Recital 6a explaining that this allowance depends on the relevant national law.</p> <p><b>WP:</b> General provision: employees’ rights of participation governed by the legislation of the Member State in which the SPE has its registered office.</p> <p>Under certain conditions, negotiations on arrangements for employee participation between the representatives of employees and the management body of the SPE (on the same model</p>	<p>Interinstitutional File 2008/0130 (CNS)</p> <p>Document number 9713/11</p> <p><a href="http://register.consilium.europa.eu/pdf/en/11/st10/st10129.en11.pdf">http://register.consilium.europa.eu/pdf/en/11/st10/st10129.en11.pdf</a></p>

as the SE Directive)

For negotiations to start, some conditions must be met:

- for a continuous period of three months after the registration of the SPE, at least 500 employees who work habitually in a Member State that provides for a higher level of participation rights for employees than is provided for those employees in the Member State where the SPE has its registered office;
- in case of the transfer of the registered office of an SPE, at least 1/3 of its employees habitually work in the Home Member State and the employees in the Home Member State were provided with a higher level of participation rights than is provided for those employees in the Host Member State.

In case negotiations fail, the standard rules are those of the Member State concerned providing for the highest level of participation rights. However, the reference to the rights of employees concerning information and consultation in accordance with national provisions and related EU legislation is deleted.

‘Member States may, where the standard rules for employee participation apply and notwithstanding these rules, limit the proportion of employee representatives in the administrative or supervisory board of the SPE to one-third’.

Preservation of the ‘before-and-after’ principle of Recital (16c) and of Paragraph 4 of Article 35.

Creation of Article 35e: ‘Member States shall ensure that the rights of employees to information and consultation are applied also in situations where the SPE has employees in different Member States, or where employees are situated in a Member State other than where the SPE has its registered office’.

Additionally, reference to the provisions on the

	thresholds laid down for employee participation in the review clause in Article 48.	
May 2011	<p><b>Council: Third compromise proposal of the Hungarian Presidency</b></p> <p>In the run-up to the Competitiveness Council on 30–31 May 2011, Hungary presented a third proposal.</p> <p><b>CB:</b> No change.  <b>MCR:</b> No change.  <b>Split:</b> Paragraph 1 of Article 7: ‘An SPE shall have its registered office and its central administration or principal place of business in the European Union in accordance with the applicable national law’.  <b>WP:</b> No change but the threshold of ‘not less than 500’ employees added (in addition to 1/3) in the case of the transfer of the registered office.</p>	<p>Interinstitutional File 2008/0130 (CNS)</p> <p>Document number 10611/11</p> <p><a href="http://register.consilium.europa.eu/pdf/en/11/st10/st10611.en11.pdf">http://register.consilium.europa.eu/pdf/en/11/st10/st10611.en11.pdf</a></p>

*Table by Arnaud Bouaffre, July 2011.*