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THE EUROPEAN UNION**

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**DRS 41  
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**PROGRESS REPORT**

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from : Presidency

to : Permanent Representatives Committee / Council (Competitiveness)

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No. Cion prop. : 11252/08 DRS 17

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Subject: Proposal for a Council Regulation on the statute for a European private company (SPE)

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1. The Commission submitted the proposal for a Council Regulation on the statute for a European private company (hereinafter referred to as "SPE") on 27 June 2008. The SPE Statute was identified as a medium-term measure of the Commission's Action Plan on Modernising Company Law and Enhancing Corporate Governance in the EU. It is also one of the key elements of the "Small Business Act for Europe" (hereinafter referred to as "SBA"), a series of legislative and non-legislative initiatives aimed at creating a level playing field for small and medium-sized enterprises (hereinafter referred to as "SMEs") and improving the legal and administrative environment throughout the EU. Moreover, the SBA forms part of the European Economic Recovery Plan, as endorsed by the European Council in December 2008.

2. The particular objective of the proposal is to create a new Community instrument which seeks to enhance the competitiveness of SMEs by facilitating their operations in the Single Market, providing for a flexible corporate law regime across the EU and reducing the compliance costs which arise at the stage of setting-up and operating of SMEs.
3. The proposal was examined by the Working Party on Company Law (hereinafter referred to as "the Working Party") in nine meetings during the second semester of 2008, with particular focus on some principal aspects of the SPE. A progress report was submitted to the December 2008 Competitiveness Council, which instructed its preparatory bodies to continue work on the draft Regulation with a view to finding solutions and reaching agreement as soon as possible.
4. Based on this mandate, the Working Party continued to examine the various aspects of the draft Regulation during the first semester of 2009. Four meetings of the Working Party were devoted to the examination of the first compromise proposal, which had been established in close cooperation between the previous and current Presidencies. In the light of those discussions, the Presidency elaborated a revised compromise proposal, which was examined by the Working Party on 6 May 2009.
5. The European Parliament adopted its opinion on the proposal for the SPE at its plenary session on 10 March 2009.
6. The aim of this report is to inform the Competitiveness Council, at its meeting on 28 and 29 May 2009, on the state of play in the examination of this proposal.
7. The Presidency focused discussions on the text of the draft SPE Regulation as a whole. As a result of the substantial exchanges of views in the Working Party and written contributions by delegations, a number of amendments were introduced to several aspects of the proposal, reflected in the latest Presidency compromise proposal (doc. 9065/09). They relate, in particular, to:
  - taking into account the different national approaches to the term "shares", which now covers both securities and parts;
  - complementing the rules on expulsion and withdrawal of a member from the SPE;

- amending the provisions on consideration for shares;
- clarifying the provisions on the organisation of the SPE, in particular in relation to the role of the general assembly of members, the information rights of members and the representation of the SPE in relation to third parties;
- providing for a minority right to convene a general meeting;
- aligning the part on the procedure of the transfer of the registered office of the SPE to that of Regulation 2157/2001<sup>1</sup>; and
- introducing, in an Annex to the proposed Regulation, the list of national forms of private-limited liability companies.

In addition, as regards the important issue of the employee participation rights, the Presidency elaborated a comprehensive framework, with the aim of accommodating concerns related to a possible circumvention of any such rights provided for by national law through the establishment of SPEs, while, at the same time, preserving the flexibility of the instrument. This framework provides that, where certain conditions are fulfilled, SPEs should start negotiations with the employee representatives on arrangements for employee participation in the SPE.

8. The matter of employee participation, as well as several other important aspects of the proposal, will need to be further discussed in order to reach an agreement. Such issues are, in particular, the possible introduction of a cross-border element, the level of minimum capital and adequate safeguards, the compliance control and the duties of directors. The Presidency expects that its latest compromise proposal, as set out in 9065/09, will facilitate future discussions and make possible swift progress towards an agreement on the proposed Regulation.
9. **The Permanent Representatives Committee is requested to invite the Competitiveness Council, at its forthcoming meeting, to take note of this report.**

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<sup>1</sup> Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE).