



European Trade Union Confederation (ETUC)
Confédération européenne des syndicats (CES)

Brussels, 16 June 2008
RH/NK/bbd

Jörgen Holmquist
Director-General for Internal Markets and Services
European Commission
200 rue de la Loi
1049 Brussels

Dear Director-General

European Private Company Statute

We have been following for some time your preparatory work on a regulation regarding a Statute for a European Private Company (EPC). Lately, the ETUC was invited to give its opinion on the occasion of your Conference on the European Private Company on 10 March. The ETUC itself gave the floor to a representative of your staff to explain the project in more detail at the meeting of the ETUC worker participation group on 13 March.

Against this background, you may understand our concern after having found out the advanced state of the project. Obviously, a draft of the regulation is already in consultation with the EU member states. On the other hand, the ETUC has not been further consulted. However, as workers information, consultation and participation are concerned, we would reiterate our opinions and suggestions already laid down in our letter to Commissioner Mc Creevy on 15 February 2007 (attached). Moreover, we would be happy to discuss with you the draft proposal more in detail.

Generally, we would like to welcome the EU Commission's initiative to support small and medium enterprises if this includes their employees with the same emphasis. The EPC may become a reality for a large number of employees. According to a figure we heard in the EU conference in March, employers expect 150,000 to 250,000 interested companies to transform into an EPC. But, especially in the targeted category of companies, employers are relying very much on the competence and commitment of their personnel. If your initiative in this field is intended to form part of the revised Lisbon Agenda which aims to create higher growth and more and better jobs in Europe generally and in the field of this particular piece of European company law, something should be in it for employees and not only for facilitating entrepreneurs and investors.

In particular, we would recall that a regulation on the EPC will also fall in line with Article 17 of the 1989 EU Community Charter of Fundamental Social Rights of Workers, to which Art. 136 I of the EC Treaty refers. Because a regulation of the EPC is supposed to be a complete legal provision for immediate and direct application, the regulation should contain standard rules for employees' involvement if this is not intended to be ruled out in a linked directive. Furthermore, we would see the new regulation fully in accordance with the provisions of the SE-/SCE-regulation because we see a clear reference between it and the regulation of the EPC. Thus, the

same rules concerning employee involvement should be clearly adopted in order to prevent any circumvention of worker participation at board level in the private sector by at least 12 EU member states and Norway. We would draw your attention again to the fact in most of those EU member states employee representation in board rooms is already envisaged for small companies, beginning with companies in Austria, as soon as a works council exists, Sweden (> 25 employees), Denmark (>35), The Czech Republic, Slovakia (>50), The Netherlands (>100), Finland (>150), Hungary (>200). The SE legislation contains **no** threshold values for interested companies. Thus, we expect not to see any threshold in the draft regulation on the matter of workers participation.

Furthermore, as this is explicitly supposed to be a really European regulation, more emphasis should be laid on information and consultation rights as provided by SE directive 2001/86/EU. It should be made clear from the beginning that it is a sound matter of this regulation to consider employees with the same weight and the same respect as directors and shareholders as further important stakeholders of a company. The regulation should express this general orientation. In this context, the applicability of the Rome I Regulation should also be clarified in order to achieve better legal certainty in the companies. The ETUC will come back on this general point after we have had the opportunity to assess the draft regulation in more depth.

According to the information gathered from the EU conference and further explanations we received afterwards the ETUC would claim points as outlined below:

- As the regulation seems to design the EPC very liberally, it may contrast with corporate law in many EU member states who pursue rather a stakeholder oriented concept of conducting and overseeing a company than a strictly shareholder orientated approach. Pressure on national systems would be increased if the founder of an EPC had the choice to set up the EPC with its registered office and central administration in different Member States. Particularly because the new regulation will allow the creation of an EPC “ex nihilo” the regulation will bring national company law in those EU member states under pressure where it is not yet in general line with the philosophy of the EPC regulation, and where it also provides a standard two-tier system for governing private companies. A regulation of the EPC shall oblige founders in any case to set up a company organ which allows the exercise of board level participation rights. The creation of an EPC should not serve, even potentially, as an invitation to play with national company law in general and with workers rights in particular.

- Because it claims to bring in new European legislation, an EPC should be built on a trans-national basis which means it should show operation in at least two EU member states. Otherwise it looks more like a European label than a serious European project. The missing trans-national element could be regarded as a breach of the subsidiary principle laid down in Art. 5 EC. Concerning the safeguarding of workers participation, it should be clarified that a transferral of the registered office of the EPC has to be treated as a transformation of the company (respecting the rules for worker participation as laid down in Srt. 7 (2) lit. of the SE statute). Particularly, no threshold for workers participation should be required as a precondition for initiating negotiations on workers involvement in such a company.

- Obviously, the EPC will be regarded only as a matter between owners and directors. Apart from general doubts on the appropriateness of such an orientation of European regulation, this could lead to a total closed relationship of those two stakeholders against the other environment. The EPC regulation shall clarify, that “the best interest of the EPC” contains also the recognition of the interests of **all** company stakeholders, namely the employees too. The possible absence of any supervisory function in an EPC would increase the possibility of an EPC subject only to the responsibility of its directors. The right of inquiry should be extended to trade unions as in The Netherlands. In case of a question about management or owner decisions for the companies, a right of inquiry for trade unions may be a stimulating issue for European regulation.

Finally, let me underline my belief that you will come back to the social partners for informing and consulting about your regulatory intentions before issuing a draft regulation to be the subject of the public and political debate. A hearing of the social partners, as it is envisaged for such a case in accordance with Art 138 (2) of the EC Treaty, might be the suitable way for this. In addition, I would be happy to explain our proposals and our concerns personally and in more detail.

Yours sincerely,



Reiner Hoffmann
Deputy General Secretary

Attachments:

- (1) ETUC letter to Commissioner McCreevy of 15 February 2007

John Monks, General Secretary
Boulevard du Roi Albert II, 5 • B – 1210 Bruxelles • Tel:
+32 2 224 04 11