

**Charlie McCREEVY**

European Commissioner for Internal Market and Services

## **European Private Company**

*Check Against Delivery*  
*Seul le texte prononcé fait foi*  
*Es gilt das gesprochene Wort*

Conference on the European Private Company

**Paris, 10 October 2008**

Ladies and Gentlemen,

I am very pleased to be here with you today to discuss the European Private Company (SPE).

First of all, I would like to thank the French Presidency and all the organisers of this conference for this timely opportunity to discuss this important project.

We must not forget that MEDEF and the Chamber of Commerce of Paris were initiators of the proposal for the European Private Company a decade ago. Gradually, it found support in the European Economic and Social Committee and in the European Parliament. And now the Commission's proposal is on the table.

Its adoption came at the right moment. From the outset, the European Private Company has been a priority for the French Presidency. It is essential for the success of the proposal that it continues to have the same high profile that the French Presidency has given to it. As attractive as the European Private Company seems to businesses, the idea of an "SPE" poses challenges to some Member States. Resolving the differences of MS requires political will and technical creativity. Therefore, I am grateful for the Presidency for putting so much effort into this.

I have been asked to close the morning session of this conference by outlining the reasons for the Commission's proposal on the European Private Company and its objectives. Allow me to recall briefly the political context.

#### SMEs in the Single Market

You all know how important small and medium-sized companies are for a competitive Europe. 23 million SMEs account for 99% of all companies and provide around 70% of employment in private sector in the EU. These are remarkable figures.

Public consultations show that these companies would like to explore new markets. But only about 5% of SMEs have subsidiaries abroad. The rest remain within the borders of their own country. And I think we all agree that this cannot be good for the European economy.

There are many factors which discourage SMEs from expanding abroad: divergent tax regimes; social, cultural differences and dare I say it here to this august forum-linguistic barriers - these have all been mentioned by companies when we ask them why they don't do business abroad.

But above all, they have told us that the costs of complying with several different regimes on company formation; on management structures; and above all the lack of trust in less known legal forms are all definite deterrents.

The Commission's proposal for a European Private Company is part of the Small Business Act for Europe. This initiative aims to anchor the "Think Small First" principle in policy-making. The European Private Company proposal is certainly, without any shadow of a doubt, the jewel in the crown of the Small Business Act.

The EU and its Member States must create an environment in which entrepreneurs and family businesses can thrive. Public administration must be responsive to SMEs needs and their access to finance must be made easier. The current turmoil in the financial markets makes this even more essential.

For SMEs that want to incorporate, one way forward is to provide a new instrument: this is what we have done with the European Private Company Statute. It is a new form of company that can be set up following one uniform set of company law rules in every Member State. This can make a huge difference. That is precisely why we have come up with the proposal that you have before you today. The contours of this proposal meet the expectations of business.

## **Objectives**

The Commission listened to business and we delivered what they asked for with this proposal. Business said they wanted a new instrument that helps them do business and expand abroad. They have got it. They also said that this instrument would only be useful if it were simple, flexible, uniform and contained as few references to national law as possible. This makes it different to the European Company Statute which already exists.

Our first objective was to propose a brand new legal form available to entrepreneurs all over Europe. It would also provide businesses with the "SPE" label, a marketing brand recognised in every Member State.

Entrepreneurs usually set up their company in their home country first and then only expand abroad gradually, at a later stage. It is entirely logical, therefore, not to limit the use of the European Private Company to cross-border business.

Our second objective was to reduce the costs of setting up and running business in the EU.

Our analysis has shown that if entrepreneurs can set up and run the same type of company anywhere in the EU, just by following a uniform set of rules, the approximate savings on legal costs could be between €2.000-10.000 for setting up companies and between €750-8.000 for day-to-day operating costs.

## **Proposal**

The Commission's proposal moves away from the traditional approach of national company laws with its myriad and multiple legal controls which all add up for SMEs.

But it is rooted in the traditions of Member States' company laws. When drafting the SPE Statute we had the chance to select the best, the most valuable elements of the 27 national company law regimes and include them in our proposal. Our objective was not to come up with a second GmbH, SARL or "limited".

Our objective was to come up with a real alternative, in particular when entrepreneurs want to get involved in cross-border business. Above all, it is a European company form.

It is innovative but it is not revolutionary. Its starting point is that entrepreneurs are much better placed to decide when a business needs capital; and whether it needs cash, real estate or provision of services.

It considers that shareholders' decisions are equally valid whether taken at a general meeting or by e-mail, provided that all shareholders are properly informed. It considers that a unitary board can be as good at managing a company as an individual director or a board in a dual board structure. It is up to shareholders to decide.

We have also produced thanks to our advisory group - and many thanks especially to Vanessa Knapp -draft articles of association as a model for companies who may wish to use them. These should be adapted to fit national situations. Here, Chambers of Commerce, and, of course, notaries have a key role to play.

The SPE is a private company. It has no external investors and, on average, the size of the business is significantly smaller than that of listed companies. Therefore, financial risk for creditors, minority shareholders and other market participants is more limited when they deal with an SPE.

But they still need to be protected. The proposal does not prescribe a formal minimum capital requirement but it does protect the SPE's assets from being distributed to the shareholders. The SPE must have a positive balance sheet after paying dividends and shareholders may decide to further protect the creditors of their SPE by requiring their directors to do an additional solvency test. The interests of minority shareholders are also safeguarded.

Finally, employees' participation rights in the board are also taken into account. The SPE cannot be used as a means to circumvent existing participation rights of workers after any transfer of seat to another Member State.

## **Negotiations**

Thanks to the strong commitment of the French Presidency, the negotiations on the SPE proposal in the Council are well underway. Of course, I am not surprised to see that Member States are a little frightened by the SPE. It may well create competition to national company forms. But is that really a problem? It is simple; it is easy to set up; it is attractive to business.

To those who want to impose a cross-border requirement, I would offer a word of caution. If the bar is set too high, the SPE will not be used by small companies but only by bigger SMEs.

To those who think €1 minimum capital is not enough, I urge you not only to consider the size of companies we want to use the SPE, but also the diversity of economic development across the EU of 27 Member States. Similarly, on employees' participation rights, our solution is adapted to SMEs.

Critics of the proposal say that we have left too much freedom to business; that this freedom will lead to mistakes, or worse still, abuse. I believe that not enough has been done to encourage entrepreneurs. As I said at the beginning, too few SMEs do any cross border business. We cannot allow this to continue. If we do, we would have failed SMEs and the Single Market.

## **Conclusion**

Ladies and Gentlemen,

I hope your discussions today will help shed the light on the most important questions in the proposal.

Let us work to ease the concerns of those who have doubts and promote the success of European businesses. The European Private Company Statute is an instrument to promote entrepreneurship. In the current climate, we need to maintain faith in start-ups; indeed, faith in small businesses.

Thank you for your attention.