



**COUNCIL OF
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COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 27 June 2008

to: Mr Javier SOLANA, Secretary-General/High Representative

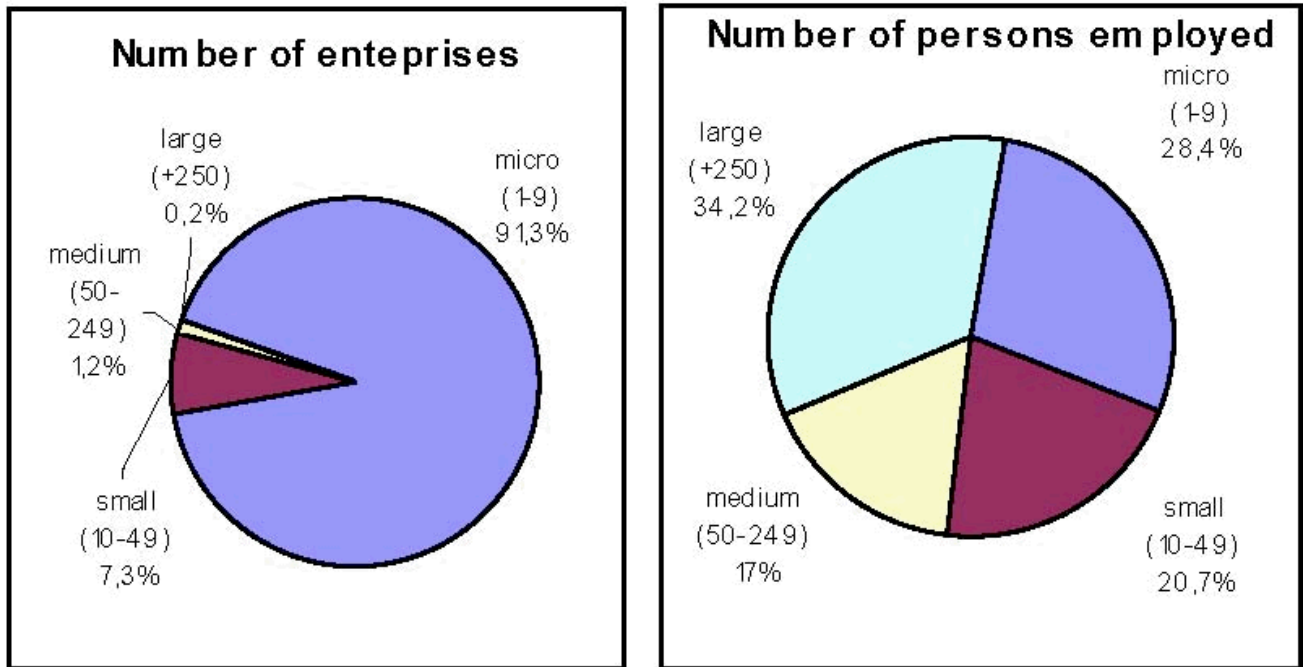
Subject: Commission Staff Working Document accompanying the Proposal for a
Council Regulation on the Statute for a European Private Company (SPE) -
Impact assessment (Annexes)

Delegations will find attached Commission document SEC(2008) 2098.

Encl.: SEC(2008) 2098

Annex 1

Graph A1. Number of enterprises in the EU in 2003 (breakdown by size and number of employees)



Source: European Commission (2003).

Graph A2. Foreign business partnerships



Q37. How much of your total turnover, that is your annual sales in percentages is created in foreign subsidiaries, joint ventures abroad?

Base: SMEs % any income from foreign business partnerships, [no subsidiary or joint venture] and [DK/NA] answers were recoded to zero income, by country

Source: European Commission (2007).

Graph A3 illustrates the location of the foreign business partnerships of EU SMEs.

	EU country	Europe, outside the EU	Asia	Else- where
EU27 SMEs	77	4	9	10
Size class				
1-9 persons employed	72	5	11	12
10-49 persons employed	85	2	5	8
50-249 persons employed	67	10	11	11
250+ persons employed	67	2	17	14
SME Activity sector				
D. Manufacturing	79	2	10	10
F. Construction	85	0	4	11
G. Wholesale and retail	71	4	14	11
H. Hotels and restaurants	78	5	9	8
I. Transport, storage and communication	82	12	6	0
J. Financial intermediation	85	0	9	5
K. Real estate, renting and business activities	81	4	5	10
N. Health and social work	92	3	0	4
O. Other community, social and personal service	70	0	3	26

* The averages for the total of SMEs and the averages for the SME sub-categories by sector are based on the replies of all those enterprises which were identified and sampled as SMEs. As some of them did not disclose their number of persons employed during the survey, the averages for the SME sub-categories by size class are based on a smaller sample.

Source: European Commission (2007).

Annex 2.

Country assessment of compliance with the objectives set by the 2006 Spring Council conclusions for start-up procedures

One stop shop to start-up a company (1)				
	Name	Fully operational*	Time required to start-up a company (1)	Cost to start-up a company (1) **
Belgium	Guichet agréé d'entreprises	YES	1,5	517 €
Bulgaria		NO*	12-30	155 €
Czech Republic	Central Registration Offices (CRO)	NO*	42-56	345 €
Denmark	Danish Commerce and Companies Agency (DCCA)	YES	3	0 €
Germany	Starter-Center	NO*	6,5	783 €
Estonia	Notaries	YES	2	190 €
Ireland	Companies Registration Office (CRO)	NO*	2-5	50 €
Greece	Directorate of Development at the prefectures (KYE)	NO*	30	1,366 €
Spain	Ventanilla Unica Empresaria (VUE) + PAIT for Ltd.	YES	30-40	617 €
France	Centres de formalités des entreprises (CFE)	YES	4	84 €
Italy	"Sportello unico"	YES	4	2,673 €
Cyprus	OSS at Ministry of Commerce, Industry and Tourism	YES	7	265 €
Latvia	Register of Enterprises	NO*	4	205 €
Lithuania	Centre of Registers	YES	6	130-289 €
Luxembourg	Guichet unique d'entreprises	YES	14	1,000 €
Hungary	County Courts	YES	2-3	392 €
Malta	Registrar of Companies - Malta Financial Services Authority (MFSA)	NO*	7-10	450 €
Netherlands	Chambers of Commerce	NO*	3	1,040 €
Austria	WKO Gründerservice	YES	7-30	400 €
Poland	Tax Offices	NO*	30	735 €
Portugal	Enterprise Formality Centres (CFE)	YES	1	300-360 €
Romania	Counties Trade Registers	YES	3	100-125 €
Slovenia	VEM	YES	3	250 €
Slovakia	Trade licence offices, companies register	NO*	14	330 €
Finland	Trade Register	YES	14	330 €
Sweden	Foretagsregistrering	YES	21	222 €
United Kingdom	Companies House & Business Link	YES	1	54 €
Compliant		17	13	23
Non compliant		10	14	4
Average		10,15 to 12,77 days		€ 485

NOTES

(1) All figures on cost and time based on information provided by Member States which have not been fully validated. Calculation methods as described in Commission Staff Working Document SEC(2007)129
 *NO means that services offered by the one-stop-shop are not sufficient to consider it a fully functional one-stop-shop.
 **Cost: numbers in a red box for countries with cost above the established threshold.

Source: European Commission (2006).

Annex 3.Tables:

Table A1. New private limited companies incorporated in the UK by Country of origin

This table reports new incorporations of private limited companies in the UK from the rest of the UE. A company is assigned to a given Member State according to a majority of its directors.

Country of origin	year 2005
Austria	609
Belgium	458
Czech Republic	89
Denmark	248
Estonia	27
Finland	21
France	1666
Germany	12019
Greece	120
Hungary	63
Ireland	328
Italy	538
Latvia	31
Lithuania	13
Luxembourg	111
Malta	23
Netherlands	2127
Poland	136
Portugal	66
Slovakia	16
Slovenia	32
Spain	539
Sweden	406
TOTAL	19.686

Source: M. Becht, C. Mayer, H.F. Wagner (2006). Where do firms incorporate?, Working paper no. 70/2006.

Table A2. The table presents the costs of the legal advice on company law issues related to the incorporation of a company and the amount of the capital required in a number of Member States. The numbers indicated are the costs of a small subsidiary. The numbers indicated in the brackets are the costs of a medium-sized subsidiary if they differ from those of a small subsidiary). The table indicates how much money an entrepreneur has to put up before he actually sets up a company. However, it should be noted that part of the capital, once paid up upon registration, can be used later on by a company for its business, e.g. to buy the necessary equipment etc.

The current IA focuses on the possible reduction of the costs related to company law, i.e. the costs of legal advice on company law issues, the notary fees and the amount of minimum capital that has to be paid up upon the registration of a company. Other costs (registration fees, publication, taxes and administrative fees) are dealt with by other EU or Member States actions (one-stop shop¹, simplification²).

The incorporation process	AT	BE	UK	FR	HU	IT	NL	PL	ES	SE
Lawyer's advice on company law ³	€1880	€7500	€2400	€2000-3000 (-4000)	Min. €3000 (€4500)	€2500 (€3000)	€2000 (€3500)	€3100 (€4100) + €2200 ⁴	€5500 (€7000)	€1500 (€4000-5300)
Registration fee	ca. €320	€500	€80	N/A	€58,3	€500 (€700)	€150	App.€280	N/A	€200
Notary	€1000	2000	€10	N/A	vary	€3000 (€5000)	€250 (€500)	App.€340 ⁵	€400(€800)	N/A
Taxes/administrative fees	€350 (1% of share cap.)	€0	N/A	N/A	N/A	€500	€100	€70 (€1000) + €50 ⁶	€400(€800)	N/A
Publication	€0	€0	N/A	€200-300	€0	€0	€0	€140	N/A	N/A
Total cost of incorporation (excluding capital)	€3550	€10000	€2490	€2000 (-8000)	App. €2000 (€2500)	€6500 (€9200)	€2500 (€4250)	App. €6180 (€8060)	€6300 (€8600)	€1700 (€4200-5500)
Min. capital⁷ (in brackets % of capital to be paid upon formation)	€ 35,000 (50%)	€ 18,550 (33%)	equiv. of €1,5	€1 (SARL) € 37,000 (SAS) (50%)	equiv. of € 11,760	€ 10,000 (33%)	€18,000 (20%)	equiv. of € 13,869 (25%)	€ 3005 (100%)	equiv. of € 10,681 (100%)

Source: Baker & McKenzie: *European Private Company. Legal Costs for Setting up a foreign subsidiary. Survey for VDMA and the University of Wuerzburg, 29 February 2008.*

¹ European commission, Lisbon Strategy for Growth and Jobs: 2007 Strategic Report Country – Assessment of the National Reform Programmes, 11 December 2007

² http://ec.europa.eu/internal_market/company/simplification/index_en.htm

³ Lawyer's fee for advice on company law includes the fee for: legal advice to client about the local company structures (e.g. choice of the appropriate legal form for a subsidiary); drafting articles of association, preparation of votes/resolutions/general assembly, research about further required steps and further legal consulting during the process.

⁴ The cost of € 2 200 refers to further general legal consulting during the process of incorporation, including other issues than company law, e.g. tax registration.

⁵ The cost of notary fee only for executing the articles of association.

⁶ € 70 (€1000) refers to the taxes for executing the articles of association only. € 50 refers to the tax registration fee.

⁷ The amount of minimum capital in other Member States can be found in the Annex.

Table A3. Private companies: minimum legal capital across the EU expressed in €

Member State	Minimum Capital (in €, for countries using other currency, an equiv. in €)	Conditions (subscription/paid up)
PL	€ 13,869	25% paid up on formation
LT	€ 2,896	25% paid up on formation
LV	€ 2,863	50% paid up upon formation, 50% within the first year thereafter
HU	€ 11,760	At least 30% of the capital must be paid up in cash
EE	€ 2,556	
CZ	€ 3,825	
MT	€ 1,164	
SLO	€ 8,757	25% paid up upon formation
SK	€ 5,984	30% paid up upon formation
UK	€1,5	
FR	€1 (SARL) € 37,000 (SAS)	SARL: Capital is set freely by the partners in light of the size, activity and capital needs of the company. At least 20% of the contributions in kind must be paid up upon formation. The remainder must be paid up within 5 years SAS: 50% must be paid up upon formation and the remainder within 5 years
DE	€10,000	
DK	€ 16,778	Entirely subscribed and paid up
IE	€1	
PT	€ 5,000	100% subscribed, 50% paid up upon formation
ES	€ 3005	100% subscribed and paid up upon formation
IT	€ 10,000	100% subscribed and 1/3 paid up upon formation
AT	€ 35,000	100% subscribed and 50% paid up upon formation
NL	€18,000	100% subscribed and 20% paid up upon formation
BE	€ 18,550	100% subscribed and 1/3 paid up upon formation
FI	€ 8,000	
SE	€ 10,681	100% subscribed and paid up upon formation
LU	€ 12,500	Entirely subscribed
EL	€18,000	Entirely subscribed
RO	N/A	
BG	€ 2,500	
CY	€2	

Between 0 and € 5,000: 11 MS (6 new: CY, LT, LV, EE, CZ, MT) (5 old: UK, FR, ES, PT, IE)

Between € 5,000 and € 10,000: 5 MS

Between €10,000 and € 20,000: 8 MS

More than € 20,000: 2 MS

Source: Interex – Fiches pays – 2006, <http://www.interex.fr/fr/fiches-pays>.

Table A4. The cost of legal advice on company law issues related to day-to-day administration of a foreign subsidiary, including the preparation of regular assemblies, shareholder resolutions and general consulting on specific company law aspects. The numbers indicated are the costs of a small subsidiary. The numbers indicated in the brackets are the costs of a medium-sized subsidiary if they differ from those of a small subsidiary).

The incorporation process	AT	BE	UK	FR	HU	IT	NL	PL	ES	SE
Regular legal consulting (after incorporation) ⁸	€1410	€4500	€1500	N/A	€750 (€1000)	€3000 (€6000)	€1500 (€1750)	App. €3000	€6000 (€8000)	€1500

Source: Baker & McKenzie: *European Private Company. Legal Costs for Setting up a foreign subsidiary. Survey for VDMA and the University of Wuerzburg, 29 February 2008.*

⁸ The costs of regular legal consulting (after incorporation) include: preparation of regular assemblies and shareholder resolutions, general consulting in specific company law aspects.

Table A5. Summary of the retained content options. The suggested options are marked in bold.

	<i>Uniformity</i>	<i>Flexibility</i>	<i>Legal certainty</i>	<i>Efficiency</i>	<i>Political acceptability</i>
Option A.2: Autonomy from national company law regimes	++	++	++	++	
<i>Option A.3: Reliance on national company law</i>	+	++	+	+	
<i>Option B.1. Uniform Statute</i>	+++	+	+++	+	
Option B.3. Uniformity in the external and flexibility in the internal affairs	++	++	++	+++	
Option C.1: No cross-border dimension			+++	+++	+
<i>Option C.2: Cross-border dimension</i>			++	++	++
Option D.2: Separation of the registered office and the head office	++	+++	++	+++	++
<i>Option D.3: Determination of an applicable rule by the law of the Member State of registration</i>	+	++	+	+	+++
<i>Option E.1: Simplified Second Company Law Directive</i>	+++	+	+++	+	+
<i>Option E.2: Balance-sheet test</i>	++	++	++	++	+
Option E.3: Shareholders' choice between a balance sheet test or a solvency test	+	+++	++	+++	++
<i>Option F.1: Rules determined by the SPE Statute</i>	+++	+	+++	+	+
<i>Option F.2: National rules of Member States of the place of incorporation of an SPE</i>	+	+++	++	++	+
Option F.3 Employee participation rules of the SE and of the Directive on cross-border mergers	++	++	+++	++	+++