

# The SPE Revolution

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No doubt a 'tsunami' of studies and commentaries in legal literature will follow the recent publication of the draft Council Regulation on the *Societas Europaea Privata* (SPE). When adopted it is likely to cause little less than a revolution in the area of EU company law. All pending and already finalized attempts to create a simple and flexible corporate entity in the various Member States (see ECL of December 2004, Issue 4 on the Light Vehicle Competition) will be overhauled by one mighty wave of Community law with direct effect. Of course only the future can tell if developments will go that far, but the impact of the SPE project as not just a theoretical, but also a feasible concept for creating a flexible and uniform corporate entity suited for Europe's small and medium sized enterprises, is already impressive.

ECL's Editorial Board has always recognized the potential importance of the SPE initiative. Particular reference is made to the earlier contributions on this subject by Professor Christoph Teichmann, one of the inspiring forces behind the revival of the SPE project in the last few years (ECL 2006, Issue 6, and ECL 2007, Issue 3). In counterbalance with Teichmann's enthusiasm Harm-Jan de Kluiver advises the European legislature to contemplate an alternative for the SPE Regulation, e.g., in the form of an SPE Directive, in his editorial for ECL 2008, Issue 3. As a logical follow-up to these contributions this issue of ECL contains, besides some lectures made at the second CECL-conference last year, the introduction to a first elaborate analysis of the draft SPE Regulation by the Utrecht-based researchers Adriaan Dorresteijn and Odeaya Uziah-Santcroos, as the first part in a series of two articles. Dorresteijn and Uziah-Santcroos inter alia express some doubt as to whether the SPE initiative really stands the test of the Subsidiarity Principle of Article 5 EC.

The literature column further on in this issue mentions some first commentaries on the SPE Regulation in German legal literature. Although the authors show a positive attitude towards the draft proposal in general, it is well understood that still a lot of important and technical issues have to be negotiated and worked in before the text will be acceptable in their eyes. Among the issues put forward by them are the use of standard articles of association, the annulment of corporate decisions, attention for group relations, creditor protection in case of mismanagement, a *mandatory* solvency test prior to the payment of dividends, state control to avoid abuse of the SPE, higher disclosure standards and provisions for the protection of minority shareholders (Silja

Maul and Victoria Röhrich). Georg Lanfermann and Marc Richard advocate a mixed system of creditor protection against uncovered distributions, by means of a mandatory prescribed solvency test as long as the SPE does not meet a minimum equity test of EUR 25,000. In addition, Mathias Siems, Erik Rosenhäger and Leif Herzog inter alia touch on the problem of (the lack of) employee involvement in the SPE. Notwithstanding the value of all these critical observations and irrespective of one's appreciation for the current proposal, one can only whole-heartedly endorse the final words of the last-mentioned authors: *'The continuing convergence and Europeanizing of company law will even be speeded up by the SPE-project.'*