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THE EUROPEAN UNION**

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NOTE

From: General Secretariat
To: Company Law Attachés
On: 13 May 2011

Subject: Proposal for a Council Regulation on a European private company

Delegations will find attached a letter by the German State Secretary Grundmann to the Director-General Faull, as well as a drafting suggestion for Article 19, transmitted by the German delegation.

Courtesy Translation

Dr. Birgit Grundmann
State Secretary
Federal Ministry of Justice

Berlin, 12 May 2011

Mr. Jonathan Faull
Director General
Internal Market and Services
European Commission
1049 Brussels
Belgium

Dear Mr. Faull,

Following the talks with Commissioner Barnier on Monday here in Berlin on the subject of the European private company, the Federal Government has conducted intensive discussions on the current ideas of the Presidency and the Commission.

These ideas can largely be endorsed by Germany. However, there is one important point where we would like to propose that an addition be made:

According to the proposal submitted by the Presidency, every Member State should be able to decide whether it wishes to permit the separation of registered office and actual place of business for those European private companies established on its territory. This possibility should not, however, act as an incentive for establishing “letter-box companies”.

We therefore consider it to be important that where such separation is permitted, it must be ensured that the company has a minimum capital amounting to around 8,000 euros as a demonstration that the company is reputable in commercial relations. A provision to this effect could be included by means of a small addition to Article 19 of the current proposal as can be found in the annexed document.

As far as the issue of employee participation is concerned, we very much welcome the fact that when an SPE is established, there should now be no second threshold in addition to the threshold of 500 employees. I hope you will understand that at the next Attaché meeting, the German representative will again refer to a number of small amendments desired, the inclusion of which would make it easier for us to give our approval to this subject matter.

Yours sincerely

(*sgd.*) Birgit Grundmann

CHAPTER IV

CAPITAL

Article 19

Capital

1. Without prejudice to Article 43, the capital of the SPE shall be expressed in euro.
2. The capital of the SPE shall be fully subscribed.
3. The capital of the SPE shall be at least EUR 1.

Member States may set a higher minimum capital requirement for SPEs registered in their territory than the amount in the first subparagraph. However, it shall not exceed EUR 8,000. If a Member State does not impose on an SPE registered in its territory the obligation of locating its central administration or principal place of business in the same member state, the capital of the SPE shall be at least EUR 8,000.

- 3a. [...]
4. If applicable, units may not be issued at a price lower than their nominal value, or where they have no nominal value, their accountable par.

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