



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 11 December 2008**

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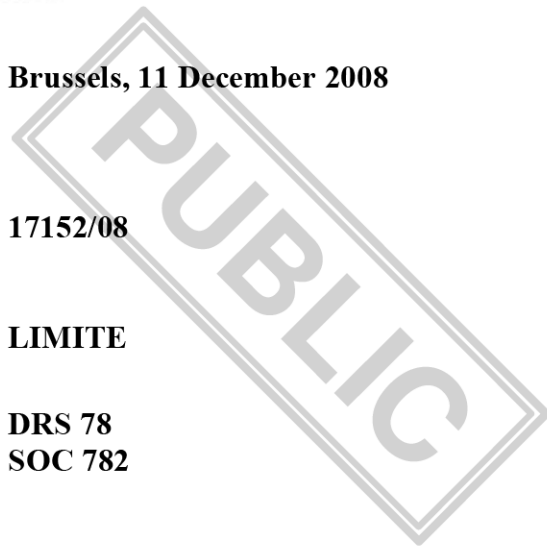
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**NOTE**

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from: Presidency  
to: Working Party on Company Law  
on: 16 December 2008

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Subject: Proposal for a Council Regulation on the Statute for a European private company (SPE)

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In view of the Working Party on Company Law on 16 December 2008, delegations will find attached a Presidency compromise text on the draft proposal.

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Presidency Compromise Proposal for a

**COUNCIL REGULATION**

**on the Statute for a European private company**

**(Text with EEA relevance)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission,<sup>1</sup>

Having regard to the opinion of the European Parliament,<sup>2</sup>

Having regard to the opinion of the European Economic and Social Committee,<sup>3</sup>

Whereas:

- (1) The legal framework in which business is carried out in the Community remains largely national. This exposes companies to a wide diversity of national laws, company forms and company regimes. The approximation of national laws by means of directives based on Article 44 of the Treaty can overcome some of these difficulties. Such approximation, however, does not release persons seeking to create companies from the obligation to adopt in each Member State a company form governed by the national law of that Member State.
- (2) Existing Community forms of company, notably the European Company (SE), whose legal form was established by Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European Company<sup>4</sup> are designed for large companies. The minimum capital requirement for an SE and the restrictions on its formation make that form of company unsuitable for many businesses, in particular of a smaller size. In view of the problems faced by such businesses as a result of the diversity of company law regimes and the unsuitability of the SE for small businesses, it is appropriate to provide for a European company form specifically designed for small businesses, which it is possible to create throughout the Community.

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<sup>1</sup> OJ C [...], [...], p. [...].

<sup>2</sup> OJ C [...], [...], p. [...].

<sup>3</sup> OJ C [...], [...], p. [...].

<sup>4</sup> OJ L 294, 10.11.2001, p.1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p.1)

- (3) Since a private company (hereinafter "SPE") which may be created throughout the Community is intended for small businesses, a legal form should be provided which is as uniform as possible throughout the Community and as many matters as possible should be left to the contractual freedom of shareholders, while a high level of legal certainty is ensured for shareholders, creditors, employees and third parties in general. Given that a high degree of flexibility and freedom is to be left to the shareholders to organise the internal affairs of the SPE, the private nature of the company should also be reflected by the fact that its shares may not be offered to the public or admitted to trading either on a regulated market or on a multilateral trading facility. However, offers of shares to less than 100 natural persons or legal bodies should be authorised as they are addressed to a restricted circle of persons. Moreover, in the interest of legal clarity, employee share schemes should be explicitly allowed.
- (4) In order to enable businesses to reap the full benefits of the internal market, the SPE should be able to transfer its registered office from one Member State to another. Other issues relating to the seat of an SPE should be governed by national law, in accordance with Community law.
- (5) To enable businesses to gain efficiencies and save costs, the SPE should be available in every Member State, with as few variations as possible as regards the company form.
- (6) To ensure a high degree of uniformity of the SPE, as many matters pertaining to the company form as possible should be governed by this Regulation, either through substantive rules or by reserving matters to the articles of association of the SPE. It is therefore appropriate to provide for a list of matters, to be set out in an Annex, in respect of which the shareholders of the SPE are obliged to lay down rules in the articles of association. In relation to those matters only Community law should apply, and consequently shareholders should be able to set out rules to regulate those matters, which are different from the rules prescribed by the law of the Member State where the SPE is registered, in relation to national forms of private limited-liability companies. However, national law should apply, provided it is not incompatible with Community law, to matters that are not regulated by the Regulation, such as insolvency, employment and taxation, or to matters that are only partly regulated by it. National law should also apply to the matters listed in Annex I to the Regulation, when these matters have not been included in the articles of association of an SPE.
- (7) In order to make the SPE an accessible company form for individuals and small businesses, Member States should allow the SPE to be created *ex nihilo* or as a result of the transformation, the merger or the division of existing national legal bodies. Member States must ensure that SPEs are not treated less favourably than national private limited-liability companies. The creation of an SPE by way of transformation, merger or division of companies should be governed by the applicable national law, including national rules prohibiting or restricting national legal bodies from transforming, merging or dividing into a national private company with limited liability.

- (8) In order to reduce the costs and administrative burdens associated with company registration, the formalities for the registration of the SPE should be limited to those requirements which are necessary to ensure legal certainty and the validity of the documents filed upon the creation of a SPE should be subject to a single verification, which may take place either before or after registration. For the purposes of registration, it is appropriate to use the registries designated by First Council Directive 68/151/EEC of 9 March 1968 on the co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community.<sup>5</sup>
- (9) Since small businesses often require long term financial and personal commitment, they should be able to adapt the structure of their share capital and the rights attached to shares to their specific circumstances. SPE shareholders should therefore be free to determine the rights attached to their shares, the procedure for the variation of those rights, the procedure to be followed if shares are transferred and any restriction on such transfer.
- (10) In order to preserve both the operation of the SPE and the freedom of shareholders, the SPE should have the possibility of applying to court to expel shareholders who seriously harm its interests and shareholders of the SPE whose interest suffered serious harm as a result of specific events should have the right to withdraw from the SPE.
- (11) The SPE should not be subject to a high mandatory capital requirement since this would be a barrier to the creation of SPEs. Creditors, however, should be protected from excessive distributions to shareholders which could affect the ability of the SPE to pay its debts. To this end, distributions that leave the SPE with liabilities exceeding the value of the assets of the SPE should be prohibited. In addition, Member States should have the possibility to require the management body of the SPE to sign a solvency certificate.
- (12) Since creditors should be granted protection in the event of a reduction of the capital of the SPE, certain rules should be laid down concerning when such reductions are to take effect.
- (13) Since small businesses need legal structures that can be adapted to their needs and size and are able to evolve as activity develops, shareholders of the SPE should be free to determine in their articles of association the internal organisation which is best suited to their needs. An SPE may opt for one or more individual managing directors, a unitary or a dual board structure. However, mandatory rules ensuring the protection of minority shareholders should be introduced in order to avoid any unfair treatment of shareholders, in particular certain key resolutions should be adopted by a majority of no less than two-thirds of the total voting rights attached to the shares issued by the SPE. While a limit may be introduced on the right to request a resolution or to request an independent expert to investigate abuses, such right may not be made conditional on the ownership of more than 5% of the voting rights of the SPE, although the articles of association of the SPE may provide for a lower threshold.

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<sup>5</sup> OJ L 65, 14.3.1968, p. 8 Directive as last amended by Directive 2006/99/EC (OJ L 363, 20.12.2006, p. 137).

- (14) In order to facilitate the operations of SPEs, the Regulation should contain minimum rules relating to the duties of their directors. However, these provisions should be limited to recalling the key principles common to all the Member States. Beyond those, the Regulation should refer the duties and liabilities of directors to national law.
- (15) Competent national authorities should monitor the completion and legality of the transfer of the registered office of an SPE to another Member State. The timely access of shareholders, creditors and employees to the transfer proposal and to the report of the management body should be ensured.
- (16) Employees' rights of participation should be governed by the legislation of the Member State in which the SPE has its registered office (the "home Member State"). The SPE should not be used for the purpose of circumventing such rights. Where the national legislation of the Member State to which the SPE transfers its registered office does not provide for at least the same level of employee participation as the home Member State, the participation of employees in the company following the transfer should in certain circumstances be negotiated. Should such negotiations fail, the provisions applying in the company before the transfer should continue to apply after the transfer.
- (17) Employees' rights other than rights of participation should remain subject to Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees<sup>6</sup>, Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies,<sup>7</sup> Council Directive 2001/23/EC of 12 March 2001 on the approximation of the law of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses<sup>8</sup> and Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community.<sup>9</sup>
- (18) The Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation, including infringements of the obligation to regulate in the articles of association of the SPE the matters prescribed by this Regulation, and should ensure that they are implemented. Those penalties must be effective, proportionate and dissuasive.
- (19) The Treaty does not provide, for the adoption of this Regulation, powers other than those under Article 308.

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<sup>6</sup> OJ L 254, 30.9.1994, p. 64 Directive as last amended by Directive 2006/109/EC (OJ L 363, 20.12.2006, p. 416).

<sup>7</sup> OJ L 225, 12.8.1998, p. 16

<sup>8</sup> OJ L 82, 22.3.2001, p. 16

<sup>9</sup> OJ L 80, 23.3.2002, p.29

- (20) Since the objectives of the proposed action cannot be sufficiently achieved by the Member States in so far as they involve the creation of a company form with common features throughout the Community and can therefore, by reason of the scale of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity laid down in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives,

HAS ADOPTED THIS REGULATION:

**CHAPTER I**  
**GENERAL PROVISIONS**

*Article 1*  
**Subject matter**

This Regulation lays down the conditions governing the establishment and operation within the Community of companies in the form of a European private company with limited liability (Societas Privata Europaea, hereinafter "SPE").

*Article 2*  
**Definitions**

For the purposes of this Regulation, the following definitions shall apply:

- (a) 'shareholder' means any natural person or legal body whose name is entered in the list of shareholders in accordance with Article 15;
- (b) 'share' means a unit of capital, expressed in percentage or number, conferring rights on the holder of the unit, which may be subject to obligations and conditions, in accordance with the articles of association of an SPE;
- (c) 'distribution' means any financial benefit derived directly or indirectly from the SPE by a shareholder, in relation to the shares held by him, including any transfer of money or property. Distributions may take the form of a dividend, be made through a purchase of property, redemption or other kind of acquisition of shares by the SPE or by any other means;

- (d) 'director' means
- (i) any individual managing director,
  - (ii) where the articles of association provide for a dual board regime, any member of the management board and of the supervisory board, if any,
  - (iii) where the articles of association provide for a unitary board regime, any member of the board of directors;
- (e) 'management body' means
- (i) one or more individual managing directors,
  - (ii) where the articles of association provide for a dual board regime, the management board,
  - (iii) where the articles of association provide for a unitary board regime, the board of directors,
- designated in the articles of association of the SPE as being responsible for the management of an SPE;
- (f) 'employee participation' means the influence of a body which represents the employees and/or of the employees' representatives in the affairs of an SPE by way of:
- (i) the right to elect or appoint some of the members of the supervisory board or board of directors of the company, or
  - (ii) the right to recommend and/or oppose the appointment of some or all of the members of the supervisory board or board of directors of the company;
- (g) 'home Member State' means the Member State in which the SPE has its registered office immediately before any transfer of its registered office to another Member State;
- (h) 'host Member State' means the Member State to which the registered office of the SPE is transferred;
- (i) 'insolvency' means insolvency proceedings defined in point (a) of Article 2 of Council Regulation (EC) No. 1346/2000;
- (j) 'winding-up' means winding-up proceedings defined in point (c) of Article 2 of Council Regulation (EC) No. 1346/2000.

*Article 3*  
**Main characteristics of an SPE**

1. An SPE shall have the following characteristics:
  - (a) its capital shall be divided into shares,
  - (b) a shareholder shall not be liable for more than the amount he has subscribed,
  - (c) it shall have legal personality,
  - (d) its shares shall not be offered to the public by the SPE or by its shareholders and shall not be traded on a regulated market or on a multilateral trading facility,
  - (e) it may be formed by one or more natural persons and/or legal bodies.
2. For the purposes of point (d) of paragraph 1, shares shall be regarded as 'offered to the public' where a communication is addressed to more than 100 persons in any form and by any means, and it presents sufficient information on the terms of the offer and the shares to be offered so as to enable an investor to decide to purchase or subscribe to these shares, including when shares are placed through financial intermediaries.

An offer of the shares of an SPE to its employees shall not be regarded as an offer to the public.
3. For the purposes of point (d) of paragraph 1, 'regulated market' means a market defined in point 14 of paragraph 1 of Article 4 of Directive 2004/39/EC<sup>10</sup> and 'multilateral trading facility' means a facility defined in point 15 of paragraph 1 of Article 4 of Directive 2004/39/EC.
4. For the purposes of point (e) of paragraph 1, 'legal bodies' shall include a European public limited-liability company as provided for in Regulation (EC) No 2001/2157, hereinafter "European Company", a European Co-operative Society as provided for in Council Regulation (EC) No 1435/2003, a European Economic Interest Grouping as provided for in Council Regulation (EEC) No 2137/85 and an SPE.

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<sup>10</sup> OJ L 145, 30.4.2004, p. 1-44



*Article 4*  
**Rules applicable to an SPE**

1. An SPE shall be governed:
  - (a) by this Regulation, and
  - (b) as regards matters listed in Annex I, by its articles of association.
2. In the case of matters that are not, or are only partly, regulated by this Regulation, and if these matters are not listed in Annex I, an SPE shall be governed by the following rules:
  - (a) the provisions of laws adopted by Member States in relation to this Regulation in order to ensure its effective application, and
  - (b) for matters not covered by point (a), the provisions of national law, including the provisions implementing Community law, which apply to private limited-liability companies in the Member State in which the SPE has its registered office, hereinafter "applicable national law".
3. Notwithstanding paragraph 1, matters listed in Annex I shall be governed by the applicable national law where such matters have not been included in the articles of association of an SPE.

***CHAPTER II***  
***FORMATION***

*Article 5*  
**Method of formation**

1. An SPE may be formed by any of the following methods:
  - (a) the creation of a SPE in accordance with this Regulation;
  - (b) the transformation of an existing legal body;
  - (c) the merger of existing legal bodies;
  - (d) the division of an existing legal body.

2. Formation of the SPE by the transformation, merger or division of existing legal bodies shall be governed by the national law applicable to the transforming legal body, to each of the merging legal bodies or to the dividing legal body. Formation by transformation shall not give rise to the winding up of the legal body or any loss or interruption of its legal personality.

The following provisions of national law shall apply to SPEs:

- (a) provisions prohibiting or restricting the transformation of certain forms of legal bodies to a private limited-liability company,
  - (b) provisions prohibiting or restricting of the merger or the division of certain forms of legal bodies where, in the case of a merger, the resulting company or, in the case of a division, at least one recipient company is a private limited-liability company.
3. Paragraph 4 of Article 3 shall apply.

#### *Article 6*

#### **Name of the company**

1. The name of an SPE shall be followed by the abbreviation "SPE".  
Only an SPE may add the abbreviation "SPE" to its name.
2. Notwithstanding paragraph 1, companies, firms and other legal bodies registered in a Member State before the date of entry into force of this Regulation, the names of which contains the abbreviation SPE, shall not be required to modify their names.

#### *Article 7*

#### **Seat of the company**

An SPE shall have its registered office and its central administration or principal place of business in the Community. The seat of the SPE shall be governed by national law in accordance with Community law.

*Article 8*  
**Articles of association**

1. An SPE shall have articles of association that cover at least the matters set out in this Regulation, as provided for in Annex I.
2. The articles of association of a SPE shall be in writing and signed by every founding shareholder.
3. The articles of association and any amendments thereto may be relied upon in accordance with the provisions of the applicable national law implementing paragraphs 5, 6 and 7 of Article 3 of Directive 68/151/EEC.<sup>11</sup>

*Article 9*  
**Formalities relating to registration**

1. Application for registration shall be made by the founding shareholders of the SPE or by any person authorised by them. Such application may be made by electronic means, in accordance with the provisions of the applicable national law implementing Article 3 of Directive 68/151/EEC.
2. Member States shall not require any particulars and documents to be supplied upon application for the registration of a SPE other than the following:
  - (a) the name of the SPE and the address of its registered office;
    - a. the object or business activity of the SPE;
    - b. the names, addresses and any other information necessary to identify
      - (i) the directors of the SPE,
      - (ii) any other person who is authorised to represent the SPE in dealings with third parties and in legal proceedings,
      - (iii) the auditor of the SPE, if any;
    - c. the share capital of the SPE and the amount that is paid up;

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<sup>11</sup> OJ L 65, 14.3.1968, p. 8

- d. the share classes and the number of shares in each share class;
  - e. the total number of shares;
  - f. if the shares have nominal value, the nominal value;
  - g. the name and address of the branches of an SPE, the information necessary to identify the register of the branch and its number of entry;
  - h. the articles of association of the SPE;
  - i. subject to paragraph 6 of Article 15, the list of shareholders;
  - j. the proof of the payment of consideration is cash or of the provision of consideration in kind;
  - k. if applicable, the statement of compliance;
  - l. where the SPE was formed as a result of a transformation, merger or division of companies, the resolution on the transformation, merger or division that led to the creation of the SPE and proof that the requirements of the applicable national law regarding the protection of creditors and minority shareholders have been complied with.
3. The documents and particulars referred to in paragraph 2 shall be provided in the language required by the applicable national law.
  4. The compliance of the documents and particular of an SPE with this Regulation, the articles of association and national law shall be subject to a single control. This control shall be carried out in accordance with the applicable national law; in particular by a notary, a judicial body, another competent authority and/or by self-certification, including by an authorised signatory. However, there shall be no duplication of substantive controls of the documents and particulars.
  5. The management body of an SPE shall submit any change in the particulars or documents referred to in points (a) to (l) of paragraph 2 to the register within 14 calendar days of the day on which the change takes place. After every amendment to the articles of association, the SPE shall submit its complete text to the register as amended to date. The submission of the changes may be done by electronic means in accordance with the second sentence of paragraph 1. Paragraphs 3 and 4 shall apply.
  6. The registration of an SPE shall be disclosed.

*Article 10*  
**Registration**

1. Each SPE shall be registered in the Member State in which it has its registered office in a register designated by the applicable national law in accordance with Article 3 of Directive 68/151/EEC.
2. The SPE shall acquire legal personality on the date on which it is entered in the register.
3. In the case of a merger by acquisition, the acquiring company shall adopt the form of an SPE on the day the merger is registered.  
  
In the case of a division by acquisition, the recipient company shall adopt the form of an SPE on the day the division is registered.
4. Paragraph 1 shall apply to the registration of any change in the documents and particulars of an SPE.

*Article 11*  
**Disclosure**

1. The disclosure of the documents and particulars concerning an SPE which must be disclosed under this Regulation shall be effected in accordance with the applicable national law implementing Article 3 of Directive 68/151/EEC.
2. The letters and order forms of an SPE, whether they are in paper or electronic form, as well as its website, if any, shall state the following particulars:
  - (a) the information necessary to identify the register referred to in Article 10, with the number of entry of the SPE in that register;
  - (b) the name of the SPE, the address of its registered office and, where appropriate, the fact that the company is being wound up.

*Article 12*  
**Liability for acts undertaken before the registration of an SPE**

Liability for acts undertaken before the registration of an SPE shall be governed by the applicable national law, including the provisions implementing Article 7 of Directive 68/151/EEC.

*Article 13*  
**Branches**

Branches of an SPE shall be governed by the law of the Member State in which the branch is located, including the relevant provisions implementing Council Directive 89/666/EEC.<sup>12</sup>

**CHAPTER III**  
**SHARES**

*Article 14*  
**Shares**

1. The shares of the SPE shall be entered in the list of shareholders.
2. Shares carrying the same rights and obligations shall constitute one class.
3. Subject to Article 28, the adoption of an amendment to the articles of association of the SPE or any other resolution of the shareholders which varies the rights attached to a class of shares (including any change to the procedure for varying the rights attached to a class of share) shall require the consent of a majority of not less than two-thirds of the voting rights attached to the shares issued in each class that is affected by the change.
4. Where a share is owned by more than one person, those persons shall be regarded as one shareholder in relation to the SPE. They shall exercise their rights through a common representative and shall notify the management body of the SPE, without undue delay, of the name of the common representative and any change thereto. Until such notification, the exercise of their rights in the SPE shall be suspended. They shall be jointly and severally liable for the commitments attached to the share.
5. The provisions of the applicable national law on share certificates shall not apply.

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<sup>12</sup> OJ L 395, 30.12.1989, p. 36

*Article 15*  
**List of shareholders**

1. The management body of the SPE shall draw up a list of shareholders. The list shall contain at least the following:
  - (a) the name and address of each shareholder;
  - (b) the number of shares held by the shareholder concerned and, if they have nominal value, their nominal value;
  - (c) where a share is owned by more than one person, the names and addresses of the co-owners and of the common representative;
  - (d) the date of acquisition of the shares;
  - (e) the amount of each consideration in cash, if any, paid or to be paid by the shareholder concerned;
  - (f) the value and nature of each consideration in kind, if any, provided or to be provided by the shareholder concerned;
  - (g) the date on which a shareholder ceases to be a member of the SPE.
2. Entries in the list of shareholders shall include the date on which they have been entered.

Information deleted from the list of shareholders shall be stored by the SPE for 10 years of the day of the deletion.
3. In case shareholders provide the SPE with a service address in addition to their personal address, only the service address may be disclosed to third parties.
4. On written notification of a transfer of shares, the management body shall, without undue delay, enter the shareholder in the list of shareholders, subject to compliance with this Regulation and the rules regarding restrictions and prohibitions of the transfer of shares in the articles of association, provided that the shareholder submits reasonable evidence as to his lawful ownership of the share.

5. The list of shareholders shall, unless proven otherwise, constitute evidence of the accuracy of the matters listed in points (a) to (g) of paragraph 1. Only shareholders registered in the list of shareholders may exercise the rights of shareholders deriving from this Regulation and the articles of association, with regard to the SPE.
6. The list of shareholders and any amendments thereto shall be disclosed.

However, Member States may decide not to require the disclosure of the list of shareholders. In this case, the list of shareholders shall be kept by the management body and may be inspected by the shareholders or third parties on request.

#### *Article 16*

#### **Transfer of shares**

Subject to Article 28, a decision introducing or amending a restriction on or prohibition of the transfer of shares may be adopted only with the consent of all shareholders affected by the restriction or prohibition in question.

#### *Article 17*

#### **Expulsion of a shareholder**

1. A shareholder may be expelled from an SPE if he has caused serious harm to the SPE's interest or the continuation of the shareholder as a member of the SPE is detrimental to its proper operation.
2. The management body of the SPE shall request a resolution of the shareholders regarding the expulsion. The shareholder concerned shall not have the right to vote when this decision is taken and his shares shall be excluded from the calculation of the quorum and voting rights.

The resolution shall be preceded by a written notice by the management body to the shareholder concerned.

3. The shareholders of the SPE or the SPE shall have the right to buy the shares of the shareholder concerned at an equitable price.
4. In the case of a dispute regarding the equitable price of the shares, the value shall be determined by an independent expert appointed by the parties or, failing an agreement between them, by the competent court or administrative authority.



5. Where no agreement is reached within the deadline set out in the articles of association, the shareholder shall have the right to sell his shares to third parties. The provisions of the articles of association on the restriction or prohibition of the transfer of shares shall not apply.
6. The amount corresponding to the price of the shares shall be paid to the shareholder who is expelled from the SPE.
7. In the case of a dispute between the parties, on the application of the concerned shareholder or on the basis of a resolution of the shareholders and on an application by the SPE, the competent court may order the expulsion of a shareholder.
8. If the court orders the expulsion of a shareholder, it shall decide whether his shares are to be acquired by the other shareholders and/or by the SPE itself and/or on payment of the equitable price of the shares. Paragraph 6 shall apply.

#### *Article 18*

#### **Withdrawal of a shareholder**

1. A shareholder shall have the right to withdraw from the SPE if the activities of the SPE are being or have been conducted in a manner which causes serious harm to the interests of the shareholder as a result of one or more of the following events:
  - (a) the SPE has been deprived of a significant part of its assets;
  - (b) the registered office of the SPE has been transferred to another Member State;
  - (c) the activities of the SPE have changed substantially;
  - (d) any other situation set out in the articles of association.
2. The shareholder shall submit his withdrawal in writing to the SPE stating his reasons for the withdrawal.
3. The management body of the SPE shall, on receipt of the notice referred to in paragraph 2, without undue delay, request a resolution of the shareholders on the withdrawal. The shareholder concerned shall not have the right to vote when this decision is taken and his shares shall be excluded from the calculation of the quorum and voting rights.

4. The shareholders of the SPE or the SPE shall have the right to buy the shares of the shareholder concerned at an equitable price.
5. In the case of a dispute regarding the equitable price of the shares, their value shall be determined by an independent expert appointed by the parties or, failing an agreement between them, by the competent court or administrative authority.
6. Where the shareholders of the SPE fail to adopt a resolution referred to in paragraph 3 or do not accept the shareholder's reasons for withdrawal within 60 calendar days of the submission of the notice referred to in paragraph 2, the management body shall notify the shareholder of that fact without undue delay.
7. Where no agreement is reached within the deadline set out in the articles of association, the shareholder shall have the right to sell his shares to third parties. The provisions of the articles of association on the restriction or prohibition of the transfer of shares shall not apply.
8. The amount corresponding to the price of the shares shall be paid to the shareholder who has withdrawn from the SPE.
9. On an application of the shareholder, the competent court may, if satisfied that the interests of the shareholder have suffered serious harm, order the acquisition of his shares by the other shareholders and/or by the SPE itself and/or the payment of the equitable price of the shares. Paragraph 8 shall apply.

***CHAPTER IV***  
***CAPITAL***

*Article 19*  
**Share 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.
4. Shares may not be issued at a price lower than their nominal value, or where they have no nominal value, their accountable par.

*Article 20*  
**Consideration for shares**

1. In the case of shares issued for consideration in cash, the shareholder shall pay up on issue at least 25 % of their nominal value or, where they have no nominal value, their accountable par.

In the case of shares issued for consideration in kind, the shareholder shall provide the consideration in full within 5 years of the issue of the share.

2. Provision of work or services may not be accepted as consideration in kind.
3. Except in the case of a reduction of the subscribed capital, shareholders may not be released from the obligation to pay or provide the agreed consideration.

*Article 21*  
**Distributions**

1. Except in the case of a reduction of the subscribed capital, the SPE may not make a distribution to its shareholders if on the closing date of the last financial year the net assets as set out in the SPE's annual accounts are, or following such a distribution would become, lower than the amount of the subscribed capital plus those reserves which may not be distributed under the applicable national law or the articles of association of the SPE. Where the uncalled part of the subscribed capital is not included in the assets shown in the balance sheet, this amount shall be deducted from the amount of the subscribed capital.
2. The amount of a distribution to shareholders may not exceed the amount of the profits at the end of the last financial year plus any profits brought forward and sums drawn from reserves available for this purpose, less any losses brought forward and sums placed to reserve in accordance with the applicable national law or the articles of association of the SPE.
3. If the articles of association allow for the payment of interim dividends, the following provisions shall apply:
  - (i) interim accounts shall be drawn up showing that the funds available for distribution are sufficient, and
  - (ii) the amount to be distributed may not exceed the total profits made since the end of the last financial year for which the annual accounts have been drawn up, plus any profits brought forward and sums drawn from reserves available for this purpose, less losses brought forward and sums to be placed to reserve in accordance with the applicable national law or the articles of association of the SPE.

4. Member States may require that the management body of the SPE, in addition to complying with paragraphs 1-3, shall sign a statement, hereinafter a 'solvency certificate', before a distribution is made, certifying that the SPE will be able to pay its debts as they become due in the normal course of business within one year of the date of the distribution. Shareholders shall be provided with the solvency certificate before the resolution on the distribution referred to in Article 28 is taken.

The solvency certificate shall be disclosed.

#### *Article 22*

#### **Recovery of distributions**

Any shareholder who has received distributions made contrary to Article 21 must return those distributions to the SPE, provided that the SPE proves that the shareholder knew or in view of the circumstances should have been aware of the irregularities.

#### *Article 23*

#### **Own shares**

1. The SPE shall not, directly or indirectly, subscribe for its own shares.
2. An SPE may only acquire its own shares from the amount available for distribution in accordance with Article 21. Paragraph 4 of Article 21 and Article 22 shall apply. Shares may not be acquired by the SPE unless they are fully paid.

The SPE shall always have at least one share held by a shareholder different from the SPE.

3. The right to vote and other non-pecuniary rights as well as the pecuniary rights attached to the SPE's own shares shall be suspended, while the SPE is the registered owner of its own shares.
4. Where the SPE cancels its own shares, its subscribed capital shall be reduced accordingly.
5. Shares acquired by the SPE in contravention of this Regulation or the articles of association shall be sold or cancelled within one year of their acquisition.
6. This Article shall apply mutatis mutandis to any shares subscribed or acquired by a person acting in his own name but on behalf of the SPE and by a subsidiary of the SPE.

*Article 24*  
**Capital reduction**

1. The resolution of the shareholders to reduce the subscribed capital of the SPE shall be disclosed. The resolution shall state the purpose of the reduction, in particular whether it is to make a distribution to shareholders or to offset losses incurred by the SPE. The management body of the SPE shall notify its known creditors directly about the reduction of the subscribed capital.
2. The subscribed capital may not be reduced below the amount set out in paragraph 3 of Article 19.

Except for the case where the purpose of the reduction of the capital is to offset losses incurred by the SPE, those creditors whose claims antedate the disclosure of the resolution shall have the right to request the SPE to provide them with adequate safeguards.

Requests for adequate safeguards shall be submitted within 30 calendar days of the disclosure of the resolution.

The SPE shall be required to provide safeguards if the creditor credibly demonstrates that due to the reduction in the capital the satisfaction of his claims is at stake, and the SPE has not provided him with adequate safeguards.

The management body shall reply to the request for adequate safeguards of the creditor within 30 calendar days of the submission of the request.

3. If the SPE does not provide adequate safeguards or the creditor considers the safeguard unsatisfactory, the creditor shall have the right to apply to the competent court for an order that the SPE provide them with adequate safeguard. An application shall be made within 30 calendar days of the response of the SPE to the request or in the absence of a response, within 60 calendar days of the submission of the request.

The court may order the SPE to provide safeguards if the creditor credibly demonstrates that due to the reduction in the capital the satisfaction of his claims is at stake, and that no adequate safeguards have been obtained from the SPE.

4. A capital reduction shall take place as follows:
  - (a) where the SPE has no creditors at the time when the resolution is adopted or if the purpose of the reduction of the capital is to offset losses incurred by the SPE, on its adoption;
  - (b) where the SPE has creditors at the time when the resolution is adopted and no creditor has submitted a request to the SPE within 30 calendar days of the disclosure of the resolution of the shareholders, on the thirty-first calendar day following that disclosure;

- (c) where the SPE has creditors at the time when the resolution is adopted and a request has been submitted to the SPE by a creditor within 30 calendar days of the disclosure of the resolution of shareholders and no application is made to the court, on the sixty-first day following the disclosure of the resolution;
  - (d) where the SPE has creditors at the time when the resolution is adopted, a request has been submitted to the SPE by a creditor and an application is made to the court within the deadline set out in paragraph 3, on the first date on which the SPE has complied with all orders by the competent court to provide adequate safeguards or, if earlier, the first date on which the court has determined, in relation to all applications that the SPE need not provide any safeguards.
5. If, as a result of a reduction of the subscribed capital, a distribution is made to the shareholders, Articles 21 and 22 shall apply.
  6. If the purpose of a reduction of the capital is to offset losses incurred by the SPE, the reduced amount may be used only for this purpose and shall not be distributed to the shareholders.
  7. A capital reduction shall be disclosed.
  8. In the case of a capital reduction, the equal treatment of shareholders in the same position shall be ensured.

#### *Article 25*

#### **Financial assistance**

If the articles of association authorise an SPE to provide financial assistance, in particular to advance funds, make loans or provide security, with a view to the acquisition of its shares by a third party, the financial assistance may only be provided from the amount available for distribution in accordance with Article 21. Paragraph 3 of Article 21 shall apply. Financial assistance shall be governed by the provisions of the applicable national law implementing Council Directive 77/91/EEC.

#### *Article 26*

#### **Accounts and statutory audit**

1. An SPE shall be subject to the requirements of the applicable national law, including the provisions implementing directives 78/660/EEC, 83/349/EEC and 2006/43/EC, as regards the preparation, filing, auditing and publication of accounts.
2. The management body shall keep the accounting records of the SPE.

**CHAPTER V**  
**ORGANISATION OF THE SPE**

*Article 27*

**General provisions**

1. The SPE shall have a management body, which shall be responsible for the management of the SPE. The management body may exercise all the powers of the SPE not required by this Regulation or the articles of association to be exercised by the shareholders.
2. The shareholders shall determine the organisation of the SPE, subject to this Regulation.
3. If the management body of an SPE consists of a board of directors, the SPE may not have a supervisory board.

*Article 28*

**Resolutions of shareholders**

1. Without prejudice to paragraph 2, at least the following matters shall be decided by a resolution of the shareholders by a majority as defined in the articles of association of the SPE:
  - (a) variation of rights attaching to shares;
  - (b) expulsion of a shareholder;
  - (c) withdrawal of a shareholder;
  - (d) approval of the annual accounts;
  - (e) distribution to the shareholders;
  - (f) acquisition of own shares;
  - (g) increase of share capital;
  - (h) reduction of share capital;
  - (i) appointment and removal of directors and their terms of office;

- (j) where the SPE has an auditor, appointment and removal of the auditor;
- (k) transfer of the registered office of the SPE to another Member State;
- (l) transformation of the SPE;
- (m) mergers and divisions;
- (n) winding up;
- (o) amendments to the articles of association, not covering matters mentioned in points (a) to (n).

2. Resolutions on the matters indicated in points (a), (b), (c), (f), (g), (h), (k), (l), (m), (n) and (o) of paragraph 1 shall be taken by a qualified majority.

For the purposes of the first subparagraph, the qualified majority may not be less than two-thirds of the total voting rights attached to the shares issued by the SPE.

The own shares of the SPE shall be excluded from the calculation of the quorum and voting rights.

3. The adoption of resolutions shall not require the organisation of a general meeting. The management body shall provide all shareholders with the proposals for resolutions together with sufficient information to enable them to take an informed decision. Resolutions shall be recorded in writing. Copies of the decisions taken shall be sent to every shareholder.

4. Resolutions of the shareholders shall comply with this Regulation and the articles of association of the SPE.

The right of shareholders to challenge resolutions shall be governed by the applicable national law.

5. If the SPE has only one shareholder, he shall exercise the rights and fulfill the obligations of the shareholders of the SPE set out in this Regulation and the articles of association of the SPE.

6. Resolutions on matters indicated in paragraph 1 shall be disclosed.

7. Resolutions may be relied on in accordance with the provisions of the applicable national law implementing paragraphs 5, 6 and 7 of Article 3 of Directive 68/151/EEC.



*Article 29*

**Information rights of shareholders**

1. Shareholders shall have the right to be duly informed and to ask questions to the management body about resolutions, annual accounts and all other matters relating to the activities of the SPE.
2. The management body may refuse to give access to the information only if doing so could cause serious harm to the business interests of the SPE.

*Article 30*

**Right to request a resolution and right to request an independent expert**

1. Shareholders holding 5% of the voting rights attached to the shares of the SPE shall have the right to request the management body to submit a proposal for a resolution to the shareholders.

The request must state the reasons and indicate the matters that should be subject to such resolution.

If the request is refused or if the management body does not submit a proposal within 14 calendar days of receiving the request, the shareholders concerned may then submit a proposal for a resolution to the shareholders regarding the matters in question.

2. In the case of suspicion of serious breach of law or of the articles of association of the SPE, shareholders holding 5% of the voting rights attached to the shares of the SPE shall have the right to request the competent court or administrative authority to appoint an independent expert to investigate and report on the findings of the investigation to shareholders.

The expert shall be allowed access to the documents and records of the SPE and to require information from the management body.

3. The articles of association may grant the rights set out in paragraphs 1 and 2 to individual shareholders or to shareholders holding less than 5% of the voting rights attached to the shares of the SPE.

### *Article 31*

#### **Directors**

1. A natural or a legal person may be a director of an SPE.  
  
If the articles of association allow a legal person to become a director of an SPE, it shall designate a natural person to comply with its duties as a director.
2. A person who acts as a director without having been formally appointed shall be considered a director as regards all duties and liabilities to which the latter are subject.
3. A person who is disqualified under national law from serving as a director of a company by a judicial or administrative decision of a Member State may not become or serve as a director of an SPE.
4. Disqualification of a person serving as a director of the SPE shall be governed by the applicable national law.

### *Article 32*

#### **General duties of directors**

1. A director shall have a duty to act in the best interests of the SPE.
2. He shall act with the care and skill that can reasonably be required in the conduct of the business.

### *Article 33*

#### **Related party transactions**

Related party transactions shall be governed by the provisions of the applicable national law implementing Council Directives 78/660/EEC<sup>13</sup> and 83/349/EEC.<sup>14</sup>

### *Article 34*

#### **Representation of the SPE in relation to third parties**

1. The SPE shall be represented in relation to third parties by one or more directors. However, members of the supervisory board may not represent an SPE.

Acts undertaken by the directors shall be binding on the SPE even if they are not within the objects of the SPE.

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<sup>13</sup> OJ L 222, 14.8.1978, p. 11

<sup>14</sup> OJ L 193, 18.7.1983, p. 1

2. The articles of association of the SPE may provide that directors are to exercise jointly the general power of representation. Any other limitation of the powers of the directors, following from the articles of association, a resolution of shareholders or a decision of the management body or supervisory board, if any, may not be relied on against third parties even if they have been disclosed.
3. Directors may delegate the right to represent the SPE in accordance with the articles of association.

**CHAPTER VI**  
**EMPLOYEE PARTICIPATION**

*Article 35*  
**General provisions**

1. The SPE shall be subject to the rules on employee participation, if any, applicable in the Member State in which it has its registered office, subject to the provisions of this Article.
2. In the case of the transfer of the registered office of an SPE Article 39 shall apply.
3. In the case of a cross-border merger of an SPE with an SPE or other company registered in another Member State, the provisions of the laws of the Member States implementing Directive 2005/56/EC of the European Parliament and of the Council<sup>15</sup> shall apply.

**CHAPTER VII**  
**TRANSFER OF THE REGISTERED OFFICE OF THE SPE**

*Article 36*  
**General provisions**

1. The registered office of an SPE may be transferred to another Member State in accordance with this Chapter.

The transfer of the registered office of an SPE shall not result in the winding-up of the SPE or in any interruption or loss of the SPE's legal personality or affect any right or obligation under any contract entered into by the SPE existing before the transfer.

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<sup>15</sup> OJ L310, 25.11.2005, p. 1

2. Paragraph 1 shall not apply to SPEs against which proceedings for winding-up, liquidation, insolvency or suspension of payments have been brought, or in respect of which preventive measures have been taken by the competent authorities to avoid the opening of such proceedings.
3. A transfer shall take effect on the date of registration of the SPE in the host Member State. From that date, for matters covered by paragraphs 2 and 3 of Article 4, the SPE shall be regulated by the law of the host Member State.
4. For the purpose of judicial or administrative proceedings commenced before the transfer of the registered office, the SPE shall be considered, following the registration referred to in paragraph 3, as having its registered office in the home Member State.

#### *Article 37*

#### **Transfer procedure**

1. The management body of an SPE planning a transfer shall draw up a transfer proposal, which shall include at least the following particulars:
  - (a) the name of the SPE, the address of its registered office in the home Member State, the information necessary to identify the register referred to in Article 10 and the number of entry of the SPE in that register;
  - (b) the name of the SPE and the address of its proposed registered office in the host Member State;
  - (c) the proposed articles of association for the SPE in the host Member State;
  - (d) the proposed timetable for the transfer;
  - (e) the consequences of the transfer for employees, and the proposed measures concerning them;
  - (f) where appropriate, detailed information on the transfer of the central administration or principal place of business of the SPE.
2. At least one month before the resolution of the shareholders referred to in point (k) of paragraph 1 of Article 28 is taken, the management body of the SPE shall:
  - (a) submit the transfer proposal to the shareholders and employee representatives, or where there are no such representatives, to the employees of the SPE for examination and make it available to the creditors for inspection;
  - (b) disclose the transfer proposal.

3. The management body of the SPE shall draw up a report to the shareholders explaining and justifying the legal and economic aspects of the proposed transfer and setting out the implications of the transfer for shareholders, creditors and employees. The report shall be submitted to the shareholders and the employee representatives, or where there are no such representatives, to the employees themselves together with the transfer proposal. At the same time, the report shall be made available to the creditors for inspection.

Where the management body receives in time the opinion of the employee representatives on the transfer, that opinion shall be submitted to the shareholders.

4. Where the SPE is subject to an employee participation regime, shareholders may reserve the right to make the implementation of the transfer conditional on their express ratification of the arrangements with respect to the participation of employees in the host Member State.
5. Without prejudice to Article 18, the protection of any minority shareholders who oppose the transfer and of the creditors of the SPE shall be governed by the law of the home Member State.

#### *Article 38*

#### **Scrutiny of the legality of the transfer**

1. Each Member State shall designate a competent authority to scrutinise the legality of the transfer by verifying compliance with the transfer procedure laid down in Article 37.
2. The competent authority of the home Member State shall verify, without undue delay, that the requirements of Article 37 have been met and, if that is found to be the case, shall issue a certificate confirming that all the formalities required under the transfer procedure have been completed in the home Member State.
3. Within one month of the receipt of the certificate referred to in paragraph 2, the SPE shall present the following documents to the competent authority in the host Member State:
  - (a) the certificate provided for in paragraph 2;
  - (b) the transfer proposal, as approved by the shareholders.

Those documents shall be deemed to be sufficient to enable the registration of the SPE in the host Member State.

4. The competent authority in the host Member State shall, within 14 calendar days of receipt of the documents referred to in paragraph 3, verify that the substantive and formal conditions required for the transfer of the registered office are met and if that is found to be the case, take the measures necessary for the registration of the SPE.
5. The competent authority of the host Member State may refuse to register an SPE only on the grounds that the SPE does not meet all the substantive or formal requirements under this Chapter. The SPE shall be registered when it has fulfilled all requirements under this Chapter.
6. Using the notification form set out in Annex II, the competent authority of the host Member State shall, without undue delay, notify the competent authority responsible for removing the SPE from the register in the home Member State of the registration of the SPE in the host Member State.  
  
Removal from the register shall be effected as soon as, but not before, a notification has been received.
7. Registrations in the host Member State and removals from the register in the home Member State shall be disclosed.

#### *Article 39*

#### **Arrangements for the participation of employees**

1. The SPE shall be subject, as from the date of registration, to the rules in force in the host Member State, if any, concerning arrangements for the participation of employees.
2. Paragraph 1 shall not apply where the employees of the SPE in the home Member State account for at least one third of the total number of employees of the SPE including subsidiaries or branches of the SPE in any Member State, and where one of the following conditions is met:
  - (a) the legislation of the host Member State does not provide for at least the same level of participation as that operated in the SPE in the home Member State prior to its registration in the host Member State. The level of employee participation shall be measured by reference to the proportion of employee representatives amongst the members of the board of directors or supervisory board or their committees or of the management group which covers the profit units of the SPE, subject to employee representation;
  - (b) the legislation of the host Member State does not confer on the employees of establishments of the SPE that are situated in other Member States the same entitlement to exercise participation rights as such employees enjoyed before the transfer.

3. Where one of the conditions set out in points a) or b) of paragraph 2 is met, the management body of the SPE shall take the necessary steps, as soon as possible, after disclosure of the transfer proposal, to start negotiations with the representatives of the SPE's employees with a view to reaching an agreement on arrangements for the participation of the employees.
4. The agreement between the management body of the SPE and the representatives of the employees shall specify:
  - (a) the scope of the agreement;
  - (b) where, during the negotiations, the parties decide to establish arrangements for participation in the SPE following the transfer, the substance of those arrangements including, where applicable, the number of members in the company's board of directors or supervisory board employees will be entitled to elect, appoint, recommend or oppose, the procedures as to how these members may be elected, appointed, recommended or opposed by employees, and their rights;
  - (c) the date of entry into force of the agreement and its duration, and any cases in which the agreement should be renegotiated and the procedure for its renegotiation.
5. Negotiations shall be limited to a period of six months. The parties may agree to extend negotiations beyond this period for an additional six-month period. The negotiations shall otherwise be governed by the law of the home Member State.
6. In the absence of an agreement, the participation arrangements existing in the home Member State shall be maintained.

***CHAPTER VIII***  
***RESTRUCTURING, DISSOLUTION AND NULLITY***

*Article 40*  
**Restructuring**

The transformation to a national legal form, merger and division of the SPE shall be governed by the applicable national law.

*Article 41*  
**Dissolution**

1. The SPE shall be dissolved in the following circumstances:
  - (a) by expiry of the period for which it was established;
  - (b) by the resolution of the shareholders;
  - (c) in cases set out in the applicable national law.
2. Winding-up, liquidation, insolvency, suspension of payments and similar procedures shall be governed by the applicable national law and by Council Regulation (EC) No 1346/2000.<sup>16</sup>
3. Dissolution of the SPE shall be disclosed.

*Article 42*  
**Nullity**

The nullity of the SPE shall be governed by the provisions of the applicable national law implementing Article 11(1) of Directive 68/151/EEC, points (a), (b), (c) and (e), except for the reference in point (c) to the objects of the company, of Article 11(2) and Article 12 of that Directive.

**CHAPTER IX**  
**ADDITIONAL AND TRANSITIONAL PROVISIONS**

*Article 43*  
**Use of national currency**

1. Member States in which the third phase of the economic and monetary union (EMU) does not apply may require SPEs having their registered office in their territory to express their capital in the national currency. An SPE may also express its capital in euro. The national currency/euro conversion rate shall be as on the last day of the month preceding the registration of the SPE.
2. An SPE may prepare and publish its annual and, where applicable, consolidated accounts in euro in Member States where the third phase of the economic and monetary union (EMU) does not apply. However such Member States may also require SPEs to prepare and publish their annual and, where applicable, consolidated accounts in the national currency in accordance with the applicable national law.

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<sup>16</sup> OJ L 160, 30.6.2000, p. 1



**CHAPTER X**  
**FINAL PROVISIONS**

*Article 44*

**Effective application**

Member States shall make such provision as is appropriate to ensure the effective application of this Regulation.

*Article 45*

**Penalties**

The Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by [1 July 2010] at the latest and shall notify it without delay of any subsequent amendment affecting them.

*Article 46*

**Notification of private limited-liability companies**

Member States shall notify the form of private limited-liability company referred to in the second paragraph of Article 4 to the Commission by [1 July 2010] at the latest.

The Commission shall publish this information in the *Official Journal of the European Union*.

*Article 47*

**Obligations of authorities responsible for registers**

1. The authorities responsible for the register referred to in paragraph 1 of Article 10 shall notify the Commission before 31 March each year, of the name, registered office and registration number of the SPEs registered in and removed from the register in the preceding calendar year as well as the total number of registered SPEs.
2. The authorities referred to in paragraph 1 shall cooperate with each other to ensure that the documents and particulars of the SPEs listed in paragraph 2 of Article 9 are also accessible through the registers of all other Member States.

*Article 48*

**Review**

The Commission shall, five year after the entry into force of this Regulation, review its application.

*Article 49*

**Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [1 July 2010].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [...]

*For the Council*

*The President*

[...]

## ANNEX I

**The articles of association of an SPE shall regulate at least the following:**

### ***Chapter II – Formation***

- the name of the SPE and the address of its registered office,
- the object or business activity of the SPE,
- the share capital of the SPE and the amount to be paid up on formation;
- the names and addresses of the founding shareholders, the number of shares subscribed for by each founding shareholder and, if they have nominal value, their nominal value;
- the amount of each consideration in cash, if any, to be paid by each founding shareholder;
- the value and nature of each consideration in kind, if any, to be provided by each founding shareholder;
- any terms and conditions of the subscription of shares;
- the names, addresses and any other information necessary to identify
  - (i) the directors of the SPE,
  - (ii) any other person who is authorised to represent the SPE in dealings with third parties and in legal proceedings.
  - (iii) the auditor of the SPE, if any,
- the name and address of the branches of an SPE, the information necessary to identify the register of the branch and its number of entry,

### ***Chapter III - Shares***

- the share classes and the number of shares in each share class,
- the total number of shares,
- whether sub-division, consolidation or redenomination of the shares is permitted and any applicable requirements,
- the pecuniary and non-pecuniary rights and the obligations attached to the shares (share classes), in particular
  - (a) the participation in the assets and profits of the company, if any,
  - (b) the votes attached to the shares, if any,
- the procedure for agreeing on any variation of the rights and obligations attached to the shares (share classes), and, subject to Article 14(3), the required majority of voting rights,
- whether there are any pre-emption rights either on issue or on transfer of shares, and any applicable requirements,

- whether the transfer of shares is restricted or prohibited, and the details of the restriction or prohibition, in particular the form, time limit, the applicable procedure,
- whether the approval of the share transfer by the SPE or by the shareholders is required or other rights are provided for shareholders or for the SPE on the transfer of shares (for example, right of first refusal), and if so, a deadline by which the transferor is to be notified of the decision,
- without prejudice to this Regulation, the conditions and the procedure of the expulsion and the withdrawal of a shareholder,
- whether, in addition to Article 17, shareholders have any rights to require other shareholders to sell their shares, and any applicable requirements,
- whether, in addition to Article 18, shareholders have the right to sell their shares to other shareholders or to the SPE, who are obliged to buy those shares, and the applicable requirements,

#### ***Chapter IV – Capital***

- the financial year of the SPE and how it may be changed,
- whether the SPE is required to establish, in addition to the legal reserves, reserves and if so, the type of reserve, the circumstances in which it is to be established and whether it is distributable,
- whether consideration in kind is to be evaluated by an independent expert or by the shareholders and any formalities that must be complied with,
- without prejudice to this Regulation, the time when the payment or provision of the consideration is to be made and any conditions relating to such payment or provision,
- without prejudice to this Regulation, whether or not the SPE can provide financial assistance, in particular advance funds, make loans or provide security, with a view to the acquisition of its shares by a third party, and whether the shareholders or the management body decides on such assistance,
- without prejudice to this Regulation, whether interim dividends can be paid and any applicable requirements,
- whether the acquisition of own shares is permitted and, if permitted, the procedure to be followed, including the conditions under which the shares may be held, transferred or cancelled,
- without prejudice to this Regulation, the procedure for increasing, reducing or otherwise changing the share capital, and any applicable requirements,

#### ***Chapter V – Organisation of the SPE***

- the method of adopting shareholder resolutions,
- subject to the provisions of this Regulation, the majority required to adopt shareholder resolutions,
- whether there are resolutions to be adopted by the shareholders, in addition to those listed in Article 28(1), the quorum and the required majority of voting rights,

- subject to Articles 21, 28 and 30, the rules on proposing resolutions,
- the period of time and the manner in which the shareholders are to be informed of proposals for shareholder resolutions and, if the articles of association provide for general meetings, general meetings,
- the way in which the shareholders obtain the text of any proposed shareholder resolution and any other preparatory documents in relation to the adoption of a resolution,
- the manner in which copies of an adopted resolution are made available to the shareholders,
- where the articles of association provide for the adoption of some or all resolutions at a general meeting, the manner of convening the general meeting, the working methods and the rules on voting by proxy,
- the procedure and time limits for the SPE to respond to requests from shareholders for information, to grant access to the documents of the SPE, and to notify resolutions that have been adopted by shareholders,
- whether the SPE's management body is composed of one or more managing directors, a management board (dual board regime) or a board of directors (unitary board regime),
- where there is a board of directors (unitary board regime), its composition and organisation,
- where there is a management board (dual board regime), its composition and organisation,
- where there is a management board or one or more managing directors, whether the SPE has a supervisory board, and if so, its composition and organisation and its relationship with the management body,
- the method of recording the decisions of the management body,
- whether a legal person can be a director in the SPE,
- whether there are any eligibility criterion of directors,
- the procedure for appointing and removing directors,
- in cases where the applicable national law does not require an SPE to have an auditor, whether the SPE has an auditor and where the articles of association provide that the SPE should have an auditor, the procedure for his appointment, removal and resignation,
- whether there are any specific duties of directors other than those mentioned in this Regulation,
- whether related party transactions as referred to in Article 33 need to be authorised and the applicable requirements,
- the rules on representation of the SPE by the management body, in particular if the directors have the right to represent the SPE jointly or separately and any delegation of this right,
- whether any management power can be delegated to another person and the applicable requirements.

**ANNEX II**

**NOTIFICATION FORM CONCERNING THE REGISTRATION OF THE TRANSFER OF  
THE REGISTERED OFFICE OF AN SPE**

**NOTIFICATION**

**concerning the registration of the transfer of the registered office of a European private  
company (SPE)**

[Name and address of the new register/competent authority]

**hereby informs**

[Name and address of the former register/competent authority]

**that the following transfer of the registered office of an SPE has been registered:**

[Name of the SPE]

[New registered office of the SPE]

[New number of entry in the register]

[Date of registration of the transfer]

**In accordance with Regulation ... on the Statute for a European private company, the  
following SPE is to be removed from its former register on receipt of this notification:**

[Name of the SPE]

[Former registered office of the SPE]

[Former number of entry in the register]

**Done at..., [...]**

*[signed]*