



European Office

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**Panel II: European Private Company – Useful tool or wishful thinking (13.20 – 14.40)**

**Introduction**

This morning we have already heard about the efforts to increase the mobility of companies in Europe. Now we will discuss about an instrument which of course would also help to improve the mobility of companies in the EU but which mainly focuses on facilitating EU-wide activities of smaller companies – the European Private Company. The idea behind the European Private Company - to provide small and medium-sized companies with a European legal form which allows them to better exploit the advantages of the internal market - is of course very compelling. For the bigger companies a breakthrough was already achieved three years ago with the adoption of the SE statute. So why not proceed with a European legal form for SME?

However the title of our panel today “European Private Company – Useful tool or wishful thinking“, already implies doubts and hesitation probably not so much with respect to the need of such a legal form but rather with respect to the chances to realize such a project.

In particular for strongly export-oriented smaller companies the European Private Company seem to be appealing. This at least showed a survey my organization VDMA conducted among its member companies a few years ago. The result was

very clear. 95% of the companies answered that they would, if possible, set up new subsidiaries in EU Member States as an EPC. The vast majority of the companies (66%) would even choose an EPC as legal form for subsidiaries if national labour and tax provisions would apply. 54% of the companies said that they would be interested to transform existing subsidiaries into an EPC. The public consultation of the European Commission on the EPC also showed the interest of the majority of the stakeholders in such a European legal form.

However important questions still need to be addressed:

- What exactly expect SME from a EPC and how must a European Private Company be structured to serve the needs of the companies?
- Is may be the recent case-law on corporate mobility (Centros, Überseering, etc) sufficient and do we simply need a awareness raising campaign to inform the companies in Europe about this situation?
- Are there other already existing legal forms available which already provide all the advantages of a EPC?
- How can the issue of workers participation be solved?
- And in particular – having in mind the long and cumbersome debate about the SE – what is politically feasible?

In order to find answers to all these complex questions we succeeded in composing a really high-ranking panel of distinguished speakers, all experts in European company law, who will now present their views on the European Private Company from different perspectives.

## **Conclusions**

The numerous comments and the interesting discussion highlighted a lot of important aspects related to the European Private Company. I have the impression that there are three main issues dominating the debate.

1. Is there really a need for such a European legal form for SME?
2. How should the European Private Company be structured to meet the needs of the companies?
3. Is such a European Private Company politically feasible?

Although we have also heard doubts regarding the need of an EPC, the contributions from the panelists but also the majority of interventions from the public seem to indicate that there is a considerable demand for a European legal form which smaller companies can use as vehicle to create a uniform EU-wide network of subsidiaries. The existing European legal forms are obviously not suited to serve this purpose. The jurisprudence on company mobility and the possibly upcoming 14<sup>th</sup> Directive help companies to move the seat of their company within Europe but we also hard that the problems and difficulties related to such a transfer may not be underestimated Having in mind the main purpose of a European legal form for SME – the creation of a uniform network of subsidiaries - , it seems to me rather complicated to create such a network of subsidiaries by transferring several companies to various Member States. SME need flexibility and legal certainty and this should be provided by the European Private Company. Flexibility must be achieved by a strong focus on freedom of contract. Mandatory rules should therefore be limited to an absolute minimum. Legal certainty requires an exhaustive EPC regulation which does not refer to the national company laws. Professor Teichmann's proposal to require stakeholders to take decisions on specific items would help to preserve flexibility on the one hand but creates a comprehensive company law system without references to the national systems.

Last but not least. Is a European Private Company political feasible?

It took the EU 30 years to adopt the SE. But today we heard that the problems related to the EPC are different. Workers' participation is not so much of an issue for the EPC because of the size and because we have developed a model which is used for the SE and the 10<sup>th</sup> Directive. Also the sometimes difficult discussions

about mandatory rules in public companies are not relevant for the European Private Company. The system of protection of creditors will definitely be an issue and probably some aspects of the structure of an EPC. At the end of the day the European Commission will have to make the decision whether or not it is worthwhile to make a proposal for a European Private Company. My impression of the discussion today in any case is: it would be worthwhile.