Dr.iur. ***Valery Reingold****, Professor*
Baltic International Academy
Riga, Latvia

Mg.iur. ***Vladimir Dolotov****, Doctoral Student*
Doctoral Study Programme «Legal Science»
Baltic International Academy
Riga, Latvia

Societas Privata Europaea: the Development of the Project

Abstract. The proposal for the Council Regulation on the Statute for a European Private Company was presented on 25 June 2008. The proposal aims to establish a European Private Company Statute with limited liability and became a part of the program called the «Small Business Act» created by the European Commission to improve access for SMEs to the Single Market and to promote their development in the EU. The article deals with the preconditions for the creation of European Private Company. The paper consistently examines the sources of legal regulation and ways of foundation of a European Private Company, addresses the general provisions of the proposal for Regulation, as well as the advantages of the European Private Company, which define their current effectiveness in entrepreneurial activity. The article analyses the development of the project and explains the reasons of deep controversies on key matters, which predetermined the withdrawal of the proposal. The paper also presents the conclusions and suggestions.

Key words: European Private Company, EU company law, Regulation, supranational character, proposal for a Council Regulation on the Statute for a European Private Company, small and medium-sized enterprises.

Dr.iur. ***Valērijs Reingolds****, profesors*
Baltijas Starptautiskā akadēmija
Rīga, Latvija

Mg.iur. ***Vladimirs Dolotovs****, doktorants*
Doktora studiju programma «Juridiskā zinātne»
Baltijas Starptautiskā akadēmija
Latvija

Societas Privata Europaea: projekta attīstība

Anotācija. Eiropas Savienības Padomes Regulas projekts par Eiropas privātā uzņēmuma statūtiem tika ierosināts 2008.gada 25.jūnijā. Projekts paredz Eiropas privātā uzņēmuma ar ierobežotu atbildību izveidošanu un kļuva par Eiropas programmas «Likuma par mazo uzņēmējdarbību» daļu.To izveidoja Eiropas Komisija, lai palīdzētu maziem un vidējiem uzņēmumiem veikt uzņēmējdarbību vienotā tirgū

un veicinātu to attīstību Eiropas Savienības valstīs. Rakstā tiek izskatīti priekšnoteikumi Eiropas privātā uzņēmuma izveidei. Konsekventi tiek izpētīti tiesiskās regulēšanas avoti un Eiropas privātā uzņēmuma dibināšanas noteikumi, tiek izskatīti Regulas projekta vispārīgi noteikumi, kā arī Eiropas privātā uzņēmuma priekšrocības, kas nosaka tās darbības efektivitāti saimnieciskās darbības veikšanā. Autori vērtē projekta attīstību un izskaidro domstarpību par galvenajiem jautājumiem iemeslus, kas gala rezultātā izraisīja projekta atsaukšanu. Rakstā izteikti secinājumi un ieteikumi.

Atslēgas vārdi: Eiropas privātais uzņēmums, Eiropas Savienības korporatīvās tiesības, Regula, starpvalstu īpašības, Eiropas Savienības Padomes Regulas projekts par Eiropas privātā uzņēmuma statūtiem, mazie un vidējie uzņēmumi.

Dr.iur. ***Валерий Рейнгольд****, профессор*
Балтийская международная академия
Рига, Латвия

Mg.iur. ***Владимир Долотов****, докторант*
Докторская программа «Юридическая наука»
Балтийская международная академия
Рига, Латвия

Societas Privata Europaea: развитие проекта

Аннотация. Проект Регламента Совета ЕС об Уставе Европейской частной компании был предложен 25 июня 2008 года. Проект предусматривал создание Европейской частной компании с ограниченной ответственностью и был частью европейской программы «Закон о малом бизнесе», созданной Европейской Комиссией для улучшения доступа малых и средних предприятий на Общий рынок и содействия их развитию в государствах ЕС. В статье рассматриваются предпосылки создания Европейской частной компании. Последовательно анализируются источники правового регулирования и создания Европейской частной компании, рассматриваются основные положения проекта Регламента, а также преимущества Европейской частной компании, устанавливающие эффективность применения данной формы для осуществления деятельности. Авторами дается оценка развития проекта и объясняются причины глубоких разногласий по ключевым вопросам, которые предопределили отзыв проекта. В статье также представлены выводы и предложения.

Ключевые слова: Европейская частная компания, корпоративное право ЕС, регламент, наднациональный характер, проект Регламента Совета ЕС об Уставе Европейской частной компании, малые и средние предприятия.

Statement of the problem, its relevance. The formation of the corporate law of the European Union (hereinafter – EU) is inseparably linked with the process of harmonization of legislation on legal entities of Member States of the EU and the creation of new organizational and legal forms of entities that allow companies from different Member States to carry out business in the territory of the EU. Adoption of the «basic» directives played an important role in the elimination of legal barriers to the stable development of international trade within the European states and the establishment of the common market of the EU. At the same time, the EU harmonization of company law of the Member States did not fully address the need for the

selection of the form for the new company set by the domestic law of one of the Member States. So the next step was the development and creation of supranational legal entities which could carry out their activities throughout the EU and obey common rules regulation.

There are three supranational legal entities created – the European Economic Interest Grouping, the European Company and the European Cooperative Society. The appropriate regulations are adapted to large companies. Indeed, the minimum capital requirement settled in the Council Regulation on the Statute for a European company is 120,000 euros. At the same time, plenty of companies in the EU are small and medium-sized enterprises. Besides the role of small and medium-sized enterprises the European economy has been repeatedly acknowledged at the highest political level. On the one hand, small and medium-sized enterprises have worse competitive ability comparing to supranational legal entities because of lack of their advantages. On the other hand, it is necessary to develop small and medium-sized enterprises in order to overcome the ramifications of the recent crisis. That is why the initiative of new European legal form for small and medium-sized enterprises was created.

The proposal on the Statute for a European Private Company aims to make the Single Market more accessible to small and medium-sized enterprises by providing them with an instrument that facilitates the expansion of their activities in national market and in other Member States of the EU. The creation of a new European legal form targeting small and medium-sized enterprises best solves the problems by offering a company form featuring uniform rules on formation throughout the EU and flexibility as regards the internal organization, thus, saving costs. It would also offer small and medium-sized enterprises a European label and thus make cross-border business easier.

The creation of the proposal on the Statute for a European Private Company has contributed to the problem of the mobility of small and medium-sized enterprises across the EU. At the same time the problem of European Private Company conformity with the status of supranational company was formed.

At the moment supranational legal entities rather have a «supranational» character. Notwithstanding the proposal aims to avoid the significant influence of the applicable national law of the EU Member States in the management of activities of small and medium-sized enterprises, as well as reduce the lack of unified rules for governing all aspects of the activities of these legal entities, the European Private Company has also a «supranational» character. At the same time, it is essential to solve the controversies on key matters related to this legal entity.

Analysis of research and publications. Since the 1960's European scientists, legal experts and the responsible institutions of the EU have been actively working on modernization of EU corporate law. One of the results was the establishment of the organizational-legal forms of supranational legal entities. The creation of the Proposal on the Statute for a European Private Company has predetermined further interest and appearance of studies and publications on this subject. Study of the problems of regulation of European Private Company was conducted by the following authors: Zaman D. (*Zaman D, 2009*), Schwarz C.A. (*Schwarz C.A., 2009*), Teichmann C. (*Teichmann C, 2013*), Hirte H. (*Hirte H, 2013*), Drury R. (*Drury R, 2013*).

The official texts of regulations and legal acts, various publications and press releases posted on the official website of the European Commission were used, as well as other internet resources on the topic of the article.

The aim of the research. The aim of this article is the study of legal status of the European Private Company, the identification of features of the legal regulation of its establishment and operating activities, the identification of its advantages, as well as the analysis of historical development of the proposal and deep controversies on key matters of specific organizational-legal form of the legal entity under EU legislation.

The idea of the creation of supranational legal entities was based on the need to achieve the main objectives of regulation of legal entities in the EU law, in particular, the freedom of establishment of legal entities on the territory of any Member State of the EU, the establishment of common minimum requirements for legal entities, providing the same protection for shareholders and creditors

of the legal entities throughout the EU, as well as facilitating the activities of companies by eliminating differences between national legal systems. At the moment three supranational legal entities are created – the European Economic Interest Grouping, the European company and the European Cooperative Society.

These legal entities have the following general features. First of all, the Regulations relating to the status of supranational legal entities are directly applicable legal acts, and vest the supranational legal entities with legal capacity, which, therefore, has a European, rather than national origin. Second, the transnational structure of the founders means that founders should fully or partly belong to the law order of at least two different EU Member States. Third, the ability to change the location of the company within the EU Member States without the need for passing the liquidation procedure of the company in the Member State of the original location.

The existing organizational-legal forms of supranational companies are adapted to large companies. Taking into account that almost 99% of companies in the EU are small and medium-sized enterprises (SMEs) and existing necessity to stimulate business activity of SMEs, as well as the recognition of the central role of SMEs in the EU economy by the European politicians, creation of the Proposal on the Statute for a European Private Company (SPE) became a serious step towards encouraging additional growth of SMEs in Europe. This Proposal aimed to establish a European Private Company Statute with limited liability in order to create a simplified legal form of company which has a European legal capacity.

The first study dedicated to the research of the perspectives of SPE was published in October 1997 by the EU Commission and covered the period 1989-1995 (Business Law Research Centre of the Chamber of Commerce and Industry of Paris – CREDA) [1, 100]. The idea of SPE was only accelerated in 2001 by the European Economic and Social Committee and the group of company law experts. In response to initiate a study on the possible Statute of a European Private Company, the European Commission issued a «Modernising Company Law and Enhancing Corporate Governance in the European Union – A Plan to Move Forward», in which this study was listed as a short-term measure [2]. In June 2006, the Legal Affairs Committee of the European Parliament held a public hearing on the SPE and drafted an own-initiative report and a resolution calling on the European Commission to present the Proposal for the SPE before the end of 2007 [3]. The Directorate General for Internal Market and Services launched a specific public consultation on the SPE in July 2007, and then the European Commission held a conference on the SPE in March 2008. The European Commission's advisory group on corporate governance and company law provided information in relation to the impact assessment and advised on the substance of the SPE Statute [4].

Proposal for the Council Regulation on the Statute for a European Private Company was presented on 25 June 2008. It became a part of the program called the «Small Business Act» created by the European Commission to improve access for SMEs to the Single Market and to promote their development in the EU [5].

In accordance to the Proposal for a Statute for an SPE, SPE is governed first and foremost by the directly applicable provisions of the Regulation. Obviously these rules facilitate the formation and ensure the necessary uniformity of the SPE in the EU Member States. The Regulation requires a range of matters to be regulated in the articles of association. At the same time, national law governs those matters which are not covered by the Regulation or by the articles of association of the SPE, for example, such important matters as tax law, accounting, labor law or the insolvency of the SPE. It means that the Proposal for a Statute for an SPE offers a possibility of the foundation of legal entity, which rather has a «supranational» character. As it is known, at the moment the existing organizational-legal forms of supranational companies also have a «supranational» character, mostly, because of the significant influence of the applicable national law of the EU Member States in the management of their activities and because of the lack of unified rules for governing all aspects of the activities of these legal entities.

SPE may be created by one or more natural persons and/or legal entities. Therefore, the Proposal for a Statute for an SPE does not have any restriction on the manner of creation of

SPE comparing to the creation of the European Company. Indeed, the European Company may be formed only by at least two legal entities from different Member States of the EU. It is interesting, but the European Company or another SPE may also participate in the formation of an SPE.

One of the most significant differences of an SPE comparing to other existing organizational-legal forms of supranational companies is that the formation of an SPE is not a subject to a cross-border requirement (in the initial proposal). It means, for example, the absence of the requirement that shareholders must be from different Member States of the EU. Taking into account that entrepreneurs set up businesses before expanding to other countries, the absence of the cross-border requirement allows significantly increasing the potential of SPE in the business environment.

SPE registration procedures are based on provisions of the First Company law Directive [6] amended later by Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 [7] in order to make the formation of an SPE easier and cheaper. First of all, the Proposal for a Statute for an SPE ensures the possibility to apply for the registration of an SPE by electronic means. Secondly, the Proposal contains a closed list of documents which the EU Member States Register may require for the registration of an SPE.

The Proposal assigns SPE as a limited-liability company which has legal personality and share capital. That is why company's shareholders may not be liable for more than the amount they have subscribed for.

As the SPE is a private company, it is not allowed to offer the shares of the SPE to the public or be publicly traded. Notwithstanding this provision the Proposal for a Statute for an SPE allows shareholders a large degree of freedom to determine matters relating to shares.

All shareholdings must be registered in the list of the shareholders. The management body of the SPE has to keep this list in order to ensure the evidence of shareholdings. Under the provision of the Proposal the list may be inspected by the shareholders or third parties on request.

The conditions for the transfer of the shares must be regulated in the articles of association.

The minimum capital requirement settled in the Proposal for a Statute for an SPE is 1 euro. Despite of traditional approach in many EU Member States that high minimum of legal capital ensures a better protection of creditors there are some reasonable facts which confirm substantiation of minimum capital. First of all, at the moment creditors put their attention to other items, for example, cash flow. Secondly, large companies or banks when starting deals with SMEs ask for personal guarantees from shareholders of SMEs. Third, companies have different capital needs depending on their activity. That is why the question of determination of an appropriate capital for all SMEs is very difficult [8, 17-18]. On the other hand, the shareholders of SMEs have to define the capital needs of their business for its development and stability. If the SPE has registered in a Member State of the EU outside the euro-zone it is allowed to express their capital and to draw up their accounts in the national currency of that Member State of the EU, although such SPE may also express their capital in euro.

The Proposal provides uniform rules regarding distributions to shareholders from the assets of the SPE. Thus such distribution may only be made only if after the distribution the SPE assets fully cover its liabilities [4].

The internal organization of the SPE is subject to the Regulation. The articles determine the management structure of the SPE. It may have a single director or several directors as well as a one-tier or a two-tier board system.

The shareholders of the SPE decide on the appointment and removal of directors. The articles must set out the term of directors' mandates and any eligibility criterion. It became important, because of management body responsibility for SPE daily activities.

The Proposal for a Statute for an SPE ensures two specific minority rights for the shareholders. The first right is to request a shareholders' resolution. The second right is to request the competent court or administrative authority to appoint an independent expert, for example, an independent auditor.

The Proposal imposes the duty of acting in the best interests of the company on the directors.

While the Regulation also identifies the most important specific duties of the directors, the articles of association may set out further duties. «Directors are required to avoid any actual or potential conflicts of interests. The Regulation establishes directors' liability for any loss or damage suffered by the SPE due to the breach of their duties deriving from the Regulation, articles of association or a resolution of shareholders» [4].

Since Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company entered into force on 8 October 2004, creation of new proposals is inseparably linked with the question of employee participation. Taking into account that employee participation exists in SMEs only in a few Member States of the EU, for example, in Sweden, this question is not as important as in case of the European Company. The only fact has to be mentioned is that the SPE is subject to the employee participation rules of the EU Member State where it has its registered office.

The SPE can transfer its registered office to another Member State of the EU, while maintaining its legal personality and not having to wind-up. The Regulation does not allow the transfer of the SPE's registered office during winding-up, liquidation or similar proceedings. This provision ensures the protection of the interests of third parties. The transfer procedure is inspired by the provisions on the transfer of the registered office of Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company [9, 168-172].

In contrast to the European Company «an SPE shall not be under any obligation to have its central administration or principal place of business in the EU Member State in which it has its registered office» [4].

By choosing SPE form entrepreneurs receive a number of advantages ensured by the Proposal for a Statute for an SPE. The most important advantages of the SPE are the following:

1) the opportunity to conduct business throughout the EU Member States and the «European label» of SPE;
2) company's relieved formation based on same and flexible provisions and company's high mobility;
3) the absence of restriction on the size of the company;
4) the opportunity for entrepreneurs to reduce costs on the creation of an SPE and operation of businesses, thus stimulating activities and the development of SPE within the Single Market;
5) the absence of cross-border requirement allows significantly increase the potential of SPE in the business environment (in the initial Proposal).

Despite of willingness to promote the development of SMEs in the EU, the choice of SPE as a legal form to conduct business activities in the EU should be neutral from a tax perspective. That is why the same tax treatment is ensured for an SPE as for similar national legal forms.

Notwithstanding the SPE's ability to ensure the development of SMEs in the EU Member States, so far, no political consensus has been reached on legislative measures, because of deep controversies on four key matters:

1) the amount of the minimum capital requirement;
2) the required cross-border component;
3) the possibility of having the registered office and the headquarters in different Member States;
4) the rules governing worker participation, especially at board-level.

Starting up and running a business largely depends on the access to the credit market. On the one hand, this is connected to the reputation of a possible debtor. On the other hand, lenders want to ensure that their loans will be repaid. This leads to the question of creditor protection in the Proposal [10]. In contrast to company law regulations in a number of continental Member States, the initial Proposal for a Council Regulation on the Statute for a European Private Company set up the amount of minimum capital requirement of 1 euro. European Parliament legislative resolution of 10 March 2009 on the Proposal for a Council regulation on the Statute for a European private company set up amendments to the Proposal [11]. The minimum capital requirement was amended by the provision to increase the minimum capital till 8,000 euros if the articles of association do not contain the requirement that the executive management body sign a solvency certificate.

Such a provision is established as a political compromise because majority of the EU Member States requires share capital for their national private limited companies. The limit of 8,000 euros is close to the arithmetical average of capital requirements in all Member States of the EU [12]. After the failure of the French Presidency to find a compromise, the Czech Presidency continued working on this topic with a new compromise proposal and the previous amendment on capital requirements was reversed.

During the Swedish Presidency the EU Member States wanted to continue the attempt to find a compromise on this topic. As a result the EU Member States may set a higher minimum capital requirement for SPEs registered in their territory. However, it shall not exceed 8,000 euros [13]. France considered the capital requirement of 8,000 euros to be too high, but Austria considered it to be too low, because of the capital requirement for private limited companies of 35,000 euros in this country [12]. After two years, the Commission had to review the effect of permitting Member States to set different minimum capital requirements within the limit of 8,000 euros.

In the end, the Proposal providing for a minimum share capital of 1 euro for the SPE was supported by the majority of delegations. A few delegations, on the other hand, indicated their preference for a higher minimum capital requirement. The Hungarian Presidency compromise suggestion, which sets out that the capital of the SPE should be at least 1 euro, while allowing Member States to set a higher minimum capital requirement of a maximum of 8,000 euros for SPEs registered in their territory could be acceptable to all but one delegation [14].

The minimum capital requirement of 1euro reduces a barrier to the creation of SPEs and ensures the ability for entrepreneurs to form SPE easier. At the same time, it has a negative impact on the ability to attract investment and creditworthiness of the company, as well as stimulate the creation of «shell» companies.

The initial Proposal for a Council Regulation on the Statute for a European Private Company had no requirement of cross-border component. European Parliament legislative resolution of 10 March 2009 on the Proposal for a Council regulation on the Statute for a European private company set up amendments on the Proposal with the requirement of the cross-border component.

During the Czech Presidency this amendment was reversed. The Proposal created during the Swedish Presidency in November 2009 provides, that «an SPE shall have a cross-border component at the time of its registration, demonstrated by one of the following:

1) an intention to do business in a Member State other than the one in which the SPE is registered;
2) a cross-border business object set out in the articles of association of the SPE;
3) a branch or a subsidiary registered in a Member State other than the one in which the SPE is registered;
4) a member or members being resident or registered in more than one Member State or in a Member State other than the one in which the SPE is registered» [13].

Italy and Lithuania preferred not having the cross-border component, but France considered that the requirement should be less stringent.

The same requirements on the cross-border component remained in the Proposal for a Council regulation on the Statute for a European private company of 23 May 2011.

One of the provisions causing most of the disagreements in the Council is the possibility of having the registered office and central administration in different Member States of the EU. The initial Proposal for a Council Regulation on the Statute for a European Private Company provides that «an SPE shall not be under any obligation to have its central administration or principal place of business in the Member State in which it has its registered office» [4]. This provision of the Proposal was not accepted, because of different theories of law used in different countries. The first theory applied in most Member States of the EU is the real seat doctrine. Under this doctrine, the company is governed by the law of the Member State in which the real seat (central administration) of the company is placed, whether or not this company was created according to the law of that Member State [15]. That is why the company needs to meet all the requirements of the EU Member State in which it has its central administration. Thus the real

seat of the company has to be in a country where this company was incorporated [16]. The second theory is the incorporation theory. In this theory the connecting factor between the company and the state is the place of incorporation. Therefore, the law of the EU Member State of incorporation is applied. Thus the founders of the company can decide on the law that would be applicable to the company.

The European Parliament legislative resolution of 10 March 2009 on the Proposal for a Council regulation of the Statute for a European private company amended the Proposal with the provision that «if the central administration or principal place of business is located in a Member State other than that in which it has its registered office, the SPE shall lodge in the register of the Member State where the central administration or principal place of business is located». As well as set up new provision, that «the registered office shall be the address at which all legal documents relating to the SPE are to be served» [11]. During the Czech Presidency this amendments were reversed.

The Proposal created during the Swedish Presidency in November 2009 provides, that «for a period of two years as from the date of application of this Regulation an SPE shall have its registered office and its central administration and/or its principal place of business in the same Member State. Thereafter national law shall apply» [13]. Spain and Netherlands would like to apply for longer transitional period, for example, Spain prefered five years instead of two. Austria instead of two years transitional period and the application of national law would only want the obligation to have both the registered office and the central administration/principal place of business in the same Member State, which could then be reviewed after five years.

In the end, the Proposal for a Council regulation on the Statute for a European private company of 23 May 2011 provides that the registered office and the central administration or principal place of business of the SPE should be in the European Union in accordance with the applicable national law.

Once again it approves inability to create unified provisions applicable in all of the EU Member States and deep controversies between national legislations.

One of the most controversial matters is employee participation in the management of a company. Among the strongest critics of the Proposal for a Statute for an SPE have been trade unions. Trade unions have found plenty of arguments to prove that this organizational-legal form could be used by companies to avoid national rules on worker involvement. Although some attempts had been made in revised versions of the Proposal to provide safeguards for worker participation arrangements, these safeguards had been seen by trade unions as too weak for protecting many types of existing arrangements [17].

Unfortunately, the Council had no feasible solutions of these deep controversies on above mentioned key matters. It will be observed, that neither the Czech nor the Swedish and Hungarian Presidencies of the Council of the EU could find a compromise on the amount of minimum capital requirement, the cross-border component, the place of registered office and central administration of SPE or employee participation. The Council sought to achieve compromises by providing national law with the right to decide on unsolved matters. Therefore by leaving provisions of Proposal for a Statute for an SPE invariable SPE would repeat the way of existing supranational companies and became a company with «supranational» character. As a result, in 2013 in the Communication from the Commission to the European Parliament, the Council, the European Social and Economic Committee and the Committee of the Regions Regulatory Fitness and Performance (REFIT): Results and Next Steps, the European Commission includes its Proposal on the Statute of a European Private Company in the list of proposals it intends to withdraw [18]. The European Commission announced that it is considering presenting a new proposal. Consequently on 9 April 2014 the European Commission officially published the Proposal for a Directive on single-member private limited liability companies. This proposal would be to harmonize national company law on single member limited liability companies, allowing companies to establish subsidiaries in any of the EU Member States. «The overall objective of this proposal is to make it easier for any potential

company founder, and in particular for SMEs, to set-up companies abroad. The proposal would facilitate cross-border activities of companies, by asking Member States to provide in their legal systems for a national company law form that would follow the same rules in all Member States and would have an EU-wide abbreviation – SUP (Societas Unius Personae)» [19].

The main results of the research and conclusions.

Summing up the above mentioned about the SPE it is important to note the following:

1. The Proposal for a Council Regulation on the Statute for a European Private Company vests SPE with the prominent features of supranational legal entity. First of all, the proposal of Regulation relating to the status of supranational legal entity (in case of enforcement) is a directly applicable legal act and vests the supranational legal entity with legal capacity, which, therefore, has a European, rather than national origin. The second feature is the availability of the cross-border component in some circumstances for the foundation of SPE. The third feature is the ability to change the location of SPE within the EU Member States without the need for passing the liquidation procedure of the company in the Member State of the original location.
2. Despite of numerous consultations and changes in the Proposal for a Statute for an SPE, it allows the foundation of legal entity which has a «supranational» character. The first reason is the influence of the applicable national law of the EU Member States in the management of SPE activities. The second reason is the lack of unified rules for governing all aspects of the activities of SPE. For example, the bookkeeping of the SPE shall be governed by the applicable national law. The third reason is the need to identify a single registry at the EU level, in which SPE will be registered. Indeed, in accordance with the Regulation, each SPE shall be registered in the EU Member State in which it has its registered office in a register designated by the applicable national law.
3. The SPE has a number of advantages that ensure the growth of SPE and its development in the Single Market. The first advantage is the opportunity to conduct business throughout the EU Member States and the «European label» of SPE. The second advantage is company's relieved formation based on same and flexible provisions and company's high mobility. The third advantage is absence of restriction on the size of a company. The fourth advantage is the opportunity for entrepreneurs to reduce costs on the creation of an SPE and operation of businesses. The fifth advantage is the absence of the cross-border requirement which allows significantly increasing the potential of SPE in the business environment (in the initial Proposal).
4. At the moment the share capital requirements are not the measure for protection of the interests of creditors. On the one hand, by providing the minimum capital requirement of 1 euro the foundation of the SPE and overall development of SMEs as one of the main targets of «Small Business Act» is stimulated. On the other hand, SMEs with the minimum share capital have less opportunity for expansion of cross-border business. Moreover, the SPE with share capital of 1 euro will enter into competition with legal entities formed based on national laws, especially in case of high requirements for share capital. At the same time, the high threshold of the share capital will reduce the formation of the SPE, especially for SMEs from the new Member States of the EU, for example, in Latvia. A possible solution would be to set capital requirement of 1 euro and allow the shareholders to decide on the amount of share capital they need, as well as to oblige to increase share capital in some years or in case of starting cross-border operations.
5. The Council had no feasible solutions of deep controversies on key matters: the amount of minimum capital requirement, the cross-border component, the place of registered office and central administration of SPE and employee participation. Therefore, the European Commission included its Proposal

on the Statute of a European Private Company in the list of proposals it intends to withdraw.

It is important to note, that this Proposal was added to the Proposal on the Statute for a European association and the Proposal on the Statute for a European mutual society which were also withdrawn by the European Commission due to lack of progress in the legislative process.

That is why it is a serious defeat of the image of organizational-legal forms of the legal entities under EU legislation, especially taking into account that the European Economic Interest Grouping, the European company and the European Cooperative Society have a wide range of disadvantages.

6. Assessing the perspectives of legal entities under the EU law, one must consider the effects of interaction with external factors, among which the most important is the political and economic development of the EU. In the current environment taking into account the political differences and the lack of economic growth in European countries, the choice of business is in favor of more familiar forms of legal entities, set out under the national law.

References

1. Opinion of the Economic and Social Committee on a «European Company Statute for SMEs» / Official Journal of the European Communities, No C 125, 27.05.2002.
2. Communication from the Commission to the Council and the European Parliament – Modernising Company Law and Enhancing Corporate Governance in the European Union – A Plan to Move Forward /* COM/2003/0284 final */. [Internet resource]. http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52003DC0284. Retrieved 19.04.2015.
3. European Parliament Report with recommendations to the Commission on the European private company Statute (2006/2013(INI)), A6-0434/2006 final. [Internet resource]. http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2006-0434+0+DOC+PDF+V0//EN&language=EN. Retrieved 19.04.2015.
4. Proposal for a Council Regulation on the statute for a European private company {SEC (2008) 2098} {SEC (2008) 2099} /* COM/2008/0396 final – CNS 2008/0130 */. [Internet resource]. http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52008PC0396. Retrieved 19.04.2015.
5. Communication from the Commission to the European Parliament, the Council, the European economic and social committee and the Committee of the regions. «Think Small First». A «Small Business Act» for Europe of 25 June 2008. [Internet resource]. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0394:FIN:EN:PDF. Retrieved 19.04.2015.
6. First Council Directive 68/151/EEC of 9 March 1968 on 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. Official Journal of the European Communities. No L 65, 14.03.1968.
7. Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent. Official Journal of the European Union. No L 258, 01.10.2009.
8. Hirte H., Teichmann C. The European Private Company – Societas Privata Europaea (SPE). ECFR Special Volume 3. Berlin: Walter de Gruyter Gmbh, 2013.
9. Zaman D., Schwarz C.A. The European private company (SPE): a critical analysis of the EU draft statute. Antwerp: Intersentia, 2009.

10. Siems M., Herzog L., Rosenhäger E. The European Private Company (SPE): An Attractive New Legal Form of Doing Business? Journal of International Banking and Financial Law. 2009. [Internet resource]. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1350465. Retrieved 19.04.2015.
11. European Parliament legislative resolution of 10 March 2009 on the proposal for a Council regulation on the Statute for a European private company (COM (2008)0396 – C6-0283/2008 – 2008/0130(CNS)). [Internet resource]. http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P6-TA-2009-0094+0+DOC+PDF+V0//EN. Retrieved 19.04.2015.
12. Commission staff working document accompanying the proposal for a Council Regulation on the Statute for a European Private Company (SPE) – Impact assessment. SEC (2008) 2098. [Internet resource]. http://ec.europa.eu/internal_market/company/docs/epc/impact_assesment_en.pdf. Retrieved 19.04.2015.
13. Revised Presidency compromise proposal for a Council regulation on the Statute for a European private company of 27 November 2009. [Internet resource]. http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2016115%202009%20ADD%201. Retrieved 19.04.2015.
14. Revised Presidency compromise text. Proposal for a Council regulation on the Statute for a European private company of 23 May 2011. [Internet resource]. http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2010611%202011%20INIT. Retrieved 19.04.2015.
15. Garcia-Riestra M. The transfer of seat of European Company v free establishment case-law. European Business Law Review. 2004. [Internet resource]. http://www.kluwerlawonline.com. Retrieved 19.04.2015.
16. Kuehrer N. Cross-border company establishment. European Business Law Review. 2001. [Internet resource]. http://www.kluwerlawonline.com. Retrieved 19.04.2015.
17. History of the European Private Company (SPE) statute. [Internet resource]. http://www.worker-participation.eu/Company-Law-and-CG/Company-Law/European-Private-Company-SPE/History. Retrieved 19.04.2015.
18. European Social and Economic Committee and the Committee of the Regions Regulatory Fitness and Performance (REFIT): Results and Next Steps of 2 October 2013. [Internet resource]. http://ec.europa.eu/archives/commission_2010-2014/president/news/archives/2013/10/pdf/20131002-refit_en.pdf. Retrieved 19.04.2015.
19. Proposal for a Directive of the European Parliament and of the Council on single-member private limited liability companies /* COM/2014/0212 final – 2014/0120 (COD) */. [Internet resource]. http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014PC0212. Retrieved 19.04.2015.