ANDRÁSSY UNIVERSITÄT BUDAPEST

Andrássy Gyula Deutschsprachige Universität Budapest
H-1088 Budapest, Pollack Mihály tér 3.
Tel. | + 36 1 266 4408 | Fax | + 36 1 266 3099
E-Mail | uni@andrassyuni.hu | www.andrassyuni.eu

Fakultät für Internationale Beziehungen
Prof. Dr. Martina Eckardt |
Professur für Finanzwissenschaft
E-Mail | martina.eckardt@andrassyuni.hu

Martina Eckardt

The Societas Privata Europaea (SPE) –

Will it Promote the Internationalization of SMEs?

Preliminary Version, Revision und way.
Please do not cite without permission from the author.

Abstract

Small and medium-sized enterprises (SMEs) are important for an economy's employment, innovation and growth. However, due to their size, SMEs experience a number of restrictions, which also lead to a low degree of internationalization. To promote their internationalization, the European Union plans to introduce a private limited corporate law form (the Societas Privata Europaea, SPE).
After an empirical overview of SMEs in the EU, we analyze whether the SPE draft regulation does indeed provide rules which result in (1) low transaction and coordination costs, (2) provide secure ownership rights and (3) reduce information asymmetries and thus mitigate agency relations among owners, management, employees and creditors.
As this can be agreed to, we ask whether an additional 28th EU-wide private corporate law form is necessary. We discuss the available empirical findings about the extent of horizontal and vertical corporate law competition in the EU. Finally, we examine whether the theory of interjurisdictional competition provides normative arguments against or in favour of introducing the SPE. As a conclusion, we find no profound arguments against its introduction from the theory of regulatory competition.

Keywords: Corporate Law, Regulatory Competition, European Integration
JEL-Classification: F15, K22

Structure

ANDRÁSSY UNIVERSITÄT BUDAPEST

Andrássy Gyula Deutschsprachige Universität Budapest
H-1088 Budapest, Pollack Mihály tér 3.
Tel. | + 36 1 266 4408 | Fax | + 36 1 266 3099
E-Mail | uni@andrassyuni.hu | www.andrassyuni.eu

Fakultät für Internationale Beziehungen
Prof. Dr. Martina Eckardt |
Professur für Finanzwissenschaft
E-Mail | martina.eckardt@andrassyuni.hu

5. Conclusion
References

1. Introduction

Small and medium-sized enterprises (SMEs) have gained a lot of attention in public policy over the last decades because of their positive contribution to employment, innovation and overall economic growth. In the course of economic internationalisation, SMEs, too, came into focus, however, only recently. Whereas nowadays one cannot conceive of any large corporation in the EU that is not doing business on a global, let alone EU-wide scale, internationalisation of SMEs is of a rather low level and of a rather new public policy concern. However, with its strategy on SMEs, the EU Commission has put the support of SMEs on its agenda. The Commission backs a number of provisions which are intended to support SMEs, both in doing business nationally as well as internationally in addition to other means which are not specifically targeted on SMEs and their internationalisation, but on removing obstacles for businesses and entrepreneurship quite generally.

According to this aim, the EU Commission has set up the so-called Small Business Act, which was adopted in June 2008. Besides reforms on regulations for starting a business, accounting rules, tax laws and so on, one of its key elements is the introduction of a new supranational corporate law form, a limited private company – the so-called Societas Privata Europaea (SPE). It should be especially tailored to the needs of SMEs to promote them doing business throughout the EU. In the mid-1990s the idea of such a supranational European Private Company was first put forward by the Paris Chamber of Commerce and Industry. But only after the European Parliament took to it in 2007, it gained momentum at the European level. This new corporate law form would complete the set of supranational corporate forms already introduced in the EU – the European Economic Interest Grouping (EEIG, put into force in 1989), the European Company (Societas Europaea SE, put into force in 2004) and the European Corporative Society (Societas Cooperativa Europaea SCE, put into force in 2006).[1]

Although the main points of disagreement between the different actors involved in the legislative process have been successfully removed over the last years, no agreement could be reached on a draft regulation of the SPE during the Hungarian Council Presidency at the end of May 2011. This was primarily due to disagreement on the issue of codetermination and taxes, mainly put forward by German representatives. Nevertheless, this seems a good point in time to evaluate the SPE's regulation in its draft form from an economics point of view (EU Council 2011). Thus, in the following we analyze whether such a 28th corporate law form

[1] For a short, but comprehensive overview with additional references see Fleischer (2010).

for SMEs could indeed promote their internationalization. More precisely, we ask whether it does address the needs of SMEs when doing business abroad and if so, what this will mean in regard to competition among company laws in the EU.

In section 2, we start with a short overview on the extent of internationalization of SMEs in the EU and the importance of an appropriate corporate law form. Hereby, we point out the main obstacles for doing business internationally for SMEs. Following this, in section 3 we describe the current draft statute of the SPE and analyze its main elements. Finally, in section 4 we turn to the issue of regulatory competition. We discuss the extent and nature of horizontal and vertical competition in this field and ask what additional gain could be expected from such an additional 28th corporate law form for SMEs in the EU. In particular, we ask what we can learn from interjurisdictional regulatory competition and the criteria derived there for the question on how much (de-)centralization is appropriate for corporate law. Hereby, we distinguish between arguments from welfare economics, political economics and evolutionary economics. Section 5 summarizes our main findings and concludes.

2. Internationalization of SMEs and Corporate Law Form

2.1 SMEs – Definition, Characteristics and Structural Problems

In the following we use the classification of the EU Commission (2003) on SMEs (*table 2.1*). Following this, 99.8% of all enterprises in the EU-27 are SMEs (including micro-enterprises), which account for 67% of all employees and for 58% of the value added. The same pattern can be found in all EU member states. These figures show the importance of SMEs for national economies.

Table 2.1: SME Classification and EU-Average

	SME Classification			EU-Average		
Company size	**Number of persons employed**	**Turnover in Mio. € / year**	**Balance sheet total in Mio. € / year**	**Number of enterprises (%)**	**Number of persons employed (%)**	**Gross value added (Mio € /year) (%)**
Micro	up to 9	up to 2	Up to 2	92,1	29,8	21,1
Small	10 to 49	2 to10	2 to 10	6,6	20,4	19,0
Medium	50 to 249	10 to 50	10 to 43	1,1	16,8	17,8
Large	more than 250	more than 50	more than 43	0,2	33,1	42,1
Total				**20,839,226**	**130,717,890**	**5,978,436**

Source: Own composition according to EU Commission (2003), Wymenga et al. (2011, p.8, tab.2.1).

Besides differences in quantitative respects, SMEs differ also in qualitative ways from large enterprises. One of the main characteristics of SMEs is the important role its proprietor plays, who usually also runs the company him- or herself. Moreover, due to the small number of employees, specialization, division of labour and thus also formal organizational structures are less pronounced, involving also a closer relationship between the owner and its employees (Mugler 1999, 20; Wegmann 2006, 15). All in all, thus, principal-agent problems are mitigated in SMEs.

However, these characteristics of SMEs also contribute to their main structural problems. While their relative small size allows SMEs to react flexible to customer preferences and to changing market conditions, they are restricted in their business activities due to their (usually) low market share and to the limited resources available, be it human resources or financial capital. Thus, they are less able to realize economies of scale and scope. Besides, in particular outside financing proves to be more problematic and costly for SMEs than for large enterprises. Their access to financial markets is more restricted, resulting also in less favourable loan conditions due to their lower capacity for spreading risks. Finally, due to the limited personnel available, the degree of specialized in-house experts is much lower, showing a less marked business strategy (EU Commission 2011).

2.2 Internationalization of SMEs

Nevertheless, SMEs are not only engaged in local markets, but also on a national and international level (see *Table 2.2* on push and pull factors of SME internationalisation). Some of them are even market leaders on a global level (see the so-called Hidden Champions, Simon 2007). A comprehensive survey among nearly 10.000 SMEs from 33 European countries (including 6 from outside the EU) in 2009 showed that those SMEs which do business internationally are characterized both by higher turnover and by higher employment growth. Besides, they are also more engaged in introducing product and process innovations. All these effects are much more pronounced for SMEs that undertake foreign direct investments. For example, SMEs with direct investment abroad reported an increase in employment of 16% compared to only 4% by SMEs without direct investment (EU Commission 2010a, 8, 69f.).

Table 2.2: Push and Pull Factors in Internationalising SMEs

Push Factors	Pull Factors
• Saturated national demand / declining national demand • Strong competitive pressure • Dependence on international active buyers (in particular relevant for suppliers) • Cost pressure (for example rising wages) • International orders which were not actively sought	• Market potential/ profit prospects abroad • Specific competences, like experiences with foreign markets, language skills, international contacts • Foreign demand of the (highly specialised) products produced • Cost advantages of the location abroad • Positive attitude of the entrepreneur on international business activities

Source: according to Baeckes-Gellner / Huhn, (2000, 185), own translation, M.E.

As regards the extent of internationalisation of SMEs, the 2009 internationalisation survey of the EU Commission (2010a) found that around 40 % of all SMEs are involved in some form of international activity, be it import, export or foreign direct investment (EU Commission, 2010a, 46). While even a large share of micro enterprises (with up to 9 employees) uses the advantages of the international division of labour in the form of imports and exports, other forms of cooperation do play only a minor role for them (see *Table 2.3*). There is, however, a clear size effect in this. When looking at medium-sized enterprises in more detail, one finds that over 50% of them are engaged in export and/or import activities between 2006 and 2008, but only 15% to 20% use the potential of international specialization in the production process, like subcontracting, technological cooperation and foreign direct investment (FDI). After all, 16 % of medium-sized and 6% of small enterprises reported FDI between 2006 and 2008, whereas only 2% of all micro enterprises did. On average, 2% of all EU SMEs invested abroad, which amounts to around 500.000 enterprises (EU Commission 2010a, 10). Besides, SMEs from smaller and thus more open economies are involved in international business activities to a higher degree than SMEs from larger member states.

Table 2.3: Extent of Internationalization (2006-2008)

		Imports	Exports	Investment abroad	Technologi-cal cooperation abroad	Subcontractor for a foreign main contractor	Enterprise had foreign subcontractors
		Row N %					
Size Class	Micro	28%	24%	2%	7%	7%	7%
	Small	39%	38%	6%	12%	11%	12%
	Medium	55%	53%	16%	22%	17%	16%
Country	Italy	23%	27%	2%	3%	1%	3%
	Germany	14%	19%	2%	11%	8%	7%
	Spain	33%	24%	2%	5%	3%	5%
	France	21%	19%	0%	3%	6%	9%
	United Kingdom	21%	21%	2%	7%	5%	6%
	Poland	29%	29%	0%	6%	10%	6%
	Nordic Countries	34%	32%	4%	17%	19%	23%
	Benelux	38%	33%	5%	13%	10%	11%
	Central Europe	33%	28%	1%	10%	12%	11%
	Rumania & Bulgaria	43%	19%	2%	15%	17%	11%
	Remaining Countries	44%	30%	4%	9%	10%	6%
Total		**29%**	**26%**	**2%**	**7%**	**8%**	**7%**

Weighted results. Source: Survey 2009, Internationalisation or European SMEs EIM/GDCC (

Source: Own composition according to EU Commission (2010b).

From the overall of 2% of SMEs that invest abroad a third uses its establishment as a sales office or for local production (see *Table 2.4*). While the latter activity dominates for larger countries, the former is more characteristic for smaller countries and for the new/ Eastern EU member states (with Spain being an exception). While class size affects the decision to invest abroad, it does not so to the same extent in regard to the decision on what activity to pursue. The main economic sectors where international local production of goods and services is pursued are manufacturing, construction, wholesale trade and business services.

Table 2.4: Activities done in or from establishments abroad

		Type of activities that are done in or from the establishment abroad						
		Representative office only	Only sales office	Only office to acquire inputs	Local production (of products or service)	Other please specify:	Do not know / no answer	Total
		Row N %	Row N %	Row N %	Row N %	Row N %	Row N %	Row N %
Size Class	Micro	18%	27%	2%	26%	23%	4%	100%
	Small	16%	28%	3%	30%	20%	3%	100%
	Medium	12%	31%	3%	38%	16%	1%	100%
Country	Italy	31%	24%	1%	35%	9%	0%	100%
	Germany	24%	15%	1%	41%	18%	0%	100%
	Spain	30%	39%	0%	3%	8%	20%	100%
	France	18%	8%	7%	44%	1%	23%	100%
	United Kingdom	37%	15%	0%	40%	9%	0%	100%
	Poland	10%	51%	26%	4%	9%	0%	100%
	Nordic Countries	2%	15%	11%	49%	23%	0%	100%
	Benelux	18%	30%	1%	16%	35%	0%	100%
	Central Europe	13%	68%	1%	13%	2%	3%	100%
	Rumania & Bulgaria	12%	47%	3%	1%	30%	7%	100%
	Remaining Countries	5%	28%	0%	27%	37%	2%	100%
Sector	Manufacturing	13%	47%	1%	24%	15%	1%	100%
	Construction	2%	55%	0%	31%	9%	3%	100%
	Wholesale trade	17%	23%	1%	46%	12%	1%	100%
	Retail trade	12%	59%	0%	9%	21%	0%	100%
	Transport and communication	15%	37%	17%	9%	17%	5%	100%
	Business services	23%	5%	1%	34%	31%	6%	100%
	Personal services	8%	68%	3%	6%	10%	5%	100%
Total		**17%**	**28%**	**2%**	**28%**	**22%**	**4%**	**100%**

Weighted results. Source: Survey 2009, Internationalisation or European SMEs EIM/GDCC (N=9480). Processing: EIM 5/22/2009

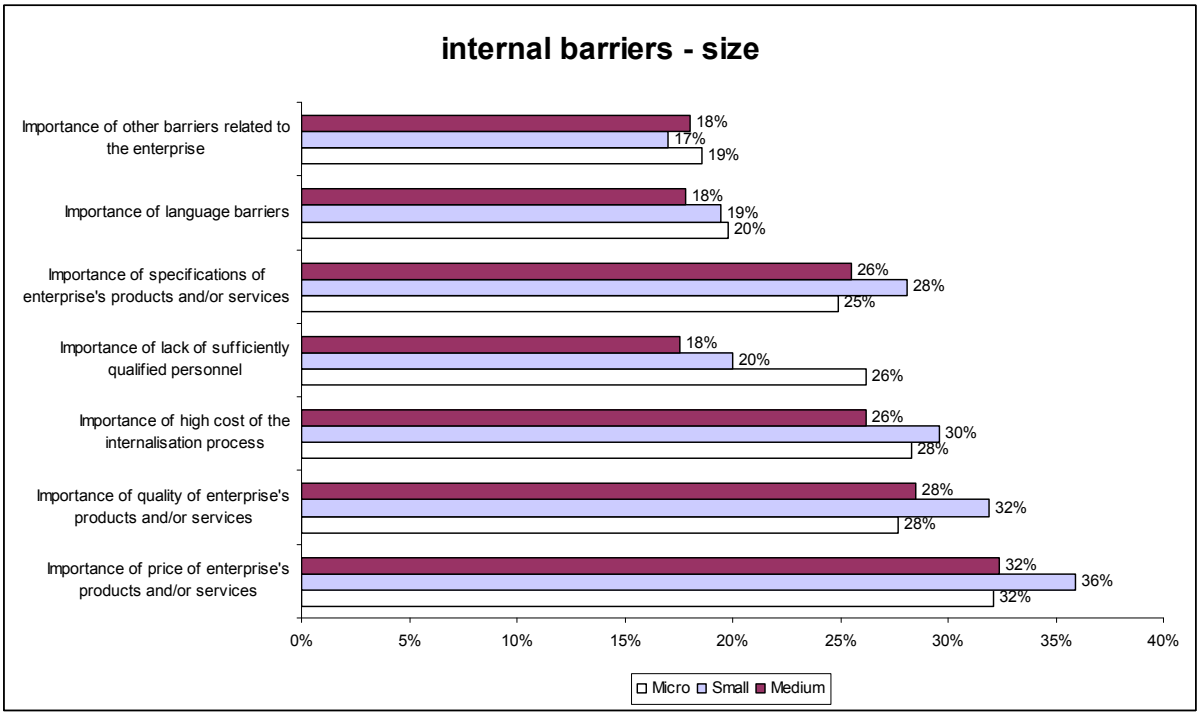
Source: Own composition according to EU Commission (2010b).

As the data show, there is a clear size effect in regard to doing business internationally. Thus, the question arises on the obstacles which prevent SMEs to realize the potential gains from international business activities. As a number of surveys have shown, the main barriers to internationalization fall under the following two categories:

> **"Internal barriers**: price of their own product or service and the high cost of internationalisation.
> **External barriers**: lack of capital, lack of adequate information, and lack of adequate public support and the costs of or difficulties with paperwork associated with transport" EU Commission (2010a, 8).

Taking into account the structural characteristics of SMEs (see section 2.1), the main obstacles to internationalization as stated by SMEs come to no surprise. As regards the internal obstacles, besides price and quality of a company's products high cost of the internalisation process, a lack of sufficiently qualified personnel and the specifications of an enterprise's products and/or services come next in line.

Figure 2.1: Internal barriers to internationalization of SMEs

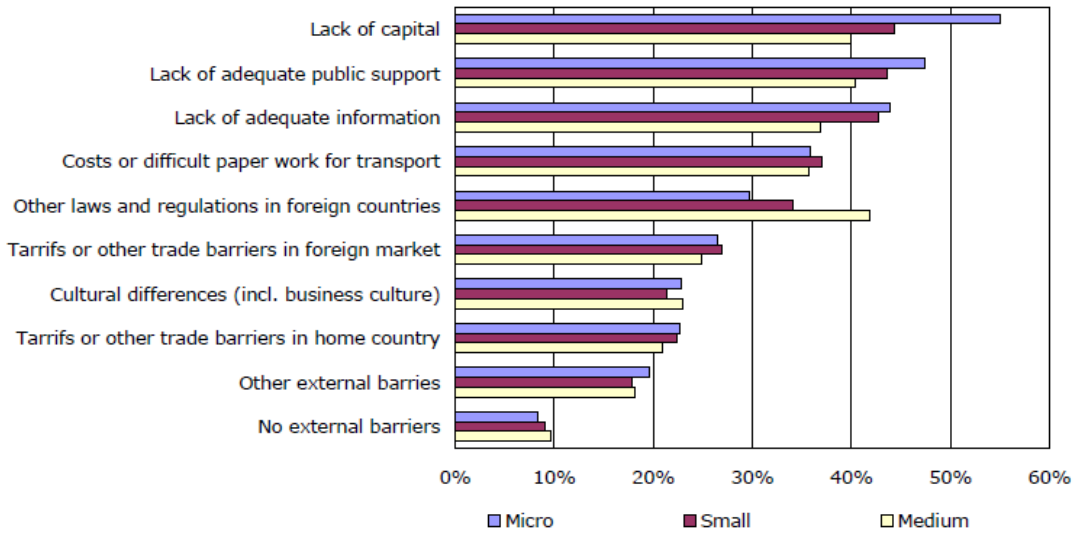


Source: Own composition according to EU Commission (2010b).

This is matched by the main barriers to internationalisation resulting from the external environment (see *figure 2.2*). Over 50 % of all SMEs report lack of capital as a main external barrier, followed by lack of public support, lack of adequate information and costs of paper work and other administrative tasks. There is no difference among SMEs in ranking the different external obstacles, as can be seen from *figure 2.2*. Note however, that medium-sized enterprises, which are more actively engaged in international business, see laws and regulations in foreign countries also as a strong obstacle.

Figure 2.2: External barriers to internationalization for SMEs

Figure 38 Barriers related to the business environment for the enterprises in EU-EEA markets, by size class (percentage of SMEs that state important)



Source: Survey 2009, Internationalisation of European SMEs EIM/GDCC (N=9480).

Source: EU Commission (2010a, p.61, fig. 38).

All in all, the barriers identified by SMEs for doing business internationally refer back to their main structural characteristics. Problems in gaining access to finance and scarce resource both in human and financial capital enhance the difficulties to acquire the necessary information to successfully gain access to foreign markets.

2.3 Internationalisation and Corporate Law Form of SMEs

As regards corporate legal form, over 50% of SMEs in Europe are private or public limited companies, while only 20% are sole proprietors. (*table 2.5*). Only in regard to the latter, size affects the choice of corporate law form to a large degree. In case of small and medium-sized companies only 8% resp. 5% chose sole proprietorship. However, differences exist for single countries. Private limited companies dominate in Germany, the UK, the Nordic Countries and Central Europe. In contrast, Poland, Romania and Bulgaria show a high share of partnerships in SMEs, which play no important role for SMEs in other countries. A below average adoption of the private limited corporate form is found for wholesale and retail trade, where other corporate law forms play a more prominent role.

Table 2.5: Legal form of SMEs in Europe

		Present legal status of enterprise						
		Sole proprietor	Private limited enterprise	Public limited enterprise	Partnership	Other	Do not know / no answer	Total
		Row N %	Row N %	Row N %	Row N %	Row N %	Row N %	Row N %
Size Class	Micro	19%	49%	9%	8%	15%	0%	100%
	Small	8%	59%	13%	7%	13%	0%	100%
	Medium	5%	53%	21%	8%	13%	0%	100%
Country	Italy	13%	55%	0%	3%	29%	0%	100%
	Germany	25%	68%	3%	5%	0%	0%	100%
	Spain	8%	55%	25%	0%	12%	0%	100%
	France	8%	42%	11%	0%	39%	0%	100%
	United Kingdom	22%	64%	1%	13%	0%	0%	100%
	Poland	38%	6%	2%	54%	0%	0%	100%
	Nordic Countries	26%	62%	9%	1%	3%	0%	100%
	Benelux	19%	48%	17%	11%	4%	0%	100%
	Central Europe	8%	75%	1%	0%	16%	0%	100%
	Rumania & Bulgaria	18%	47%	1%	32%	1%	0%	100%
	Remaining Countries	29%	33%	19%	6%	14%	0%	100%
Sector	Manufacturing	13%	54%	10%	11%	13%	0%	100%
	Construction	27%	50%	4%	6%	13%	0%	100%
	Wholesale trade	11%	44%	18%	6%	20%	0%	100%
	Retail trade	27%	35%	10%	11%	17%	0%	100%
	Transport and communicatio n	16%	54%	8%	9%	12%	0%	100%
	Business services	10%	57%	11%	7%	14%	0%	100%
	Personal services	20%	56%	4%	6%	13%	0%	100%
Total		18%	50%	9%	8%	15%	0%	100%

Weighted results. Source: Survey 2009, Internationalisation or European SMEs EIM/GDCC (N=9480). Processing: EIM 5/22/2009

Source: Own composition according to EU Commission (2010b).

There are not detailed data available on the corporate legal form SMEs use when investing in foreign countries. But the EU 2009 internationalisation survey shows that 20% run their foreign establishments as a branch, 42% as an independent subsidiary and another 22% have entered into a joint venture (*table 2.6*). Again, class size has a significant effect, with nearly 60% of both small- and medium-sized companies reporting to have established independent subsidiaries. Looking at differences in regard to sectors, we find that for construction over 50% of FDIs are joint ventures.

Table 2.6: Legal form of foreign establishments

		Legal form of enterprise's foreign establishment				
		Foreign subsidiary	Branch	Joint venture	Do not know / no answer	Total
		Row N %	Row N %	Row N %	Row N %	Row N %
Size Class	Micro	38%	21%	22%	19%	100%
	Small	57%	15%	23%	6%	100%
	Medium	58%	21%	14%	7%	100%
Country	Italy	61%	29%	10%	0%	100%
	Germany	54%	24%	14%	9%	100%
	Spain	52%	39%	2%	7%	100%
	France	73%	2%	10%	16%	100%
	United Kingdom	18%	5%	77%	1%	100%
	Poland	94%	4%	2%	0%	100%
	Nordic Countries	56%	5%	37%	2%	100%
	Benelux	68%	22%	8%	1%	100%
	Central Europe	20%	16%	64%	1%	100%
	Rumania & Bulgaria	36%	49%	5%	10%	100%
	Remaining Countries	20%	15%	21%	44%	100%
Sector	Manufacturing	43%	37%	14%	6%	100%
	Construction	22%	22%	56%	0%	100%
	Wholesale trade	63%	11%	21%	5%	100%
	Retail trade	46%	29%	21%	3%	100%
	Transport and communicatio n	66%	9%	14%	10%	100%
	Business services	30%	17%	23%	29%	100%
	Personal services	67%	13%	14%	7%	100%
Total		**42%**	**20%**	**22%**	**16%**	**100%**

Weighted results. Source: Survey 2009, Internationalisation or European SMEs EIM/GDCC (N=9480). Proces

Source: Own composition according to EU Commission (2010b). N=698 for foreign establishments.

Taking into account that SMEs are financially more vulnerable than larger companies due to their limitations in capital availability and risk spreading, an average of 20% of SMEs that have set up their establishments as dependent branches is rather high. This might result from the restrictions imposed on companies' choice of corporate law form. Up until the European

Court of Justice's (ECJ) decision on *Centros* in 1999, companies had only a very limited choice in regard to corporate law forms when investing abroad. They could establish a dependent branch, thus sticking to the corporate law form of their home member state, which was familiar to them, or run their foreign establishment according to the applicable law of the host member state. In this case uncertainty increases, since usually there is only limited knowledge about the company law and legal system of foreign countries.

Since the *Centros* decision now for companies there is a broader menu of corporate forms available. It is now possible to establish a company in a member state according to one of its corporate law forms only to the end of doing business on a regular basis under this corporate law form in another member state. Thus, for example, the number of enterprises registered as a British Private Company Limited by Shares in Germany has grown over the last years. However, in 2010 it still amounts to only 0.3% of all newly registered companies in Germany, compared to 11 % of all companies registered as *Gesellschaft mit beschränkter Haftung* (*GmbH,* the German private limited company) and 80% as sole proprietors. In contrast to that, the share of companies in the form of the British Private Company Limited which cancelled registration amounts to 0.6% in 2010, while other corporate law forms show no significant differences. This indicates that the uses of unfamiliar corporate forms involves higher uncertainties, resulting in higher costs for companies and eventually in failure (see *section 4* for more details).

When deciding on which corporate law form to use for a foreign establishment, SMEs have to take into account what costs the chosen corporate law form causes. They have to calculate the costs of establishing together with regular expenses related to the chosen corporate form, like for capital requirements for establishment, disclosure rules, accounting rules, employee participation rights, co-determination rules, third party representation, liability rules, tax burden and so on (Knoth 2008, 193, fig.30; Pezoldt/ Knoth 2011). Besides, what the optimal corporate law form is for a particular SME, depends not only on factors related to the different corporate law forms, but also on factors internal to the company and on external factors of the wider economic and legal environment (see *table 2.7*). Again, these aspects are about the scarce resources available to SMEs, with information problems and costs for legal and administrative activities becoming something of a strategic bottleneck for successfully entering international markets (Buschmann 2005).

Thus, when looking at the specific challenges SMEs face when internationalising their business activities, ideally, a corporate law form should be available that takes into account their scarce resources (both in terms of human as well as financial capital), information problems, and difficulties in financing.

Table 2.7: Factors affecting the choice of corporate law form for internationalisation

Internal determinants	External legal and economic determinants	Determinants of the corporate law form
• Knowledge about corporate law forms of the home and host state • low information deficits • realisation of synergies by establishing uniform subsidiaries • realisation of synergies by using the same corporate law form for the parent company and its subsidiary	• corporate law form recognized in the host country • prohibition of purchasing real estate by a foreign legal personality • reservations against a foreign company law form among business partners, customers, banks or public administration in the host member state • recognized corporate form among foreign business partners in case of cross-border transactions of a subsidiary	• corporate law form which is easy and quick to found • low conditions for establishment • no or only low minimum capital requirements • low requirements as to the regular disclosure and accounting duties

Source: According to Knoth (2008, p.193, fig.30 and p.223, fig.34), own translation, M.E.

Accordingly, an ideal corporate law form for SME internationalisation should be (1) inexpensive, requiring few resources for setting it up and meeting its regular tax and accounting obligations. Besides it should (2) provide secure ownership rights, including limited liability so as not to endanger the parent company by doing business internationally. In addition it should also provide secure property rights for creditors so as to reduce problems of getting access to finance and decrease extra risk charges. Furthermore, it should (3) reduce principal-agent problems due to information asymmetries. This holds for business partners, customers and foreign authorities to whom the company statute should provide clear information about the company thus improving trust in it (and by this lowering its financing costs). Finally, information and consultation costs for SMEs about legal and administrative questions should be low, which requires a not too complex corporate law form.

Against these criteria we analyze the provisions laid down in the draft regulation on the European Private company (SPE) in the following section to see whether it could provide a useful alternative corporate law form for SMEs.

3. The Societas Privata Europaea (SPE) – Evaluation of its Draft Regulation

3.1 The Economic Rationale of Corporate Law

From an institutional economics point of view, enterprises can be seen as a nexus of incomplete contracts, both explicit and implicit ones (Kraakman R et al. 2009, Schaper 2012). The different stakeholders involved in an enterprise – that is the owners of a company, its employees, its creditors and the state (representing the public) – pool their resources to gain from team production. Due to the contingencies and uncertainties of the future, it is not possible to write *ex ante* complete contracts which deal with all possible future events. Accordingly, a number of different fields of law have evolved over time to cope with some of the resulting effects. Corporate law takes into account some of the resulting aspects (labour law, contract law, public regulations etc. are other fields of law also concerned with the arising problems). It provides different legal forms for a corporation, forming its constitution by delineating the overlapping actions spaces of the stakeholders which cooperate in a world of uncertainty in a business enterprise. Accordingly, it makes available instruments to cope with (potentially and actually arising) conflicts among the different stakeholders. In particular it states rules necessary to ensure the ownership of the resources pooled in the joint undertaking for the different proprietors. Besides rules are laid down to decide on how the related (positive and negative) gains are to be divided among the different owners.

Thus, firstly, corporate law eases cooperation among the different resource owners by securing their ownership rights. This takes place by assigning well-defined property rights and decision rights to the different stakeholders.

Secondly, corporate law reduces information problems, in particular those resulting from asymmetric information and principal-agent relationships. Its main instruments are information rights and disclosure duties. Principal-agent problems occur in different forms in companies. They are most prominent in the relationship between owners and management, if owners do not themselves run their enterprise. Rules in regard to the decision-making structure of a company and the distribution of decision rights as well as information rights and disclosure duties between owners and managers are means to reduce these asymmetries.[2]

[2] Besides legal rules, a variety of different solutions to the problems resulting from principal-agent problems have evolved, like incentive-based payment schemes to reduce owner-management conflicts of interest. These are not part of the following discussion.

Principal-agent problems between management (as representatives of the owners) and employees are dealt with by co-determination rights and by employee participation rights. While labor law can be seen as a legal field which primarily deals with these aspects when individual labor relations are concerned, participation and co-determination rights as laid down in corporate constitutions can be seen as a supplementary problem- and conflict-resolution mechanism.

Moreover, principal-agent relations are also predominant in the relationship between creditors and debtors, causing moral hazard behavior and potentially resulting in adverse selection. Since asymmetric information may lead creditors to restrict capital supply and/or to require higher interest rates (because an extra charge for the higher risks due to asymmetric information is included), companies are better off when information asymmetries are reduced. Again, corporate law supports this by offering clearly delineated ownership rights and by providing information rights and disclosure duties both among owners as well as among owners and the other stakeholders of a corporation.

Thirdly, corporate law contributes to reducing transaction costs by stating procedural rights and conflict resolution mechanisms.

When analyzing corporate law forms for SMEs doing business internationally, there is a trade off between legal rules reducing transaction costs and increasing legal security in international/ cross-border cooperation by providing clear-cut/ fixed rules on the one hand, and legal rules which allow for the utmost flexibility in regard to the particularities of a single SME and its specific economic circumstances by offering scope for setting up flexible regulations on the other hand.

3.2 The SPE Draft Regulation

In the following we analyze what property rights, decision-making rights and information rights the SPE draft regulation (EU Council 2011) grants its various stakeholders, our main concern being with the owners, the creditors and the employees of a SPE.[3] We analyze the draft of the SPE regulation accordingly along the following three dimensions: (1) How does it assign and secure property rights and decision rights in regard to the resources incurred by the

[3] From the broad legal literature, on this see for example Bernecker (2010), van den Braak (2010), Hommelhoff/ Teichmann (2010), Hommelhoff (2011), Münch/ Franz (2010), Teichmann (2009), Weber-Rey (2011). For a comprehensive overview of the legal literature see http://www.europeanprivatecompany.eu/publications/?category=articles.

different stakeholders and in regard to a proper division of the quasi-rents (profits and losses) obtained from pooling them? (2) How does it deal with information asymmetries between the stakeholders (information rights and duties)? And finally (3) what procedural rights and rights in case of conflicting legal regulations among different EU member states does the SPE state?

The SPE draft regulation comprises 48 articles, which are grouped in ten chapters with three annexes. Its structure follows the life cycle of a company. First it sets out the main definitions (art.2) and the main characteristics of an SPE (art.3), while also dealing with the question of the applicable rules (art.4). Chapter II then turns to questions of the formation of an SPE (artt.5-13). This can be affected *ex nihilo*, by transformation of an already existing company or by merger. Annex I contains a list of matters for which special provisions can be included in the articles of association of an SPE according to art.8. Chapters III to IV (artt.14-26) concern primarily the property rights of an SPE's owners. They deal in particular with the definition of its units and with questions regarding its capital. Chapter V (artt.27-34) is about an SPE's internal organization, stating decision-making rights and dealing with management-ownership relations, while Chapter VI (artt.35- 35e) concerns co-determination and employee participation. Chapter VII (artt.36-39) lays down rules for transferring the registered office of an SPE, with Chapter VIII (artt.40-42) setting up the different methods for dissolving an SPE, either by transforming it into a national corporate law form or by nullifying it.

As article 3 states, an SPE is a limited liability company with an own legal personality whose units are neither offered nor traded publicly. These characteristics are important information for all the stakeholders and business partners of an SPE. It gives legal security to its owners in regard to the extent to which they are liable for entitlements against an SPE with their other personal property.[4] By this it delineates the potential claims of its creditors. As stated in art.2, owners of a SPE are those who own one or more units of capital put into it.

Chapter II of the SPE draft regulation deals with the formation of a SPE. There are three different ways by which a SPE can be founded (art.5): ex nihilo (art.5a), by transformation (art.5b) or by merger. A formation ex nihilo requires primarily to sign the articles of associations (Annex 1 in accordance with art.8) and to register the company (art.9-11). Transformation takes place by turning an already existing company, which so far has operated under the corporate law form among EU member states, into an SPE (art.5b). For this, no

[4] Of course, the limited liability as stated by corporate law does not rule out that there are other legal entitlements according to which claims against the private property of an SPE owner can be made for by its creditors.

winding up and/or loss of legal personality of the company is required. Besides of rules that guide the transformation process, the draft regulation also contains rules that take into account how to protect the rights of both minority owners as well as creditors (art.5b(9)). In addition, it also states information rights for the employees.

Art.8 states the compulsory subjects the article of association has to include, while Annex 1 lists 23 further matters that the owners of an SPE are free to additionally regulate in their articles of association. The compulsory issues concern the basic matters of an SPE, that is its name and address, its business objectives, the capital and units of the SPE, special rights and obligations attached to the units, the set up of the management and – if it exists – the supervisory board, the names and addresses of the founding members as well as those of the initial director(s). The voluntary matters as listed in Annex I refer to both property rights and decision-making rights. The property rights concern *inter alia* issues related to the units (like sub-divisions, restrictions on their transferability, purchase and cancellation of own units), interim dividends, aspects regarding the considerations in kind or cash and the reduction of capital. Decision-making rights concern primarily information rights both between the SPE and its members as well as among the members themselves, voting rules and rules regarding the general assembly.[5] Both in regard to the compulsory and to the voluntary matters as enumerated in art.8 (1) and Annex I the members of an SPE are not bound by national laws. This gives them broad flexibility to adopt such regulations with which they are most familiar and which best serve their needs, irrespective of the company law of the member state where the SPE is established.

If there is more than one owner of an SPE, to have secure property rights in the capital he or she invests into the SPE, it must be fixed who inserts what units of capital in the company and how profits and losses resulting from their pooled use are distributed. Besides, conflict may arise from heterogeneous interests among a company's owners in regard to taking out capital as well as to other matters. Rules relating to these issues are laid down in chapters 3 and 4 (articles 14 to 24).[6] Art.15 refers to the minimum capital requirements (MCR) of an SPE, which is regularly 1 €. However, member states with higher minimum requirements for national private limited-liability companies are allowed to raise the requirements for an SPE to up to a maximum of 8.000 € (art.19 (3)).

[5] For more details see the following discussion below on the internal structure of the SPE.
[6] These rules also concern the interests of creditors in their ownership rights. See in particular art.24 which contains safeguards for creditors in case of capital reductions of a company.

The economic rationale behind the MCR can be seen as giving creditors at least some security in regard to the obligations of a limited liability company. However, it is now widely accepted that MCR does no longer serve as an adequate guarantor for a private limited-liability company. Besides, with the growing emphasis on SMEs' contribution to economic growth, high MCR are seen as one of the obstacles to promote entrepreneurship and the establishment of new businesses. This holds especially for the new Eastern European member states, where availability and access to finance proves particularly critical for SMEs. Over the last years MCRs have declined due to reforms in various EU member states.

Artt.21 and 24 concern distributions to owners from their capital and capital reductions. They contain in particular provisions which should act as safeguards for both other owners and creditors to ensure that distributions or capital reductions do not affect the financial stability and thus the viability of an SPE.

During the life cycle of an SPE circumstances may change, making modifications in either its location (by shifting its registered seat) or in its organizational structure desirable from the point of view of its owners. The SPE draft regulation takes this into account, too. Chapter VII deals with the provisions for a transfer of the registered office of an SPE to another member state. In accordance to art.5b(3), art.36 states that transferring its registered seat should not change the legal status of a SPE. In particularly, it should not require its formal winding up with a new founding procedure. Art.37 details the formal procedure of the transfer, including both information rights to all the stakeholders involved, in particular the members (i.e. the co-owners), the employees and the creditors. Besides, art.38 lays down provisions for monitoring the transfer by the competent authorities of the home and host member states. Against any legal opposition to the transfer, review by a judicial authority should be granted. Art.40 deals with structural changes, either by change of the legal form, by merger or division. These should take place according to the applicable national law.[7]

Finally, closing of a SPE is the subject of art.41, according to which its winding-up, liquidation, insolvency etc. should be governed by the applicable national law and by Council Regulation (EC) no 1346/2000.

The rights described so far are mainly designed to secure the property rights of the *owners* of a SPE. In addition there are also a number of decision rights which concern the internal

[7] Art. 4 (2)b states that the national law applicable is that which is applicable also to the private limited-liability companies of the member state where the SPE has its registered office.

organization of the company. Art.27 states the general provisions for the internal organization of a SPE, setting up the general assembly of the owners as the main decision making body, with an additional management body for its operation. Artt.28 to 30 concern the decision-making processes among the owners of the company. Art.28 deals with the subjects the general assembly has to decide upon and with the applying voting rules. Art.30 contains the rights to require a resolution by the members as well as the right to convene a general assembly. Thus, these rights are necessary corollaries to make the ownership rights effective during the operation of a SPE.

Extra rules are necessary if the founder of a SPE does not also act as manager, but employs separate *managers*. This gives rise to the well-known principal-agent relationship between owners and management which is caused by asymmetric information. Accordingly, information and decision-making rights have to be stated together with the underlying organizational structure within which such rights are executed. Art.29 states the information rights owners have against the management body. It includes the clause that they are entitled to get information about "any important matters relating to the activities of the SPE" (art.29 (1c)) and narrows refusal to answer questions by owners only to the case that this would harm the SPE's interests. By this, at least the formal prerequisite for mitigating the owner-management agency relation is given. While art.31 sets up minimum requirements for the director of an SPE (in particular to be a natural person), art.34 grants the management of an SPE the right to represent it in relation to third parties.

Relations between a SPE as an employer and its *employees* are also characterized by asymmetric information on both sides. Due to the long-term nature of most labor contracts and to the specific investment in human capital which employees undertake for the benefit of their employer, they are subject to the risk of opportunism and moral hazard. Accordingly, co-determination and employee participation rights can be seen as a means to reduce the underlying information asymmetries. Such participation rights can take different forms, ranging from mere information rights to consultation and decision-making rights, with granting either just a veto right or even a fully fledged co-determination right. However, stronger employee participation rights imply a reduction in the discretionary powers of the owners and management of an SPE. Accordingly, they imply a conflict of interest. Since co-determination and employee participation rights differ widely within the EU, the SPE draft regulation does not contain a uniform regulation as to the precise nature of these rights.

Instead art. 35 (1) states that generally the rules of the member state in which the SPE has its registered office apply. Besides, it includes a provision to ensure that a higher level of participation should remain in force in member states with stricter participation rights than it is the case in the member state where the SPE has its registered office. Additional rules should also apply in case of transfer of the registered office, so as to prevent that this is done just to circumvent employee participation. However, these provisions hold only if an SPE's branch has at least 500 employees in the member state with the stronger participation rights. Accordingly, these provisions would not apply to SMEs as defined by the EU Commission's definition according to which SMEs have up to a maximum of 250 employees only (see *section 2* above). For SPEs to which these thresholds apply, artt.35a to 35d provide the establishment of a special negotiating body whose task it is to reach an agreement on the kind and degree of employee participation in the administrative and supervisory body of the SPE.[8]

To all SPEs - irrespective of the numbers of staff employed in different member states - applies art.35e. According to this, member states should ensure the realization of employees' information and consultation rights. However, it does not become clear from this article whether the host member states are asked to make sure that the respective rights of the home member state are applied also in the host member state, whether the home member state should take care that its participation rights are applied in the host member states or whether each member state should take care that his or her own participation rights are implemented.

Creditors are another important group of stakeholders of an SPE, like already mentioned above in discussing ownership rights of a SPE's members. They are investing money and other resources in a SPE. Thus, granting secure property rights to creditors is of vital interest for SMEs, since they have particular problems in gaining access to outside capital. In a number of articles the SPE draft regulation also deals with creditors' property rights, both explicitly and implicitly. On the one hand, there are explicit regulations concerning the safeguards for creditors in case of capital reductions (art.24) and solvency of a SPE (art.21). On the other hand, all information rights resp. disclosure duties on the members and the ownership structure of a SPE are of vital importance for creditors to form correct expectations about the financial situation of a SPE (see for example artt.6, 11, 15, 24, 37).[9] The rules on

[8] On this see also Scherm/ Fleischmann (2011).
[9] Note that most of the articles which deal with information rights or disclosure duties are vital also for the owners of an SPE to be able to effectively exercise their property rights.

accounting and auditing procedures, which are subject to the applicable national law, also serve this objective to allow creditors to form correct expectations about a SPE (art.26).

Finally, some of the regulations directly concern the *public*. It is represented by state authority as a stakeholder who provides public goods as inputs for the working of a SPE (like the legal system, infrastructure etc.) for which tax-prices have to be paid. In addition, it also defines the restrictions within which a SPE's business take place (see in particular legal and administrative production standards etc.). Clear rules as to the competent member state are necessary to grant legal security and to prevent a SPE from avoiding tax payments or from refusing to comply with its legal duties. At the same time such rules also reduce transaction costs and help tackle problems in regard to conflicts about which member state is competent in case of companies doing business in several member state. In the SPE draft regulation the rules concerning the registration of a SPE (artt.9 to 10), its company seat (art.7) as well as the procedural rules for a transfer of seat (artt.36 to 38), and rules on the applicable accounting and auditing rules (art.26) fall in this realm.

Finally, the SPE draft regulation contains a number of rules which deal with the potential problems arising from the international nature of an SPE. They are supposed to create legal security as to which is the applicable national law in case of conflicting laws from different member states. Art.4 explicitly deals with this question. As a general rule, art.4(1) states that the SPE regulation and the articles of association are the primary source governing a SPE. In case of matters not comprehensively regulated by these, regulations specially enacted by member states to complement them are applicable (art.4(2a)). If no such extra regulations have been put into force, national provisions pertaining to this field should be applied. However, art.4(3) states that in case that the matters listed in Annex I are not comprehensively dealt with in the articles of association, the national law which refers to private limited-liability companies as listed in Annex II of the regulation where the SPE has its registered office should be applied (art.4 (4)). Accordingly, a hierarchy of applicable legal rules is set up, with national law of that member state where a SPE has its registered seat as the last resort for matters not dealt with otherwise. To make the SPE regulation effective, art.45 states that member states should put into force effective sanctions for its proper use.

In addition, throughout the draft regulation, special rules are set up stating in what case and to what degree national law is applicable.[10] These rules concern particularly those aspects of corporate law where large differences exist in EU member states' corporate law for private limited-liability companies. It thus refers in particular to the transformation of existing legal bodies to an SPE (art.5b), the question of a uniform seat for the registered and administrative office of an SPE (art.7), matters regulated within the articles of association and changes of it later on (artt. 8, 9, 14), an upper limit to minimum capital requirements (art.19) as well as a lower limit for capital reduction (art.24), regulation on employee participation rights (artt.27(3a), 35, 35e) and to the restructuring (art.40), winding-up (art.41) and nullity (art.42) of a SPE. Whether the hierarchy of rules laid down in these instances will in effect help attain the underlying objectives – that is provide for a simply to use, uniform EU-wide private limited liability corporate law form for SMEs while at the same time both preventing misuse as well as maintaining the main substantive differences of its national counterparts – seems questionable. In particular, the rules concerning the matters settled in the articles of association, regulating a SPE's seat and its employee participation rights, seem to give broad scope for interpretation and thus may give rise to future legal dispute on the applicable legal regulations.

Time and again, the draft regulation states some instances where member states are not allowed to ask for other than the listed documents or to carry out substantive controls (see for example art.9). These provisions also show that the law-makers see the possibility that competent national authorities might apply stricter rules when implementing the SPE regulation than intended by the EU law-maker. Besides such explicit limits on national authorities' scope for interpretation, art.48 requires a review after some years of application of the regulation in particular with respect to certain heavily contested matters by member states, namely minimum capital requirements and threshold of employee participation rights.

Finally, there are a number of articles which set up regulations to reduce transaction costs by stating the definitions of the main terms and prescribing how certain procedure have to be carried out. Under this category fall those articles that define the subject matter of an SPE (artt.1 and 2) as well art.43 on which currency to use. Besides, also procedural prescriptions on how to register (artt.9 to 10) fall under this category of rules. In particular, art.9 (2) gives a

[10] The SPE draft regulation also refers to national law time and again when stating how formal procedures have to be carried out. By referring to national rules in case of information rights, disclosure duties or procedures relating to registration, transformation or transfer of a SPE, transaction cost economies are realized, since national authorities can use already well established procedures instead of introducing new ones.

final list of documents which have to be supplied for registration to prevent member states from applying different administrative requirements for registration,

Table 3.1: Overview of the SPE Draft Regulation

	Owners	Manage-ment	Em-ployees	Credi-tors	State - Public
Design of property rights	Ch. II (art.5-13): formation Ch.III-IV (art.14-26): PR of the owners regarding MCR Ch.VII transfer of seat Ch. VIII dissolution			art.24, 21: capital reduction solvency	Registra-tion, seat, accoun-ting and auditing
Design of decision rights	Art.8 and Annex 1: articles of association Ch.V (art.27-34): among owners	Ch.V (art.27-34): between owners and management	Ch.VI: co-determi-nation		
Design of information rights	Ch.V (art.27-34) Ch.VII	Ch.V (art.27-34)	Ch.VI Ch.VII	Artt.6,11, 15,24,37: disclosure rules Ch.VII	Ch.VII
Design of coordination rules	art.4 : applicable rules		art.35		Art.45 sanctions

Source: Own composition, M.E.

3.3 Assessment of the SPE Draft Regulation

As we have derived from section 2 and section 3.1 above, a corporate law form suited for SMEs for doing business internationally has to meet at least the following three requirements. Firstly, it has to provide an inexpensive legal framework which requires few resources for setting up a corporation and meeting its regular tax and accounting obligations. Secondly, it must provide secure ownership rights, including limited liability so as not to endanger the parent company by doing business internationally for the owners, but at the same time also providing secure property rights for creditors so as to reduce problems of getting access to finance and decrease risk premium. Finally, it must reduce principal-agent problems due to information asymmetries by providing clear information to business partners, customers and foreign authorities about the company. In this way trust in foreign markets increases (again with costs and restraints of outside finance decreasing). Besides, by being a not to complex

corporate form, information and consultation costs for SMEs about legal and administrative questions are drastically reduced, referring back to the requirement of providing an inexpensive corporate law form.

Applying these requirements to the SPE draft regulation, it follows from our discussion above that it might be well suited to fulfill them. The main complications might arise in regard to the regulations of co-determination. However, this procedure applies only to enterprises with 500 employees and more. This notwithstanding, the SPE draft regulation seems to be a viable corporate law form for the typical SME.

4. Competition among Corporate Law Forms

Our discussion so far has shown that the SPE draft regulation might provide an appropriate legal basis by offering SMEs a corporate law form for international business activities. However, this result alone does not imply by itself that there is actually the need for an additional supranational private limited-liability corporate legal form, provided by the EU level. Therefore, in the following we ask whether indeed additional gains can be expected from such a 28th law form for SMEs in the EU. For this, in *section 4.1* we analyze the regulatory environment of the SPE. Firstly, we examine the extent of horizontal competition among the existing 27 national private limited-liability corporate law forms available in the EU member states (as acknowledged in Annex II of the draft regulation). Secondly, we examine what can be learned about the positive and negative effects of vertical competition from the already existing supranational corporate forms, in particular in regard to the European Company. Based on this, we finally turn in *section 4.2* to the question of how much (de-)centralization is appropriate for corporate law, exemplified by the SPE. To this end we apply the main criteria developed in the theory of interjurisdictional regulatory competition.

4.1 The Regulatory Environment of the SPE: its Horizontal and Vertical Dimension

Until the ECJ's Centros decision in 1999, companies had only a limited number of alternatives available when deciding which corporate law form to use. Basically, they were confined to the corporate law forms available in their home country of establishment. As has been shown in *section 2.3* 50% of SMEs run their business as a private limited liability company (with additional 9% on average as a public limited liability company). Around 20%

operate their business as sole proprietor, being subject to complete liability in regard to their personal assets.

When doing business internationally by an establishment in another EU country accordingly, SMEs had only two options available. They could either establish a legally dependent branch in the host member state or found a legally independent subsidiary. For the latter, they had to choose among the corporate law forms offered by the host member state where they found the establishment. Only by setting up a limited liability company according to the host member state's corporate law a SME could limit the risks from its international business activities in the host member state to the establishment founded there. As a result, a SME had to incur additional costs to get informed about the particularities of the foreign corporate law form in regard to the particularities discussed in *section 3.1*. Linked to this are additional costs on the specific characteristics of the legal environment in the host country. As can be seen from *table 4.1* below legal and administrative barriers proved most important for shift of establishment to another country. The data refer to about 17.000 German companies with more than 100 employees (Statistisches Bundesamt 2008). Since legal and administrative barriers cause fix costs, for enterprises with 100 employees or less, this obstacle to international business becomes even more pronounced.

Table 4.1: Obstacles to shift of location

Obstacles	Com-pany	Importance				
		Very rele-vant	rele-vant	Less rele-vant	Not rele-vant	Do not know
	numbers	%				
Language and cultural obstacles	16 631	27,4	43,2	19,0	6,5	3,9
Other legal and administrative obstacles	16 631	13,0	49,9	26,6	6,2	4,2
Cost-benefit-ratio	16 630	20,1	38,8	25,2	11,2	4,6
Distance to production locations	16628	19,5	36,5	27,6	12,2	4,3
Tax problems	16 631	11,7	41,5	34,9	7,7	4,1
Employee-related Issues	16 628	10,3	42,1	32,9	10,5	4,3
Ethical Problems	16 628	7,9	42,1	34,5	10,7	4,8
Uncertainty as to competent international standards	16 631	9,3	40,4	36,0	10,0	4,3
Risk of patent law violation	16 631	16,0	32,9	32,5	14,5	4,2
Distance to main markets	16 630	16,2	32,1	33,2	14,2	4,3
Customs	16 631	10,6	36,5	34,7	14,1	4,2
No adequate supplier Abroad	16 628	11,2	32,5	34,9	17,0	4,5
Insufficent process documentation	16 626	5,5	25,4	43,9	20,3	4,8
Others	254	64,2	31,7	0,0	/	/

Source: Statistisches Bundesamt (2008, Tab.4), own translation, M.E.

Nevertheless although the costs for legal consultation and advice are fixed costs, on average over 40% of SMEs in the EU with a foreign establishment have established an independent subsidiary or formed a joint venture. Only one fifth has put up a dependent branch (see *table 2.6*, in *section 2.3*). This shows how much SMEs value limited liability and the resulting risk reduction when doing business internationally. Accordingly, gains from reducing the costs of setting up a foreign subsidiary can be expected. Besides, so far only about 2% of the SMEs in the EU have foreign establishments. It can thus be assumed that such cost reductions would also set incentives for more SMEs to capture the resulting gains form doing business internationally. *Table 4.2* shows the average official administrative costs for starting up a business in the 27 EU member states, which have to be added to the costs of minimum capital requirement, costs of legal advice as well as translations costs .

Table 4.2: Costs and time required for starting-up a company in EU member states 2010

Member state	Costs in €	Time in days
Italy	2673	1
Greece	1101	15
Netherlands	1040	2
Luxembourg	1000	14
Belgium	517	2
Poland	429	22
Hungary	392	2
Austria	385	11
Czech Republic	345	15
Slovakia	335	12
Finland	330	8
Portugal	330	1
Cyprus	265	5
Malta	210	7
Lithuania	210	4
Latvia	205	4
Sweden	185	16
Estonia	185	2
Germany	176	6
Spain	115	18
Romania	113	3
France	84	4
Bulgaria	56	5
Ireland	50	4
UK	33	6
Slovenia	0	3
Denmark	0	2
Mean	**399**	**7**

Source: Own composition according to EU Commission (2010c).

Horizontal Competition among EU Member States' Corporate Law Forms[11]

Since the Centros decision in 1999 the ECJ has opened up the restrictions on corporate law form to a large extent. Since then companies within the EU are in principal free to choose among all the corporate law forms across EU member states by incorporating in one member state and doing business on a regular basis in another one.[12] This would indeed allow SMEs to start up an independent private limited liability company according to any of the 27 member state's corporate law forms. A SME can now found a corporation according to its home country corporate law, solely with the purpose to do business in another member state. As a consequence, there are no information and transaction costs associated with incorporating

[11] Note that this part is currently under revision, for more see Eckardt (2012).
[12] See also for example Davis (2010), Hommelhoff (2008).

with an unfamiliar corporate law form, that is, one which the SME is not familiar with. It only has to register in the member state of the establishment and fulfill the legal and administrative requirements for auditing, taxes and doing business in general.

However, there are also disadvantages of using a corporate legal form which is unknown to the creditors, business partners and public administration in the host member state. A SME has to spend extra resources for reducing these information asymmetries due to the asymmetric information to the disadvantage of the host country's stakeholders. In addition it realizes restrictions (in the form of worse access to resources like outside finance or in the form of extra risk or wage or price premium to be paid). Moreover, additional time has to be spent to build up trust with business partners, creditors, public administration and employees. Of course, there might be differences between the 27 corporate law forms in terms of familiarity and information asymmetry assigned to them.

An indicator on the extent of horizontal competition among corporate law forms from different countries within the EU member states can be gained from the German business register (*Gewerberegister*). *Table 4.3* below shows the businesses newly registered or deregistered in Germany in 2011 according to their legal form.[13] The British Limited has become rather well-known in Germany following the Centros decision of the ECJ due to a large number of legal consultants promoting it in Germany. But as can be seen, following the introduction of the *Unternehmergesellschaft* with only 1 € minimum shares requirement in 2009, the British Limited realized a sharp drop. Following this, horizontal competition among corporate legal forms within the EU seems to be working, at least in regard to start ups. However, there are no data available as far as we know on its importance for SMEs doing business internationally.

[13] The British private company limited by shares is the only foreign (that is non-German) corporate law form for which extra data are available.

Table 4.3: GmbH and Private Company Limited by Shares in Germany (2005 - 2011)

Gesellschaft mit beschränkter Haftung (GmbH)

year	newly registered companies	deregistered companies	net total	change p.a. (in %) newly registered companies	change p.a. (in %) companies deregistered
2005	81 415	70 605	10 810		
2006	77 530	67 490	10 040	- 5	- 4
2007	80 277	63 096	17 181	4	- 7
2008	82 533	65 035	17 498	3	3
2009	94 961	70 580	24 381	15	9
2010	95 481	68 500	26 981	1	- 3
2011	91 610	66 251	25 359	- 4	- 3
mean	**86 258**	**67 365**	**18 893**	**2**	**- 1**
2011-UG (1)	**15 423**	**5 103**	**10 320**		
share of GmbH (%)	**17**				

Private Company Limited by Shares

year	newly registered companies	deregistered companies	net total	change p.a. (in %) newly registered companies	change p.a. (in %) companies deregistered
2005	6 625	1 814	4 811		
2006	8 643	3 166	5 477	30	75
2007	7 463	4 243	3 220	-14	34
2008	5 863	4 568	1 295	-21	8
2009	3 632	4 916	- 1 284	-38	8
2010	2 486	4 531	- 2 045	-32	-8
2011	1 693	3 336	- 1 643	-32	-26
mean	**5 201**	**3 796**	**1 404**	**- 18**	**15**

(1) UG = Unternehmergesellschaft
Total number of businesses: 3.6 mio in 2009 (source: Unternehmensregister, Statistisches Bundesamt)

Source: According to Statistisches Bundesamt (different years), own translation M.E.

Vertical Competition among EU Member States' Corporate Law Forms

Over the last years not only the corporate alternatives available from other member states have opened up due to the jurisdiction of the ECJ. There are also a number of supranational corporate law forms available.[14] Starting with the European Economic Interest Grouping (EEIG, applicable since 1989), the European Company (SE, applicable since 2004) and the European Cooperative Society (SCE, applicable since 2006) already three different supranational corporate law forms are in force. As one can see from *Table 4.4*, the yearly rate of newly established companies under these regulations is very low. For the European Cooperative Society there is a mean value of 5, while on average per year 114 enterprises have incorporated as SEs and 93 as EEIG. The SE realizes still an increase in absolute numbers per year, while for the EEIG it remains relatively stable with around 80 new establishments per year for the last decade.

[14] For a comprehensive overview see Fleischer (2010).

Table 4.4: Supranational Corporate Enterprises Established per Year

	Establishments per year			Changes per year		
Year	**EEIG (1)**	**SE (2)**	**SCE (1)**	**EEIG (1)**	**SE (2)**	**SCE (1)**
1989-1999	1144					
2000	137			140%		
2001	101			74%		
2002	83			82%		
2003	69			83%		
2004	87	7		126%		
2005	95	17		109%	243%	
2006	74	35		78%	206%	
2007	88	85		119%	243%	
2008	69	171	2	78%	201%	
2009	58	168	5	84%	98%	250%
2010	80	209	10	138%	124%	200%
2011	59*	217**	3*	74%*	104%**	30%*
Total	**2144**	**909**	**20**			
Mean	**93**	**114**	**5**			

EEIG = European Economic Interest Grouping; SE = European Company, SCE = European Cooperative Society
* 10.11. 2011 ; ** 01.09.2011

Source: (1) see www.ewiv.eu; (2) see http://www.worker-participation.eu/European-Company/SE-COMPANIES/Facts-and-Figures

While the SE was intended to offer a uniform corporate form on an EU-wide scale, in effect it differs widely from member state to member state in its legal rules. This is due to the extensive reference made to national law in its regulation.[15,16] Consequently, it is not surprising that this together with the resulting uncertainty and the related costs are identified as the main obstacles for choosing the SE for incorporation (see *table 4.5*). Besides, employee involvement and inflexibility of applicable national legislation also are disadvantages of the SE regulation. In contrast to that the possibility of transfer of the registered office and the value of the European image created by the SE as becoming part of a company's name are seen as the main advantages accompanied by the higher flexibility given in regard to tax and labour law issues.[17]

[15] For a detailed analysis on the experiences with the SE see Ernst and Young (2009), EU Commission (2010d), EU Commission Staff (2010).
[16] Indeed, it is to be questioned whether the term "vertical competition" is actually appropriate in regard to the SE regulation in its current version. One might rather argue that the 27 EU member states strongly colluded when setting up the SE regulation. In doing so they reduced the potential threat to a margin that a EU-wide uniform public limited corporate form could have posed to their national corporate forms.
[17] See for example Njoya (2010).

Table 4.5: Drivers for choosing the SE as corporate law form

Positive Drivers		Negative Drivers	
Linked to the SE Regulation	**Linked to national legislation**	**Linked to the SE Regulation**	**Linked to national legislation**
• Possibility of transfer of the registered office • Value of the European image • Formation of an SE by cross-border merger • Possibility of cross-border groups simplifying and harmonising their structure	• Flexibility of the relevant national legislation applicable to the SE • Considerations linked to tax regime • Considerations linked to labour law regime	• Cost, complexity and uncertainty of the SE • Employee involvement • Apparent reduced uniformity of the SE due to the number of references to national law	• Inflexibility of the relevant national legislation applicable to the SE

Source: Own composition according to Ernst and Young (2009, table on p.266f.).

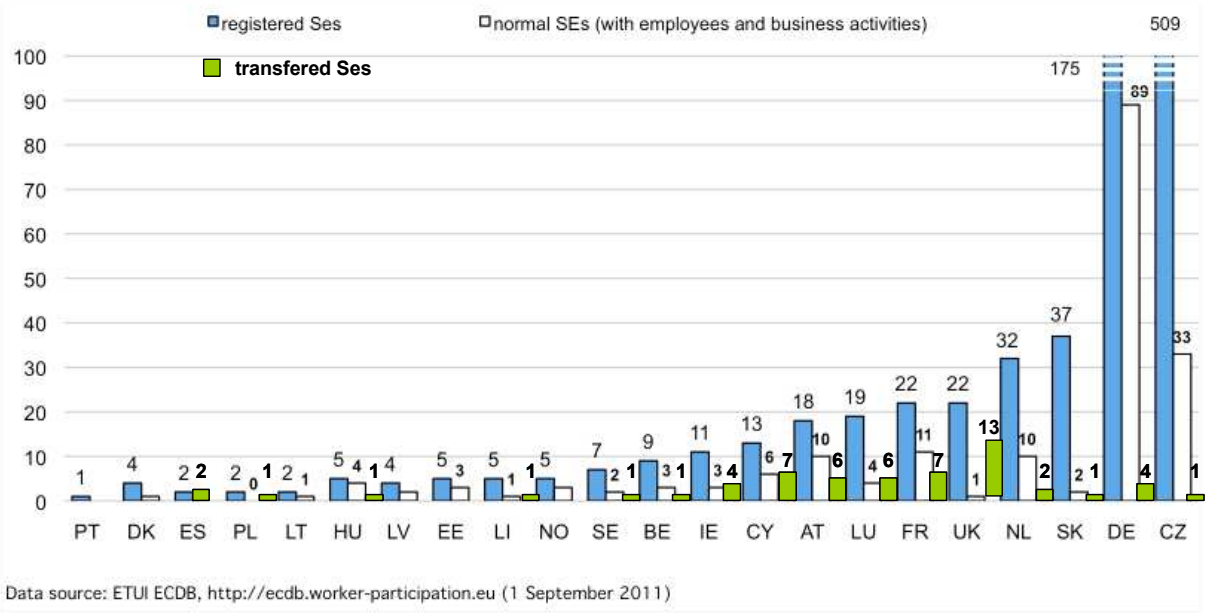
Due to legal changes since the enforcement of the SE regulation, some of its original objectives are not that important anymore, since they are now taken care for by special legislation (like the EU cross-border merger directive) or are being handled by the ECJ. The latter holds in particular in regard to the freedom of establishment for corporate law forms. The recent jurisdiction of the ECJ has removed some of the main obstacles for incorporation, which are mainly related to whether a member states follows the incorporation principle or the real seat theory. Nevertheless, the SE offers the possibility to register in any member state.

There had been both hopes and fears that it thus would favour establishment in member states offering higher flexibility to owners, implying a weakening in particular of employee participation rights (race-to-the-bottom). Accordingly, one would expect that newly found SEs incorporate more frequently in such member states. Moreover, transfers of the registered seat of already established SEs to those member states should also occur more frequently. However, so far, the main reasons for choosing a particular member state for incorporation by an SE seem to be ownership and control and the signal given by the "European" nature displayed in the resulting company name (Ernst and Young 2009, 210f., 214).

As regards the distribution of SEs among the EU member states, *figure 4.1* also underlines that preferences for incorporation in countries with less strict legal rules have not been realized to a significant degree so far. Germany makes up for the highest number both in regard to registered as well as working SEs. In addition, so far, there have been 58 transfers of

registered seats, of which 13 incorporated in the UK, but 4 even in Germany. This is in line with the finding, that companies while highly valuing the possibility of transfer of registered seat, only rarely put it into practice (Ernst and Young 2009, p.212ff.).[18]

Figure 4.1: Distribution of SEs in the EU member states



Source: http://www.worker-participation.eu/European-Company/SE-COMPANIES/Facts-and-Figures

As regards the proportion of SEs in respect to the newly established public limited companies, one finds for Germany that the total of 175 registered SEs in 2011 amount to only 11% of the newly set up public limited companies in 2010 (see *table 4.3*).[19] All in all, thus, the SE so far seems to be not a serious competitor for the German *Aktiengesellschaften*. If one extends the German experience to other EU member states, there seems to be not much of vertical competition, too. This is quite in line with the findings for horizontal competition among private limited companies in the EU.

A main reason for this might be that the SE is not truly a uniform EU-wide corporate law form, as it has been originally intended – and is still labelled – to be. As a consequence of the broad reference made to national laws, uncertainty, complexity and costs relating from these are to be expected from applying the SE statute. And indeed, these issues have been named

[18] Of course, the low number of transfers of registered seat might in part result form the additional uncertainty and costs associated with the SE due to its complex structure.
[19] Data for 2011 are not yet available.

the most important reasons for not choosing the SE as corporate form. According to a number of interviews carried out by Ernst and Young (2009, 240) the average costs for setting up a SE amount to EUR 784,000, ranging between EUR 100,000 and EUR 4 million.[20] In addition, the minimum capital required amounts to EUR 120,000. For setting up an operating SE the following types of costs have to be spent: registration costs, expert costs (fees of tax and legal advice), notary costs, travel and accommodation costs, translation costs, communication costs. Besides, also the opportunity costs of time spend for administration particularly related to the SE have to be taken into account (Ernst and Young 2009, 239ff.).

Higher costs of establishing and running a SE compared to corresponding domestic corporate law forms result from the fact that (1) the SE regulation deals with international / cross-border issues, (2) the SE regulation is a legal innovation, and (3) the high complexity of the SE regulation itself. While the first source of costs is intrinsically linked to the *raison d'etre* of the SE as such, the second source should be expected to decrease over time due to learning effects. Compared to that, costs arising out of the alleged complexity of the SE might require a change in its regulation for a substantial reduction. Note however, that the accruing types of costs cannot be clearly assigned to each of these categories separately. For example, there are costs associated with establishing a special negotiating body concerning the regulation of employee participation in the SE. These costs are attributable to all three categories. The objective of the special negotiating body is to deal with differences in participation rights of the different member states across which the workforce is located (category 1). With more experience over the years in how to effectively conduct such negotiations, the resulting costs will decline for SEs founded later on (category 2). Nevertheless, the provisions stated in the SE regulation on this issue will set the limit for costs (category 3). Only if there are reforms resulting in a simplification of how to deal with employee participation rights, substantial costs reduction seem to be attainable.

Conclusions from Horizontal and Vertical Competition for the SPE

What conclusions can we draw from this discussion about horizontal and vertical competition among corporate law forms for the SPE? In regard to horizontal competition we have seen that foreign corporate legal forms so far play rather no role, neither in regard to newly established companies nor when looking at companies moving in or out of a member state.

[20] Note that these data are not representative, see Ernst and Young (2009).

Accordingly, the extent of horizontal competition is rather low. In regard to vertical competition the same holds. Besides, so far the so-called supranational corporate forms, like in particular the SE, show a high level of complexity and uncertainty – implying additional costs – due to their extensive reference to national law.

Are these findings in favour or against the introduction of the SPE regulation? From the discussion in *section 2* we know that SMEs are in favour of limited liability corporate forms for establishments in other member states and that they see legal and administrative barriers as crucial obstacles to internationalization. Besides, financial resources and time are critical structural bottlenecks for SMEs. Although the ECJ opened up the way for using corporate law forms provided by other member states all over the EU, this is obviously not attractive for SME in a broader way. Besides, there are still a lot of uncertainties and barriers to use non-domestic corporate forms in a country.

In addition, the SPE compares favourably with the SE. The minimum capital requirements are much lower and the areas with references to national law are rather limited. In addition there are precise rules for setting up a SPE and for its registration procedure. At the same time, it allows for broad flexibility, since the article of association leaves much scope for the design of its internal relationship. Consequently, unlike the SE, the SPE regulation blurs much less the lines between the horizontal and vertical level, implying increased legal stability, more transparency and much less transaction costs.

4.2 Interjurisdictional Regulatory Competition and the SPE

Within the framework of the theory of interjurisdictional competition a number of criteria have been derived for the assignment of competencies to either the central or lower levels of multi-layered jurisdictions.[21] In the following we refer to them and discuss whether these criteria are in favour or against a supranational private limited-liability corporate law form in the EU. We distinguish between arguments from welfare economics, political economics and evolutionary economics, as *table 4.6* shows (Eckardt 2007 with additional references).

The main focus of *Welfare Economics* is on the efficient allocation of scarce resources. Thus, the main function attributed to interjurisdictional competition is that of coordinating independent economic activities so as to achieve this objective. The main justification for assigning competencies to a more central jurisdictional level then is to prevent and limit

[21] For an in-depth discussion of these issues in regard to the SE, see Röpke/Heine (2005).

market failure because of the ensuing inefficiencies. While the presence of heterogeneous preferences of the economic actors is the main argument in favour of decentralized competence assignment, market failure arguments like externalities, incomplete and asymmetric information (resulting in additional information and transaction costs), economies of scale (allowing for market power and strategic behaviour) support a centralized solution. Besides, to bring about a common playing field also is a strong argument in favour of a centralized assignment of competencies.

In regard to these efficiency considerations, the arguments in favour of the presence of a EU-wide uniform limited-liability corporate law form for SMEs apply to the SPE. With such a EU-wide applicable corporate law form, incomplete information diminishes and transaction costs are reduced. Economies of scale and scope imply additional cost reductions if SMEs intend to do business in several member states and adopt the SPE corporate law form for establishing more than one independent subsidiary. Accordingly, market access to different EU member states becomes less expensive, too. Besides, founding establishments in other EU member states becomes accessible more easily for SMEs, since with a uniform corporate law form obstacles of entering foreign markets are reduced and a more equal playing field emerges.

In contrast to that the main point against the SPE are heterogeneous preferences of SMEs' owners on what corporate law form to adopt. However, since the SPE is not the only corporate law form available, entrepreneurs can still chose among the broad variety of the 27 (!) other EU private limited-liability corporate law forms plus other corporate forms available (like partnership or sole proprietor). Accordingly, the SPE does not reduce the choice set available, but on the contrary, it increases it.

Public Choice approaches of interjurisdictional competition focus primarily on distributional questions. They center on the incentives set for rent-seeking activities and ask what assignment of competences best can control a misuse of market *and* political power. For this, it is claimed that the main rules of the game should be provided on the constitutional level. In this way they are out of reach of the players and cannot be manipulated while the game is being played. However, to control for the (mis-)use of political power to the advantage of individual interest groups, there are arguments both in favour and against a decentralized allocation of competencies. On the one hand it is argued that a decentralized allocation of competences reduces political information and transaction costs and ensures a more effective

control of rent-seeking behaviour. On the other hand, one has to remember that corporate law sets up the basic constitution of economic entities as legal personalities. Taking this into account, like with political constitutions also the corporate constitution of companies should be out of reach for the players while the game is being played to make up for a level playing-field and to create legal certainty and reliability for long-term planning by the economic actors. Accordingly, the public choice approach also favours the central provision of corporate legal forms as they withdraw the basic constitutional rules of a corporation from the influence of interested parties.

Table 4.6: Criteria for vertical assignment of competencies

	Welfare Economics	**Public Choice**	**Evolutionary Economics**
Focus	Efficiency	Distribution	Innovations
Main function of competition	Coordination	Control	Discovery
Objective of competence assignment	to prevent and limit market failure	to prevent and limit political failure	to promote innovation and imitation
Arguments for decentralisation	• Heterogeneous preferences	• Preventing rent-seeking • Political information costs • Economies on political transaction costs	• Decentralised knowledge about problems and their solutions • Adaptive flexibility
Arguments for centralisation	• Externalities • Economies of Scale • Transaction costs economies • Incomplete information • Strategic behaviour • Level playing-field	• Preventing rent-seeking • Political information costs • Economies on political transaction costs	• Economies in innovation activities • Promotion of innovations and their dissemination • Overcoming reform blockades

Source: Own composition according to Eckardt (2007).

Finally, *Evolutionary Economics* stresses the importance of competition for the generation and dissemination of innovations. They are based on a number of different approaches, with Hayekian and Schumpeterian notions being most prominent (Kerber/Eckardt 2007). Arguments in favour of a decentralized assignment of competencies refer to its greater adaptive flexibility and to its superior problem-solving capacity due to the resulting advantages in knowledge about the underlying problems and the potential for a more flexible response to newly emerging issues. But there are also arguments in favour of a centralized

assignment of competencies. They rely on economies of scale and scope achievable in innovation activities, problems in regard to the promotion and dissemination of innovations which stem from the uncertainties related to innovations and to externalities linked to their diffusion. Besides, innovations might also be hindered by reform blockades, which are preserved by interested parties that fear to realize disadvantages from the innovation under question. In addition, due to the large uncertainties of genuine innovations, a secure framework within which economic activity takes place is of special importance.

In regard to these arguments there can be made no clear statement either for or against the provision of corporate law forms at the supranational EU level. However, one has to take into account that the SPE is not the only corporate law form available for doing business internationally. In fact, it extends the choices available at the horizontal EU level to another alternative. It indeed competes with all other 27 EU private limited liability corporate law forms as well as every other corporate law form available.

As a summary, then, we find that for all three approaches to the assignment of competencies in multi-layered jurisdictions discussed they are in favour of the SPE. This is supported by the fact that the SPE does not prevent the other 27 corporate legal forms situated at the level of the member states from being adopted. Accordingly, since there are additional decentral corporate solutions available, the provision of the SPE at the supranational level does not stand against the decentralization arguments either.

5. Conclusion

As a summary, we find that the current draft of the SPE might well address the needs of SMEs when doing business internationally in the EU. It seems to be much better qualified than the already existing supranational corporate forms. Nevertheless, member states' national interests still seem to prevent more centralized regulations which would be more efficient from an economic point of view.

To summarize our findings, in *section 2*, we started with an overview on the extent of internationalization of SMEs in the EU and the importance of an appropriate corporate law form. Hereby, we pointed out the main obstacles for doing business internationally for SMEs. These regard mainly the access to finance and scarce resources in terms of time and managerial capacity available for the administrative tasks related to internationalization. As a consequence, ideally a corporate law form which supports the internationalization of SMEs

should meet the following three criteria. Firstly, it should be kept simple and be inexpensive for setting up a foreign establishment and meeting its regular administrative, accounting and tax obligations. Secondly, it should provide secure property rights, not only for an SMEs' owners but also for third parties, in particular for creditors. Thirdly, it should reduce principal-agent problems due to information asymmetries by providing adequate decision-making rights and information rights to all relevant stakeholders.

Following this, in *section 3* we analyzed the current draft regulation of the SPE. We found that it might be well suited to meet the criteria set up before. The main complications might arise in regard to the regulations of co-determination. However, this procedure applies only to enterprises with 500 employees and more. This notwithstanding, the SPE draft regulation seems to be a viable corporate law form for the typical SME with less than 250 employees.

Finally, in *section 4* we turned to the issue of regulatory competition. We discuss the extent and nature of horizontal and vertical competition in field of corporate law forms. We found that so far, the empirical evidence for both horizontal and vertical competitions is rather weak. In addition, even from the normative point of view of regulatory competition in multi-level jurisdictions we find more arguments in favour than against the introduction of the SPE at the supranational level.

As a summary, we conclude that the current draft of the SPE might well address the needs of SMEs when doing business internationally in the EU. It seems to be well qualified to supplement the already existing national and supranational corporate law forms. By this, it may well promote SME internationalization. Accordingly, it would be desirable, if the political actors could find a way to remove the still existing obstacles for introducing it (This holds in particular to German objections regarding the seat of the SPE and tax issues.).

References

Beckes-Gellner, U., Huhn, K. (2000): Internationalisierungsformen und ihre Bedeutung für mittelständische Unternehmen, in: Gutmann, J. and Kabst, R. (eds.): Internationalisierung im Mittelstand. Chancen – Risiken – Erfolgsfaktoren, Wiesbaden, 175-192.

Bernecker, A. (2010): Europa-GmbH. Einheitliche Rechtsform für KMU auf der Zielgeraden?, Deutsche Bank Research, Research Briefing –Wirtschaft und Politik, 7. Juli 2010, www.dbresearch.de

Buschmann, Birgit (2005): Rechtsformwahl in kleinen und mittleren Unternehmen. Ergebnisse einer empirischen Untersuchung, 121-144.

Davis, P. (2010): The European Private Company (SPE): Uniformity, Flexibility, Competition and the Persistence of National Laws, European Corporate Governance Institute, Law Working Paper nr 154/2010, May 2010, www.ecgi.org/wp

Eckardt, M. (2007): Die Kompetenzen der Europäischen Union in der Rentenpolitik: Quo vadis?, in: Heine, K. and Kerber. W. (eds.): *Zentralität und Dezentralität von Regulierung in Europa*, Schriften zu Ordnungsfragen der Wirtschaft, Band 83, Stuttgart, 261-285.

Eckardt, M. (2012): The European Private Company: Do we Need another 28th Private Company Law Form in the EU? On Regulatory Competition of Corporate Law, in: Raudjärv, M.: Discussions on Estonian Economic Policy, Theory and Practice of Economic Policy, 20th ed., Berlin, Tallinn, forthcoming

Ernst and Young (2009): Study on the operation and the impacts of the Statute for a European Company (SE) - 2008/S 144-192482, Final report, 9 December 2009, http://ec.europa.eu/internal_market/consultations/docs/2010/se/study_SE_9122009_en.pdf

EU Commission (2003): Commission Recommendation of 6 May 2003 concerning the Definition of Micro, Small and Medium-sized Enterprises, 2003/361/EC, Official Journal of the European Union, L 124, 20.05.2003, 36-38.

EU Commission (2010a): Internationalisation of European SMEs, Final Report, EIM, Brussels, http://ec.europa.eu/enterprise/policies/sme/market-access/files/internationalisation_of_ european_smes_final_en.pdf

EU Commission (2010b): Database on EU Commission (2010a), http://ec.europa.eu/enterprise/policies/sme/market-access/internationalisation/index_en.htm

EU Commission (2010c): Start-up procedures under the Lisbon Agenda for Growth and Jobs. 2010 Country by country assessment - overview table, http://ec.europa.eu/enterprise/policies/sme/business-environment/files/startups2010_en.pdf

EU Commission (2010d): Report from the Commission to the European Parliament and the Council. The application of Council Regulation 2157/2001 of 8 October 2001 on the Statute for a European Company (SE) (Text with EEA relevance), SEC(2010) 1391, Brussels, 17.11.2010 COM(2010) 676 final

EU Commission (2011): Impact Assessment, Accompanying the document "Proposal for a regulation of the European Parliament and the Council establishing a Programme for the Competitiveness of enterprises and small and medium-sized enterprises (2014 to 2020)

{COM(2011) 834 final} {SEC(2011) 1453 final}, Commission Staff Working Paper, Brussels, 30.11.2011 , SEC(2011) 1452 final

EU Commission Staff (2010): EU Commission Staff Working Document. Accompanying document to the Report from the Commission to the European Parliament and the Council on the application of Council Regulation 2157/2001 of 8 October 2001 on the Statute for a European Company (SE), COM(2010) 676, Brussels, 17.11.2010 SEC(2010) 1391 final

EU Council (2011): Proposal for a Council Regulation on a European private company - Political agreement, Interinstitutional File 2008/0130 (CNS), 23. May 2011, 10611/11 DRS 84 SOC 432, http://register.consilium.europa.eu/pdf/en/11/st10/st10611.en11.pdf

Fleischer, H. (2010), Supranational Corporate Forms in the European Union: Prolegomena to a theory on Supranational Forms of Association, in: Common Market Law Review, Vol. 47, 1671-1717.

Hommelhoff, P. (2008): Die Europäische Privatgesellschaft (SPE): Auswirkungen auf die nationale GmbH, in: Der Gesellschafter, 337-345.

Hommelhoff, P. (2011): SPE-Mitbestimmung: Strukturen, Wertungen und rechtspolitische Kompromisslinien, in: ZEuP, 7-40.

Hommelhoff, P. and Teichmann, Chr. (2010): Die SPE vor dem Gipfelsturm - zum Kompromissvorschlag der schwedischen EU-Ratspräsidentschaft, in: GmbHR (GmbH-Rundschau) 337-348.

Kerber, W. and Eckardt, M. (2007): Policy Learning in Europe: The "Open Method of Coordination" and Laboratory Federalism, in: Journal of European Public Policy, Vol.14, 227-247.

Kraakman, R. et al. (2009): The Anatomy of Corporate Law. A Comparative and Functional Approach, Oxford et al., 2nd ed.

Knoth, A.F. (2008): Internationalisierung und Rechtsformwahl innerhalb der Europäischen Union, Synergieeffekte durch die Wahl einheitlicher Rechtsformen für Muttergesellschaft und ausländische Tochterunternehmen unter besonderer Berücksichtigung von Investitionen kleiner und mittlerer Unternehmen in den osteuropäischen Mitgliedstaaten der Europäischen Union, Ilmenau

Mugler, J. (1999): Betriebswirtschaftslehre der Klein- und Mittelbetriebe. Wien

Münch, S and Franz, A. (2010): Die passende Rechtsform für deutsche Unternehmen im Ausland, in: BetriebsBerater, 2707-2716.

Njoya, W. (2010): Employee Ownership in the European company: Reflexive Law, Reincorporation and Escaping Codetermination, Centre for Business Research , University of Cambridge, Working Paper 416

Pezoldt, K. and Knoth, A. F. (2011): Internationalisierung und Rechtsformenwahl – Markteintritt in die osteuropäischen Mitgliedstaaten der Europäischen Union, in: Keuper, F. and Schunk, H.A. (eds.): Internationalisierung deutscher Unternehmen, Wiesbaden, 371-390.

Röpke, K. and Heine, K. (2005): Vertikaler Regulierungswettbewerb und europäischer Binnenmarkt – die Europäische Aktiengesellschaft als supranationales Rechtsangebot, in: ORDO, Vol.56, 157-185.

Schaper, M. (2012): Selektion und Kombination von Gesellschaftsformen im institutionellen Wettbewerb. Typenvermischung und hybride Rechtsformen im europäischen und US-amerikanischen Wettbewerb der Gesellschaftsrechte, Berlin

Scherm, E. and Fleischmann, L. (2011): Internationales Mitbestimmungsmanagement, in: Keuper, F. and Schunk, H.A. (eds.): Internationalisierung deutscher Unternehmen, Wiesbaden, 100-120.

Simon, H. (2007): Hidden Champions des 21. Jahrhunderts. Die Erfolgsstrategien unbekannter Weltmarktführer. Frankfurt/New York.

Statistisches Bundesamt (2008): Verlagerung wirtschaftlicher Erhebungen, Ergebnisse der Piloterhebung, Wiesbaden, August 2008

Statistisches Bundesamt (different years): Unternehmen und Arbeitsstätten, Gewerbeanzeigen, Dezember und Jahr 2010, Fachserie 2, Reihe 5, Wiesbaden

Teichmann, Chr. (2009): Die Europäische Privatgesellschaft (SPE) - Wissenschaftliche Grundlegung, in: Gesellschaftsrecht in der Diskussion 2008, Gesellschaftsrechtliche Vereinigung (VGR), 55-76.

Van den Braak, S. (2010): The European Private Company, its Shareholders and its Creditors, in: Utrecht Law Review, Vol.6, 1-21.

Weber-Rey, D. (2011): Die Internationalisierung von KMU mithilfe der Europäischen Privatrechtsgesellschaft, in: Keuper, F. and Schunk, H.A. (eds.): Internationalisierung deutscher Unternehmen, Wiesbaden, 74-98.

Wegmann, J. (2006): Betriebswirtschaftslehre mittelständischer Unternehmen. München

Wymenga, Paul et al. (2011): Are EU SMEs recovering? Annual Report on EU SMEs 2010/2011, Rotterdam, Cambridge