Study financed by the
European Commission

Executive Summary

Feasibility Study of a European Statute for SMEs

Contract letter No FIF 20030950

Contents

1. Recap of methodology

Conducting a feasibility study to define a European statute for small and medium-sized enterprises called for particular consideration of the conditions of drawing up this statute.

Presentation of the approach

- **Opportunity analysis**

To be able to measure the effects of such an approach on the socio-economic, legal and financial sectors, the team of experts:

- evaluated the potential impact of such an approach on all enterprises, in particular in a context of macroeconomic development of SMEs,
- researched the impact of such a trend on the development of the economic fabric in the various countries of the Union, but also in the context of cross-border programmes.

The use of an initial SWOT matrix (strengths, weaknesses, opportunities, threats) was a decisive component to evaluate the conditions for the success of the project. In fact, the analysis of the strengths and weaknesses of the current situation, whether in the economic, legal, tax or social environment, but also in a national and cross-border context allowed the constraints to be overcome to be defined in the context of the feasibility study in respect of the European Union Member States and the future entrants.

Finally, a preliminary prospective study of the potential threats, but also of the opportunities potentially arising from a European statute for SMEs was completed in order to construct a feasibility approach capable of corresponding to the various realisation constraints.

- **Identification of the feasibility constraints**

This study identified the degrees of feasibility which could be defined in a context of Community development, at the same time allowing the constraints to be imagined which have to be overcome in the context of the enlargement of the Union in respect of the development of SMEs: economic, legal, tax and social.

Various points were studied specifically in the various States then compared in order to bring out the main lines so that an approach specific to all the States could be initiated and a true European statute for SMEs constructed.

- **The feasibility study**

It was carried out in 4 stages.

  - **The preliminary stage of information retrieval**

The conditions for the conducting the feasibility study called for rigorous management of the information in relation to the various economic, institutional, social and professional operators.

This management was keyed to information retrieval from operators in the 25 European Union Member States.

This required:

- the involvement of networked partners (the EBN network) capable of supporting computerised management of operational databases in order to receive the information systematically from the operators and permitting the use of on-line research media (questionnaires, on-line interviews, etc.)
- the implementation of a standardised data collection model usable in the 25 European Union Member States
- the guiding of an approach allowing the planning and collection of the data from the questionnaire of a survey to be conducted of 2047 enterprises, pre-selected and pre-segmented (on the basis of a sample to be defined).

  - **The choice of the partner networks as backing for the study and the eligibility criteria for participation in the questionnaires in the various countries: the objective choice of the segmentation criteria**

The team of experts conducted the study using the BIC/EBN network and the partner network of the Chambers of Commerce and Industry present in each of the target States, the representation of which on the spot allowed the number, type, size of enterprise and various eligibility criteria to be refined for each country.

Taking into account a specific segmentation for each State, given its level of development, its level of integration in the Union, its economic clout and the legal, social and fiscal representativeness of its institutions in relation to the project resulting from the Feira European Council (European Charter for Small Enterprises) optimised the scope of the investigation by determining the parent population of the enterprises for conducting the feasibility study.

  - **Validation of the segmentation criteria**

Once this parent population had been defined, the experts extracted the segmentation criteria appropriate to a homogeneous population of small and medium-sized enterprises established in all the European Union Member States.

The objective evaluation of the criteria chosen permitted the identification of the conditions for the implementation of the constraints/opportunities of eligibility for the European statute and therefore the definition of the topics on which information would be sought on the basis of the legal, economic, judicial and financial constraints.

  - **Drawing up a test questionnaire and the preliminary survey**

In order to refine the scope of the study and to centre the information retrieval on eligibility for a European statute for SMEs and then to assemble and draw up the data files allowing the outlines of this statute to be defined, drawing up a test questionnaire proved essential.

The experts considered it to be a priority to put this test questionnaire to the representatives of groups formed in the various States (employers, trade unions, professional associations and consular corps), as well as to a representative sample of enterprises targeted according to specific criteria of the study.

- **Field study**

A database (Access) was created and SPSS was used for technical data analysis.

Close cooperation in each country with the EBN/BIC representatives, whose task also included providing access to the questionnaire, advice and support for the choice of enterprises eligible for interview, enabled the experts to carry out the study in an optimal fashion, since the EBN network was the ideal relay on the spot through the various partnerships instructed in the European Union Member States and the future entrants.

- **Finalisation of the field study**

The database management subsequently enabled the experts to draw up a file containing analysis and recommendations allowing several typical profiles of enterprises likely to benefit from a European statute to be proposed.

This approach was accompanied by the introduction of a process to identify the constraints to be overcome in each country in order to adjust the European statute suitability criteria.

2. Analysis and feasibility constraints

The object of the feasibility study was to ascertain whether it was possible to propose to SMEs a model European statute capable of promoting their intra-Community development.

With this in view, the introductory stage should logically include:

- Analysis of opportunities showing the alternatives already made available to enterprises and their legal, tax and social implications;
- Alignment with the economic situation in the European Union compared with the levels of development of the Member States and the new entrants.

It should be pointed out that the basic characteristics of the relevant national laws of the 25 Member States were dealt with at the same time as the current trends in company law, taxation and social policy. The information gathered provided a full impression of the constraints to be overcome to define a new model.

At legal level, this analysis was liable to expose the gap between two levels: on the one hand, the convergences and divergences between the national legal provisions governing SMEs and, on the other hand, the relationship between the national laws and the solutions at Community level.

Four analytical studies were carried out in the legal, social, fiscal and economic fields respectively.

2.1. Legal analysis

2.1.1. Method

Two aspects: analysis of the regulations in force regarding the companies in the Member States and analysis of company law at Community level.

To make the study reliable, the experts availed themselves of necessary presuppositions, i.e. provisions which do not yet come under substantive law (e.g. Societas Cooperativa Europea,

European Private Company project, 14th Directive, etc.) were placed on the same legal footing as those which are, or will shortly become, part of the acquis communautaire (Societas Europea, EEIG).

They also considered that the expectations of European SMEs are twofold at legal level:

- on the one hand, the need to be able to move freely within the Union (through merger, transfer of their registered office, establishment of joint subsidiaries, etc.) and
- on the other hand, the need for a convenient legal instrument, which will minimise the conflicts between the legal and administrative provisions in their own country of establishment.

2.1.2. Two levels of analysis: national law and Community law

The first part of the analysis comprises a synopsis of the company law in each of the 25 European Union Member States.

According to actual European experience, SMEs seem to prefer two forms of company: the public limited company (or its equivalent) and the private company (private limited company and its equivalent).

As a prototype European public limited company is already in place (the SE), the experts focused their research on the analysis of the confluence of the national systems with regard to the concept of private company.

A priori, there is sufficient convergence to be able to envisage a European private company statute.

However, the existing legal divergences may form a significant barrier to the introduction of the European statute in so far as they will remain the prerogative of national law.

These constraints essentially concern: the corporate form, the company capital, the number of partners and the rigidity of the statutes in a number of countries.

The second part of the analysis defines the role of company law in relation to Community law in respect of whether creating a statute for European SMEs is opportune.

To do so, it was necessary, in terms of the methodology, to place the harmonisation of company law, the various European autonomous structures (public limited company, EEIG, limited partnership with a share capital), as well as the European private company project on an equal footing, and to examine their strengths and weaknesses, as well as the opportunities and threats in relation to the needs of SMEs identified up to then.

2.1.3. Harmonisation

The harmonisation process, through its progress and dynamism (if it is considered that the 14th Directive on cross-border mergers will soon become substantive law, with the possibility of transfer of the registered office), must allow SMEs to move within the single market.

Nevertheless, two factors likely to assist the SMEs to position themselves in the enlarged market are not currently taken into account.

The first is of a purely legal nature. Harmonisation on the mobility of enterprises (mergers, transfer of the registered office) is not designed to assist SMEs which confine themselves to the national economic area. Hence the economic operators are not offered a pliable legal instrument which would enable to them to combat the mechanisms of the national legal systems effectively.
The second factor is the absence of a European corporate identity. Only a more or less uniform, autonomous structure offers a «European flag» and «entrepreneurial» credit to SMEs with their registered office in the 25 Member States.

2.1.4. The autonomous structures at European level

The second part of the research at Community level integrates the analysis of the structures capable of promoting the mobility of small and medium-sized enterprises and of offering them, *ipso facto*, all the advantages of homogeneity in their trading relations, but also the great advantage of the «European flag».

This examination of the opportunities and constraints of adaptation of each of the forms concerned will help in the subsequent definition of the model for a European statute for European SMEs.

Societas Europaea (European Company)
The statute of the Societas Europaea incorporates the main characteristics of a public limited company accessible to the general public.
Its main strengths are:

- The creation of a company recognised *ipso facto* in all the European Union Member States. This is expressed by a mechanism which facilities the mobility of companies within the Union, through cross-border mergers of the enterprises concerned, the freedom to transfer the registered office from one State to another and the possibility to set up subsidiaries (in the form of an SE).
- The European image it is able to convey presents numerous communication and marketing advantages.

Its weaknesses relate to:

- The persisting strong influence of national law does not eliminate the legal obstacles reducing the mobility of the enterprises in the European area and may also lead to the creation of 25 new types of companies, which partially destroys the raison d'être of the SE.
- Diversity of national legislation which may give rise to the risk of «law shopping» by the SEs, i.e. choosing the most favourable legal environment from among the 25 States.

The impossibility to set up a SE *ex novo* or *ex nihilo* (i.e. by a single enterprise or by natural persons), which may constitute an obstacle to the creation of new European business.
The rigidity of the articles of the SE, which gives rise to two types of contradictions: one *rationne nationalitatis* and the other *rationne materiae*.
Finally, the dissuasive minimum capital requirement of 120 000 euro could prevent the SME from using the legal form of the SE.

The European Economic Interest Grouping
The EEIG is presented as a solution to cross-border mobility, as it can associate two or more enterprises which pursue the same commercial objectives.

Despite its strengths, which lie in its legal autonomy and the contractual flexibility of its articles, its great shortcoming is its lack of autonomy and its auxiliary nature in relation to the activities of its members and especially its legal and fiscal transparency.
Hence it does not seem that the EEIG could appear as a European entity for use by SMEs, which are enterprises whose existence and commercial strategy are based on limited risk and economic independence.

The European Cooperative Society (SCE)

The SCE is a step forward from the EEIG. This is a union of enterprises operating at the same distribution level: it is designed principally for enterprises wishing to boost their marketing or purchasing capacity. Its articles opt for relatively flexible operation, despite the compulsory provision of a one-tier or two-tier administrative system, like the SE.
The SCE is able to cater for the group of SMEs which do not possess the commercial clout of large competing enterprises.
Despite everything, it does not seem that the SCE is the ideal medium to represent European SMEs, as its economic objectives are limited and its use as investor is virtually non-existent.
However, as an example of a relatively flexible company, the mechanism of the SCE could serve as a platform for deliberations with a view to drawing up a European statute for SMEs.
Indeed, the SCE incorporates all the opportunities and advantages inherent in a European autonomous structure, but is confronted by the corresponding threats.
Like the SE and the EEIG, it promotes mobility of enterprises in the Union, constitutes a kind of European «label» for the cooperatives, but also, given the relative hegemony of the national law of the registered office, generates the risk of creating 25 different SCEs, and that of «law shopping» in the Member States where the national regulations are the least onerous.

Contractual relations

If the study is confined solely to the needs of SMEs with a cross-border vocation, i.e. those seeking to establish in another Member State and to develop their market of goods or services there, an alternative to a European statute exists: that of inter-company contractual relations.
In fact, the main strength of the choice of a contract (e.g. distribution) compared to the option of establishment in the form of a subsidiary or branch, is the very low cost of setting up or abandoning an activity.
This low cost in terms of finance and time taken is attributable to the fact that the operator leaves the bulk of the financing and the legal and administrative constraints to its local partner, which is expressed in a minimal commercial risk.
In addition, the SME which opts for the contractual approach will not have the supervision of the foreign institution, which may constitute a major handicap in its commercial strategy.
Finally, a worthwhile interface could be found between the two options of a European Company and commercial relations: as the European statute will act as a vector of confidence between the European enterprises, there will be an additional interest for them to acquire it, not to set up in another country, but with a view to facilitating their cross-border commercial relations!

2.2. Social analysis

2.2.1. Method: the social issues

Three topics have been selected:

The involvement of workers in the SPE
Social rights – pension/retirement rights
The free movement of workers.

In accordance with the priorities defined, labour law in the strict sense of the term is distinguished from social legislation, which is assigned relative importance as a subject for research.

> Among these topics, particular attention was paid to the involvement of workers. In fact, the importance of consensual labour relations for social Europe argues in favour of the extended participation of all citizens in economic life.
> The developments in the issues, the context and the degree of harmonisation through the acquis communautaire in this field have a certain flexibility, by providing a true dilemma with regard to the regulations relating to the SPE.
> As regards the other topics (free movement, social security, equal treatment of cross-border workers, etc.), the path to be followed is already predetermined, strictly and absolutely, by the existing framework and the Community legal edifice.
> It is not therefore a matter of taking a decision in one direction or another, but rather of remaining vigilant to the fact that the harmonisation process is in fact achieved and respected in practice.
> It is significant that the regulatory project of CREDA (Business Law Research Centre of the Chamber of Commerce and Industry of Paris) does not pronounce on other rights or social aspects of the SPE but only on the involvement of workers.

2.2.2. The acquis communautaire (AC) – country analysis

A concise description of the outlines of the corresponding acquis is essential for the examination of these topics:

- to identify the outlines of the existing legal framework,
- to obtain an idea of the degree of convergence/divergence of the acquis with the objectives of the SPE and in this way to pronounce on the appropriateness of the corresponding provisions of the SPE statute (such as, for example, the choice of the law applicable or the corporate form to which the SPE is or must be assimilated in each Member State).

Moreover, it is very important to note that, from the legal point of view, a description of the AC is a description of the existing law in each Member State and therefore a first indirect analysis by country of the strengths, weaknesses, opportunities and threats of this framework for an SPE statute.
The objective of this analysis is not to offer an exhaustive study of these issues (especially that of pension/retirement rights), but to assess the current state of the corresponding legal framework in relation to the possible introduction of an SPE statute.
A brief examination of the involvement of workers in the European Union before enlargement was carried out. A few comments were made, purely for guidance, on certain countries concerned by the enlargement (where the corresponding framework is still in the midst of change) and the strengths and weaknesses of the retirement systems in each Member State were examined.
Finally, it was opted to present social issues in order to do justice to the specificities of each subject dealt with.

2.3. Tax analysis

2.3.1. Method

The method used is based on analysis of the acquis and the degree of Community harmonisation, analysis of the essential issues in the tax field and analysis of the tax data by country, still with a view to seeking out the strengths, weaknesses, opportunities and threats for a European statute for SMEs.

2.3.2. Overall analysis

The incomplete harmonisation would argue in favour of a specific statute for SMEs. The field of direct taxation is that which has experienced the most limited intervention by the Community authorities. This shortfall obviously works in favour of the proposal for a European statute for SMEs**.**
Secondary legislation has a more direct impact on the regulation of the legal relations concerning direct taxation, even if this is confined to specific fields and does not always cover the case of SMEs.

Political issues: the major constraint
This limited intervention derives from the lack of will on the part of the Member States to allow more extensive Community intervention in the field of taxation. The States consider taxation to be a domain of sovereignty which is essential to their existence and they do not appear to be disposed to abandon their prerogatives in the regulatory field to another body.
This renders any effort towards harmonisation through the introduction of Community legislation more difficult and forces this study to consider measures which could be easily be approved by the Member States.

The ECJ case-law and the principles of European direct tax law as a constraint for a statute for SMEs
It is decisive as regards the interpretation and application of Community law. Its role is to fill in the gaps of Community law and to ensure cohesion in its application. From this point of view, this institution constitutes a constraint to the establishment of a statute for SMEs, as its existence could appear to suffice to contribute to the procedure for the expansion of the cross-border business of SMEs. However, this constraint is of minor importance on account of the very low frequency of its intervention and the limited scope of the legal issues it can decide**.**
The possibility to form a common Community basis for direct taxation and to improve the rules of the existing framework is one of the European Commission's constant concerns.
In October 2001, it presented a two-tier strategy aiming to remedy the loss of efficiency associated with taxation and to remove the barriers to cross-border economic activity in the internal market. It is constantly putting these considerations forward to the competent institutions of the Union and refining its policy focusing on harmonisation, protection, creating the internal market and freedom of establishment.
Measures such as creating a principle for taxation on the basis of the rules applicable to the registered office of the company for its subsidiaries or branches and the drawing up of rules to lay down a common basis for assessment applicable to all the States, are seriously envisaged.
On the other hand, proposals have been made on the reform of the existing directives concerning parent companies, their subsidiaries and concentrations.
The most interesting prospect in the field of direct taxation of enterprises is the establishment of rules determining a uniform calculation basis for company tax in the European Union.

This Commission strategy derives from the needs of the market. One of the objectives of this study is to refine them in order to check whether they can constitute a decisive argument for the realisation of a European statute and consequently an opportunity for realisation.

The tax obstacles in the cross-border activity of European enterprises

The tax analysis of the feasibility study for a European statute for SMEs places the emphasis on the key problems encountered by enterprises when they engage in intra-European activities**.**

These problems include:

multiple taxation, incentive schemes, the practice of withholding tax, the different rules governing the basis for assessment, the divergences in tax rates, methods for the assessment of taxable income, the absence of the possibility to offset cross-border losses, the divergence in tax rules in the case of establishment of an enterprise and in the case of transfer, the administrative and accounting formalities, the multiple liability rules in relation to the various States.

The need to solve these problems could inherently constitute an opportunity for a statute for SMEs.

The analysis carried out of the reports of the Commission services shows that the diversity of the existing systems is at the origin of all the impediments and distortions presented in this text.

Opportunities of a European statute for SMEs in relation to retaining the existing situation

The intervention of the European Union authorities through the entry into force of directives on mergers, parent – subsidiaries, the taxation applicable to interest, royalty payments and expenses between associated companies and the Arbitration Convention, do not constitute a satisfactory framework to eliminate the tax impediments produced by internal legislation or the essential characteristic of extensive harmonisation.

It is not therefore surprising that criticisms and proposals for amendments of the secondary law in force have been made on several occasions.

The existing European autonomous structures, such as the European Company (SE) and the European Economic Interest Grouping (EEIG) do not seem to fill the gaps**.**

The SE is an institution intended for large enterprises. Whereas through its design and the measures adopted it provides a source of inspiration, it does not seem desirable to transpose it to the SME field as it does not contain tax regulations which could help to solve the tax problems raised by the SMEs.

The proposed European Cooperative Society (SCE) statute does not contain any particular tax provisions, but refers to the national rules of the member countries for multinationals and their concept of permanent establishment.

The EEIG introduces unlimited liability of partners and fiscal transparency, i.e. taxation at partner level. This is an unwieldy tax problem, especially in «triangular» cases, i.e. where three or more tax jurisdictions are involved.

2.3.3. Tax analysis by country

The analysis was carried out on the basis of a list of topics potentially constituting opportunities or constraints with regard to the implementation of a European statute for SMEs.

The way in which these topics were handled by national legislation was assessed on the basis of the information communicated by the representative bodies at national level.

These topics cover:

- the taxation rates
- the rules governing the basis of assessment
- the handling of losses
- the handling of dividend distribution
- withholding tax
- tax incentives for investment
- the handling of company restructuring.

Hypotheses

The following hypotheses were analysed for the purposes of classifying the topics as opportunities or constraints:

Hypothesis 1. Where a factor makes the tax system of a given country more rigid and contributes to increasing the tax burden in this country, this must be considered in the context of a European statute for SMEs:

- as an opportunity, in relation to the domestic enterprises, as a common statute for SMEs would encourage them to invest abroad,
- as an opportunity, in relation to foreign enterprises, as the possibility to opt for a – legally defined – common statute for SMEs would moderate the rigidity and the high tax burden,
- as a constraint, in relation to the country concerned, as the later would be less inclined to approve the establishment of a European statute which would facilitate the exodus of domestic capital abroad.

Hypothesis 2. Where a factor makes the tax system of a given country more flexible and favourable and contributes to decreasing the tax burden in this country, this must be considered in the context of a European statute for SMEs:

- as a constraint for the domestic enterprises, as the statute will not encourage investment in other countries with higher taxation,
- as an opportunity, for the foreign enterprises, as the statute would favour and facilitate their establishment in this country,
- as an opportunity, for the country concerned, as the statute would constitute an additional attraction for foreign investment.

The tax analysis by country shows that, in almost all the Member States, the strengths and opportunities in favour of creating a statute for SMEs are dominant.

In conclusion, the strong desire of SMEs for standardisation and simplification of the rules and formalities and the will of the countries to attract foreign capital through rationalisation of the tax system constitute a positive basis for any proposal to introduce a new statute for SMEs.

2.4. Synoptic economic analysis

The 2002 study by the European Observatory for SMEs in the European Union revealed certain significant criteria, such as:

- the average size (workforce) of an SME in the country – the European average is 4 persons
- the proportion of women entrepreneurs, observed as a dynamism factor measured by the ambitions and the development rate of the enterprises (which, on average, is higher in the case of female managers).

The table in **Annex 1** summarises the strengths and weaknesses of the 25 countries with regard to the situation of SMEs.

2.5. The feasibility constraints

The difficulties inherent in carrying out the study derive from the complexity of the analysis of the feasibility of the statute for European SMEs.

In fact, looking for a legal status for SMEs requires an examination of the effectiveness and implications of the structures which are already in existence and gauging whether, among these structures, some could integrate tax, legal or social components.

From this point of view, it is found that the SCE and the EEIG can bring partial solutions to the problem of the statute through certain components.

However, it is also found that contract law and its applicability in the majority of countries may bring not inconsiderable solutions to the implementation of this kind of statute.

It is therefore necessary to imagine basing one of the criteria of the field study on the perception of the existing forms by the selected enterprises and also an analysis of the contribution of contract law.

The search for information in this respect will be decisive with regard to the approaches to be adopted towards the statute for the European SME.

The tax analysis brings out certain constraints which it will be difficult to overcome, especially in respect of the problems associated with double taxation or those relating to the harmonisation of the tax rates, which remain a utopian approach in the light of the sovereignty prerogatives which the Member States wish to preserve.

On the other hand, potential harmonisation of the basis for the calculation of company income tax could be attractive in a step to simplify and clarify the procedures.

At social level, the integration of worker participation is also a constraint for the feasibility of the statute for European SMEs. In this context, a large number of malfunctions are to be found which, as for the tax analysis, seem to be linked to the problems of sovereignty of the Member States on the subject.

It is useful to consider the way in which worker participation will be envisaged in an overall reflection on the European SME.

Finally, as regards the specific characteristics of the position of cross-border workers, the social problem must be raised, especially for problems of social protection and retirement/ pension.

The feasibility constraints have been assessed and taken into account as topics in the questionnaire for enterprises.

The topics covered by the questions include:

- the legal characteristics of the European structures seen by the entrepreneurs and business managers interviewed (SE, SCE, EEIG);
- the empirical perception of the activity of the enterprises as regards contract law (preferences for a commercial partnership based on contracts rather than intra-Community establishments);
- the analysis of the social and tax constraints currently imposed on enterprises exporting within the Union and their expectations in this respect;
- the perception of the expectations of the entrepreneurs and business managers in relation to the idea of a European SME.

As regards the segmentation of activities and the representativeness of the sample to be surveyed, it was necessary to consider:

- the selection of activities corresponding to the problems of an SME operating within the territory of the Community (7 sectors of activity were pre-selected);
- assigning weights to these activities in each European Union Member State (especially at the level of the new Member States) in relation to their respective weights in the Union;
- representativeness of the different enterprises according to the States, according to the information available and according to the targeting criteria underlying the study, and the relative weight of the States and the sectors.

The experts advocated a pragmatic approach likely to provide the best reflection of the "parent population" of the European SMEs, but which for obvious reasons of non-homogeneous source data, required reasonable adjustments, even though a mathematical, statistical approach to this sample proved possible, but unrealistic.

The field study

3.1. Presentation of the study

The difficulties inherent in carrying out the study related to the following points:

1) The choice of the target enterprises for the interviews was carried out at random, once the quotas per target activity were defined on the basis of segmentation criteria (activity, GDP, population etc.).

   Naturally, to obtain a balanced distribution over all the countries, for all the sectors in relation to the selected criteria, reference was made to the universal application of the law of large numbers, on the basis of which certain distortions could be observed for certain countries, but which promoted ironing out and correct representativeness for the countries of the European Union as a

whole. Under these conditions, the minimum number of 25 questionnaires was deemed acceptable as a minimum basis for interviews.

2) The interviewees did not all have legal backgrounds. It should be pointed out that, in the majority of SMEs, the managers have varied stills and are not specialised in one specific field. Therefore some interviews were in part transformed into educational sessions for the interviewees to be able then to gather relevant opinions. This information related to the European directives and the statutes currently in force.

3) Some interviewees did not wish to give certain information, such as the turnover of the enterprises and even the recruitment of cross-border workers. The reticence about giving these figures was obvious among the respondents. This constant is to be encountered in the majority of studies currently carried out among enterprises.

4) The results produced were translated into percentages to allow more descriptive analyses to be carried out and to make them more readable.

5) For certain selection sorts, the analysis carried out by means of SPSS did not yield significant data recognition values (low degree of representativeness, weak results in reply to the questions). The results of these sorts are presented with reservations.

6) The tables of the replies are presented with the KHI 2 analysis to validate the selection sorts presented in this study.

3.1.1. Content of the questionnaire (Annex 2)

The questionnaire distributed to the enterprises comprised 21 questions divided into various topics:

- identification of the enterprises;
- flow of intra-Community activities;
- employment of foreign employees (from European Union member and non-member countries);
- problems concerning intra-Community trade;
- problems of the feasibility of the European legal status;
- formalities and decisive criteria in the decisions for action and economic establishment in other European Union Member States.

3.1.2. Administration of the questionnaire

The questionnaires were administered in the 25 European Union Member States.

The questionnaires were administered in the local language of each country, but the retranscription was carried out in various languages, depending on the countries. The following languages were involved: German, English, Spanish, French, Italian, Portuguese. Most of the questionnaires were completed in English (table below).

Table 1: Language distribution of the survey questionnaires

Language	Country of origin of the questionnaires
English	United Kingdom, Denmark, Netherlands, Estonia, Ireland, Luxembourg, Finland, Slovakia, Slovenia, Czech Republic, Poland, Cyprus, Lithuania, Malta, Latvia, Greece, Sweden, Hungary
German	Germany, Austria
Spanish/Portuguese	Spain, Portugal
French	France, Belgium
Italian	Italy

3.1.3. Data acquisition

Using SPSS software, the questionnaires were analysed in three stages:

The first, of a descriptive nature, related to all the countries, by merging all the questionnaires of the survey (2149 questionnaires).
The second was based on the two-way tables. The replies by the enterprises were analysed according to a certain number of criteria, such as turnover, sector of activity, country category, etc. This part, like the first, involved all the 2149 questionnaires of the study.
The third related to the analysis of the replies of the SMEs of each country. This descriptive analysis was based on frequency tables, like the first part of the analysis.

3.2. Descriptive analysis of the data

3.2.1. Workforce of the enterprises questioned

The enterprises questioned are small or medium-sized. The mean workforce of the enterprises concerned is 55 employees, the minimum being one person and the maximum 249 employees.

Table 2: Workforce of the enterprises questioned

	Minimum	Maximum	Mean
Workforce	1	249	55

In order to give a clearer picture of the workforce of the enterprises and to be able to make it into an analysis tool, segmentation into four categories was opted for:

1st category: enterprises with 1 to 25 employees (45.9% of the enterprises)
2nd category: enterprises with 25 to 50 employees (25% of the enterprises)
3rd category: enterprises with 50 to 100 employees (14.8% of the enterprises)
4th category: enterprises with over 100 employees (14.3% of the enterprises).

3.2.2. Turnover

The turnover of the enterprises of the study varies from 0.01 million euro to 432 million euro, the mean being 11.92 million euro. However, it should be pointed out that this information is missing for a certain number of enterprises, which did not disclose it.

Table 3: Turnover of the enterprises questioned

	Minimum	Maximum	Mean
Turnover	0.01	432	11.92

As for the workforce, this variable was segmented into four categories, in order to obtain a clearer picture and to make it into an analysis tool.

Table 4: Number of enterprises by turnover categories

Category	Percentage
Less than 1 million euro	23%
1 to 5 million euro	37.1%
5 to 10 million euro	14.4%
Over 20 million euro	25.5%
Total	**100%**

3.2.3. Sectors of activity

The enterprises of the study are divided into 7 sectors of activity. The following sectors are involved: IT, industry, construction, textiles, transport, agri-foodstuffs and tourism.

Table 5: Sectors of activity of the enterprises questioned

Category	Percentage
Industry (mechanical engineering)	25.3%
Transport	15.4%
Agri-foodstuffs	12.7%
Textiles	12.3%
Construction	11.7%
Tourism	11.7%
IT	10.9%

Total	**100%**

3.3. Comments; Descriptive analysis

The turnover of the enterprises in the study varies from 0.01 million euro to 432 million euro, the mean being 11.92 million euro. As for the workforce, this variable was divided into four categories: first category: less than 1 to 1 million euro, second category: from 1 to 5 million euro, third category: from 5 to 10 million euro, and fourth category: over 10 million euro. The second category, with 37.1% of the enterprises, is the largest category.

3.3.1. Intra-Community commercial activity

As regards European commercial activity (question 1), the vast majority, i.e. 88.17%, of the enterprises questioned engage in intra-Community commercial activity.

56.5% stated that they import goods on the intra-Community market. Of all the enterprises importing goods, such imports account for less than 10% of all purchases for 37.9% of the enterprises of the survey; this is the largest category.

Among the enterprises engaging in intra-Community commercial activity, 60.3% stated that they export their goods to the European Union Member States. Germany and France are the main countries of destination of the exports of goods, with 22.7% and 18.3% of the enterprises declaring that they export their goods to these two countries respectively.

As regards the sale of intra-Community services, 36.5% declare that they provide intra-Community services. Of all the enterprises exporting services, such services account for less than 10% of all sales for 39.5% of the enterprises. As for the exports of goods to all European Union Member States, Germany is the main country of destination for supplies of intra-Community services, with 20.8% of the enterprises declaring that they export their products to this country. Spain comes second, with 14.4% of the enterprises.

The purchase of intra-Community services is the least important commercial activity among the enterprises engaging in intra-Community trade, with 19.1% stating that they received supplies of intra-Community services. For all the enterprises purchasing services on the Community market, these constitute less than 10% of total purchases for 50.7% of the enterprises. As for the destination of sales of services, of all the European Union Member States, Germany is the main country where enterprises purchase their intra-Community services with 27.5% of enterprises. France is in second place with 13.5% of the enterprises.

3.3.2. Legal nature of the intra-Community transactions

As regards the legal nature of the intra-Community transactions of the SMEs questioned, ad hoc transactions are at the top of the list. 61.6% of the enterprises stated that their transactions are based on demand (ad hoc), 28.2% stated that these transactions are contract-based and 10.1% stated it was a combination of the two. Of those whose intra-Community commercial activity is contract-based, specific contracts head the list with 51.3% of the enterprises, followed by general contracts with 45.3% of the enterprises, and finally the obligation of belonging to a group for 3% of the enterprises.

3.3.3. Employment of cross-border workers

The employment of workers from countries across the border from the country of origin of the SMEs questioned is not very widespread. 83.8% of the respondents stated that they did not employ such workers. For 53.1% of the enterprises employing workers from countries geographically across the border from their home country, these workers account for less than 10% of their entire workforce.

Furthermore, for 81.3% of the SMEs, these workers are in permanent jobs, for 12.1% of the SMEs in temporary jobs and for 6.7% of the SMEs a combination of both permanent and temporary jobs.

Furthermore, the employment of workers living in countries across the border from the European Union is also not very widespread. 89.9% of the enterprises stated that they did not employ such workers. Of the remaining 11.1%, 67.9% of the enterprises employing workers residing in countries across the border from the European Union stated that these workers account for less than 10% of their entire workforce. 78% of the SMEs stated that these workers are in permanent jobs, 17.2% in temporary jobs and 4.8% a combination of both permanent and temporary jobs.

3.3.4. Worker involvement

The involvement of workers in the management of their enterprises is low overall. 52.8% of the SMEs stressed non-existent involvement, which was the largest category. 37.6% stressed a low level of participation, and 9.7% active participation in the management of their enterprises.

3.3.5. Obstacles to the flow of commercial activities

As regards the obstacles to the flow of intra-Community commercial activities, the intra-Community market functions relatively well, as few SMEs declared that they encounter any:

- only 2.6% of the enterprises stated that they encounter obstacles to free movement;
- only 5.2% of the enterprises stated that they encounter tax obstacles;
- 6.4% of the enterprises declared that they encounter administrative problems other than tax problems;
- finally, 7.2% of the enterprises declared that they encounter administrative problems, other than tax problems, during their transactions outside the European Union.

The problems encountered in the application of European Union law in the context of the intra-Community commercial activities of the enterprises questioned, are also not very widespread. The customs legislation heads the list with 13% of the enterprises stating that they encounter problems. This is followed by technical standards, with 12% of the enterprises. The problems of social regulations and accounting affect 9% and 8% respectively. The problems relating to intellectual property concern 7% of the SMEs. Company law is a source of obstacles for 7% of the SMEs. Finally, 41 SMEs experience know-how difficulties.

3.3.6. Establishment plans

Concerning the plans to establish in another country of the European Union, 13.1% of the enterprises questioned had such plans. Germany is the top destination with 16.3% of the

enterprises intending to establish there, followed by France, with 15.8% of the enterprises. The most popular legal form is the limited company, with 66.7% of the enterprises. Finally, the industrial sector is the leading sector of activity for establishment plans, with 26.4% of the enterprises. IT is in second position with 18.9% of the enterprises, followed by the transport sector with 13.2% of the enterprises.

As regards the probable plans to establish in a European Union Member State, only 8.1% of the enterprises had such plans. France is the prime destination of the enterprises with 21.6% of the enterprises, followed by Italy with 19.6%. The industrial sector is in the lead with 34.6% of the enterprises. Agri-foodstuffs and tourism come second, with 23.1% of the enterprises each.

3.3.7. Knowledge of the legal forms

The knowledge of the SMEs questioned concerning the legal forms for SMEs in Europe is quite weak. Only 12.2% of the interviewees stated that they knew these main forms. Of those having stated that they knew these forms, 53.8% mentioned the SE, while the EEIG and SCE were cited by 23% of the enterprises.

Even though the SMEs questioned know little about the main characteristics of the legal forms for enterprises in Europe, 54.6% of them wished to be informed on this subject.

More precise knowledge of the three legal forms of enterprises in Europe (the EEIG, the SCE and the SE) is also very poor.

The EEIG: 92.9% of the persons questioned did not know this statutory form.
The SCE: 94.4% of the entrepreneurs and business managers questioned did not know the SCE,
The SE: 91.3% of the persons questioned did not know the SE.

The SMEs questioned are on the whole reticent about adopting the three legal forms for enterprises in Europe.

After receiving information on these various forms during the interviewers, it is found that:

- 18.4% of the enterprises questioned stated that they were prepared to use the EEIG,
- 17.4% of the enterprises questioned stated that they were prepared to use the SCE,
- 19.9% of the enterprises questioned stated that they were prepared to use the SE.

The enterprises are prepared to use a European legal form for different reasons, including:

- 33.4% of the SMEs considered that a European legal form facilitates commercial activity in Europe.
- 25.9% of the SMEs considered that a European form allows the obstacles associated with the national regulations to be eliminated.
- 22.6% of the SMEs considered that a European legal form will allow the competitive constraints to be harmonised on the European Union market.
- Finally, 18.1% of the SMEs mentioned the practical, simple nature of a European form.

The SMEs which are not prepared to use a European legal form also gave their reasons:

- 47.1% of the SMEs replied that they needed information on this subject.

- 20.2% of the SMEs declared that their current form is satisfactory and that they did not encounter any particular problems associated with their form.
- 4.6% of the SMEs stated that their European activities only account for a very minimal part of their turnover, which did not prompt them to take further interest in this question.
- 19.4% of the SMEs questioned stated that they have no opinion on the matter.

3.3.8. Attitude to the current system of European directives

51.7% of the SMEs considered this system to be sufficient for the expansion of their activities, 41.6% thought it is not sufficient and 6.7% stated that they have no opinion on this matter.

The respondents put forward a variety of reasons why they considered this system to be a sufficient tool for the expansion of their activities:

For 57.9% of the SMEs, this system permits rapid access to the market of another European Union country.
For 22.4% of the SMEs, this system is a means for organisational development and expansion.
For 9.2% of the SMEs, this system is a means for commercial development.
Finally,10.5% declared that they had no opinion on this matter.

3.3.9. Introduction of a single legal form

The SMEs questioned were on a whole in favour of the introduction of a single legal form for SMEs in Europe, with 48.1% of SMEs in favour of such a form, compared to 12.1% against. 39.8% of the enterprises expressed no opinion on this matter.

This indecision is related to the lack of information of the respondents on the question of the European legal forms.

3.3.10. Formalities to be improved

The priority formalities to be improved for the SMEs in Europe are first and foremost the legal formalities, for 34.7% of the enterprises, followed by the tax formalities with 31.3% of the enterprises. The social formalities were mentioned by 25.6% of the enterprises. Other formalities were mentioned to a lesser extent, such as the commercial formalities, the administrative steps or difficulties in obtaining access to information.

3.3.11. Obstacles to be overcome, formalities to be eliminated

71.4% of the SMEs mentioned the tax obstacles and 28.6% the legal obstacles.

The tax formalities, with 42.1% of the respondents, head the list of the formalities which have to be eliminated in the countries where the SMEs questioned engage in their commercial activities. They are followed by the legal formalities, with 36.8% of the respondents, and the social formalities with 21% of the respondents.

3.3.12. Establishment decision criteria

Finally, as regards the criteria on which the decisions to establish abroad depend, the administrative and accounting formalities came first, followed by multiple taxation. The company tax rate takes third place, followed by the practice of withholding tax. The divergence of the tax rules and the absence of offsetting cross-border losses were ranked last.

3.4. Cross-analysis of the data

3.4.1. Introduction

The analyses carried out were divided into two parts.

The first part related directly or indirectly to the intra-Community commercial activity. This referred to the questions on intra-Community purchases and sales, the legal nature of these activities, the involvement of employees within the enterprises and the employment of foreign workers, the problems and obstacles encountered by the enterprises and the plans for establishment in other countries of the Community market.

The second part concerned the legal status of the SME in Europe. It involved questions relating to the knowledge of the main legal forms of enterprise in Europe and the intention to use them, the attitude towards the current system of European directives and the utility of a single European statute for SMEs in Europe, the formalities to be eliminated in the countries where activities are performed and the criteria influencing the decision to establish in another country.

3.4.2. Analysis of the intra-Community commercial activity of the enterprises questioned

The intra-Community commercial activity is analysed in the light of a few key variables, which allowed comparisons to be made and certain conclusions to be drawn. These key variables of the analyses are:

- the country category
- the sector of activity
- the turnover
- the export of goods
- the export of services.

3.4.2.1. Analysis by country category

The 25 countries of the European Community were divided into three categories: the liberal countries, the countries with strict regulations and the «new entrant» countries. The three categories are as follows:

- The liberal countries: the United Kingdom, Denmark, Ireland, the Netherlands, Sweden, Finland, Cyprus;
- The countries with strict regulations: Germany, Austria, Belgium, Spain, France, Greece, Italy, Luxembourg, Portugal.
- The «new entrant» countries: Estonia, Hungary, Lithuania, Latvia, Malta, Poland, the Czech Republic, Slovakia, Slovenia.

A frequency analysis enables the distribution of the enterprises questioned among the three country categories to be measured.

The countries with strict regulations account for 47.2% of the enterprises questioned, the liberal countries 35% and the «new entrant» countries 17.8%.

According to the cross-analyses, the following results were obtained.

The neutral impact of the country category of the SMEs questioned:

The country category to which the SMEs questioned belong has no impact on:

- the distribution of the workforce of the SMEs of the survey. The smallest SMEs (1 to 25 employees) account for the largest percentage for the three country categories;
- their intra-Community trade flows. Over 86% of the enterprises questioned stated that they have a European commercial activity, irrespective of their country category;
- their intra-Community goods imports. The SMEs undertake such imports in fairly similar proportions in the three country categories: 58.8% for the «liberal countries», 56.2% for the «strict regulations» countries and 53.1% for the «new entrant» countries;
- their intra-Community services sales. Over 60% of the SMEs of the three country categories stated that they did not engage in such activities;
- the obstacles to the free movement of their workers. Only very small percentages of the SMEs of all the country categories together stated that they encounter such problems: 3.2% of the SMEs of the «liberal countries», 2.4% of the «strict regulations» countries and 2.2% of the «new entrant» countries;
- the tax problems they encounter during their transactions within the Community market. The SMEs questioned of all the country categories together stated that they did not encounter such obstacles: 94.9% for the «liberal countries», 94.6% for the «strict regulations» countries and 94.8% for the «new entrant» countries;
- the administrative problems, other than tax problems, which they encounter during their transactions within the intra-Community market. The SMEs of the survey stated that they did not encounter such problems: 93.8% for the «liberal countries», 93.4% for the «strict regulations» countries and 94% for the «new entrant» countries;
- the administrative problems, other than tax problems, which they encounter during their transactions outside the European Union. The SMEs questioned replied that they did not encounter administrative problems, other than tax problems, in their transactions outside the European Union: 91.9% for the «liberal countries», 93.1% for the «strict regulations» countries and 93.6% for the «new entrant» countries.

The positive impact of the country category of the SMEs questioned:

The country category of the SMEs questioned has an impact on:

- the distribution of the enterprises between the four turnover categories. The percentages of the turnover categories of less than 1 million euro and from 1 to 5 million euro are higher for the enterprises of the «new entrant» countries than for the SMEs of the other two categories. Conversely, the percentages of the turnover categories of 5 to 10 million euro and over 10 million euro are higher for the enterprises of the «liberal» and of the « strict regulations» countries than for the SMEs of the «new entrant» countries;

- their intra-Community exports of goods. Whereas 66.4% and 61.7% respectively of the enterprises of the «liberal countries» and the «strict regulations» countries sell their goods in other EU countries, only 45.2% of the SMEs of the «new entrant» countries do so;
- their intra-Community purchases of services. 24.5% of the enterprises of the «new entrant» countries purchase intra-Community services, followed by the «liberal countries» with 21% of the enterprises and the «strict regulations» countries with 16.1%;
- the legal nature of their intra-Community transactions. For the SMEs of the «strict regulations» countries and the «liberal countries», the ad hoc form is the most used, with 76.4% of the respondents for the former and 50.6% for the latter. For the enterprises of the «new entrant» countries, the contract form heads the list with 44.7% of the enterprises, just in front of the ad hoc form with 42.6% of the enterprises;
- their employment of cross-border workers from other European Union Member States. The SMEs of the «liberal countries» employ the most such workers, with 21.2% of the respondents. 14.3% of the SMEs of the «strict regulations» countries and 11.2% of those of the «new entrant» countries do so;
- their employment of cross-border workers resident in countries outside the European Union. The SMEs from «liberal» countries are those which employ the most such workers, with 14.1% of the respondents. Those of the «strict regulations» countries come second with 8.1% and those of the «new entrant» countries end up third with 7.5%;
- the involvement of the workers of the SMEs questioned in the management of their enterprises. For example, 60% of the SMEs of the «strict regulations» countries state that their employees have no involvement in the management of their SMEs, whereas in the other two country categories only 36.3% (liberal countries) and 39% (new entrants) gave such a reply.

3.4.2.2. Analysis by sector of activity

According to the cross-analyses, the following results were obtained.

The neutral impact of the sector of activity of the enterprises questioned:

The sector of activity of the SMEs questioned has no impact on:

- whether or not they have European commercial activity. All sectors of activity together, the vast majority of the SMEs questioned stated that they engage in a commercial activity within Europe: textiles, 90.6%; IT and transport, 90.4%; industry, 88.6%; agri-foodstuffs, 88.3%; tourism, 84.7%; construction, 84.6%;
- the legal nature of their intra-Community commercial transactions. All sectors together, the commonest legal form used for commercial transactions was the ad hoc relations: textiles 68.5%, construction 64.3%, tourism 64%, agri-foodstuffs 63.2%, IT 61%, industry 58%, transport 57.2%;
- the employment of cross-border workers from other European Union Member States. The enterprises questioned, all sectors together, stated that they only employed small percentages: transport 19.7%; IT 19.1%; construction 17.4%; industry 14.8%, agri-foodstuffs 13.7%; textiles and tourism 13.4%;
- the employment of cross-border workers living in countries located outside the European Union. The enterprises questioned, all sectors together, stated that they only employed small percentages of cross-border workers living in countries located

outside the European Union: agri-foodstuffs 12.1%; construction and transport 11.1%; IT 10.6%; tourism 9.2%; industry 8.9%; textiles 8,6%;

- the tax obstacles which they encounter during their intra-Community transactions. All sectors together, between 4.4% and 7.1% of the enterprises stated that they encountered tax problems;
- the administrative obstacles they encounter during their intra-Community transactions. The percentage of enterprises stating that they encountered such obstacles was between 3.3% (textiles sector) and 8.4% (industrial sectors). Over 90% of all the enterprises stated that they did not encounter administrative problems in their intra-Community transactions;
- the administrative obstacles, apart from tax, which they encounter in their transactions outside the European Union. The percentage of enterprises stating that they encountered administrative obstacles, apart from tax, in their transactions outside the European Union is between 5% (construction) and 8.9% (textiles). Over 90% of the enterprises, all sectors of activity together, stated that they did not encounter such problems.

The positive impact of the sector of activity of the enterprises questioned:

The sector of activity of the enterprises questioned has an impact on:

- their intra-Community goods imports. In fact, a distinction can be made between the sectors in which the enterprises make large goods imports and the others, in which the enterprises import lower volumes of goods. The former category comprises the textiles sector (69% of the SMEs), industry (66.1% of the SMEs), IT and construction (62.6% and 62.3% of the SMEs), and the agri-foodstuffs sector (57.9% of the SMEs). The latter category groups together the tourism (33.8%) and transport (35%) sectors;
- their intra-Community goods exports. A distinction can be made between two categories of sectors of activity. On the one hand, the sectors in which the enterprises have strong goods exports within the intra-Community territory: in descending order, these are textiles (74.3% of SMEs), industry (74.2% of SMEs), agri-foodstuffs (72.8% of SMEs), construction (59.6% of SMEs), and IT (59.1% of SMEs). On the other hand, the sectors in which the enterprises only export low volumes: this groups together tourism (34.2% of SMEs) and transport (34.1% of enterprises);
- their intra-Community services exports. The services sectors are those in which the enterprises' volumes of intra-Community services exports are very high. The figures for the SMEs come to 63.4% in transport, 53.6% in tourism and 45.2% in IT. For the other sectors, there are fewer services-exporting SMEs: industry 28.6%, construction 24.9%, agri-foodstuffs 20.5% and textiles 17.8%;
- their purchases of intra-Community services. The enterprises of the transport and tourist sectors buy more services than the enterprises in the other sectors. The results in descending order of purchases of services by sector of activity are as follows: tourism 29.2%, transport 27.1%, IT 19.9%, construction 17.1%, industry 16.7%, textiles 12% and agri-foodstuffs 9.7%;
- the involvement of their workers in the management of their enterprises. Three categories can be distinguished: the first comprises the SMEs of the tourist sector, 43.3% of which state that their employees have little involvement in the management of their enterprises. The second category comprises five sectors: the industry and textiles sectors with 38.4% of the enterprises each; the transport sector with 38.4% of the enterprises; agri-foodstuffs with 37.3% of the enterprises and finally IT with

35.2% of the enterprises. The third category comprises construction with 32.1% of the enterprises;

- the obstacles to free movement of the workers of the enterprises questioned. Three categories can be distinguished in this respect. The first comprises the SMEs of the construction sector and industry, in which 4.1% and 3.7% respectively stated that they encounter obstacles to the free movement of workers. The second category groups together two sectors: IT and transport, in which 2.9% of the SMEs in both sectors state that they encounter obstacles to the free movement of workers. The third category is represented by the SMEs of three sectors: textiles, agri-foodstuffs and tourism with 0.9% of SMEs for the first two and 0.5% of SMEs for the third stating that they encountered obstacles to the free movement of workers.

3.4.2.3. Analysis by turnover

The neutral impact of the category of the turnover of the SMEs questioned:

The category of the turnover of the SMEs questioned has no impact on:

- the nature of their intra-Community commercial transactions. All turnover categories together, the most common legal form of commercial transactions used is ad hoc relations. The contractual legal form comes second, with quite similar proportions between the four turnover categories;
- the obstacles they encounter to the free movement of workers. All turnover categories together, quite low percentages of SMEs state that they encounter such obstacles, ranging from 2.6% to 3.9% of the respondents;
- the tax problems they encounter within the intra-Community market. All turnover categories together, quite low percentages of SMEs state that they encounter such obstacles, ranging from 3.4% to 8.3% of the respondents;
- the administrative problems, apart from tax, which they encounter within the intra-Community market. Quite low percentages, with little variation, of the SMEs state that they encounter such obstacles, all turnover categories together, ranging from 5.3% to 11.7% of the respondents;
- the administrative problems, apart from tax, which they encounter in their transactions outside the European Union. Quite low percentages, with little variation, of the SMEs state that they encounter such obstacles, all turnover categories together, ranging from 6.7% to 11.8% of the respondents.

The positive impact of the category of turnover of the SMEs questioned:

The category of turnover of the SMEs questioned has an impact on:

- whether or not they have European commercial activity. Whereas only 69.7% of the SMEs of the first category have intra-Community commercial activity, over 90% of the respondents in the other three categories state that they have intra-Community commercial activity.
- their imports of intra-Community goods. The higher the turnover of an SME, the more goods it imports on the intra-Community market. Only 41.1% of the SMEs with a turnover of less than 1 million euro import goods on the intra-Community market; 58.9% of the SMEs with a turnover of 1 to 5 million euro do so, as do 68.1% and 69.5% of the SMEs with a turnover of 5 to 10 million euro and of over 10 million euro respectively;

- their exports of intra-Community goods. The higher the turnover of an SME, the more goods it exports on the intra-Community market. Only 42.4% of the SMEs with a turnover of less than 1 million euro export goods on the intra-Community market. 60.2% of the SMEs with a turnover of 1 to 5 million euro do so, as do 75.5% and 70.3% of the SMEs with a turnover of 5 to 10 million euro and of over 10 million euro respectively;
- their sales of intra-Community services. For this question, the link between turnover and European activity is less obvious, but still present. SMEs with a turnover of 1 to 5 million euro, of which 38.6% sell intra-Community services, are the leading category. They are followed by the SMEs with turnover of over 10 million euro, at 38.3% of the respondents. The SMEs with turnover of 5 to 10 million euro are third at 32.1% of the respondents. The SMEs with a turnover of less than 1 million euro are those which sell the least services on the intra-Community market, with 26.9% of the respondents;
- their purchases of intra-Community services. The higher the turnover of an SME, the more services it buys on the intra-Community market. Only 16.5% of the SMEs in the first category buy services on the intra-Community market, 18.8% of the SMEs of the second category do so, as do 27.9% and 28.8% of the SMEs of the third and fourth categories respectively;
- their employment of cross-border workers from other European Union Member States. The link between the turnover category and the employment of cross-border workers from other European Union Member States is easy to see. In ascending order, the SMEs employing the fewest workers in this category are those with the lowest turnover, with 12.5% of the respondents, followed by the SMEs with a turnover from 1 to 5 million euro, which account for 14.3%, followed by the SMEs with a turnover of 5 to 10 million euro at 17.9% of the respondents, finally followed by the SMEs with a turnover of over 10 million euro with 26.4% of the respondents;
- their employment of cross-border workers living in countries located outside the European Union. There is a link between the category of turnover and the employment of cross-border workers living in countries located outside the European Union. In ascending order, the SMEs employing the fewest workers in this category are those with a turnover of 1 to 5 million euro with 6.7% of the respondents. They are followed by the SMEs with a turnover of less than 1 million euro, at 7.7% of the respondents. Then come the SMEs with a turnover of 5 to 10 million euro at 12.1% of the respondents. Finally, there are the SMEs with a turnover of over 10 million euro with 15% of the respondents. As regards the involvement of their employees in their management, it is in fact possible to draw a distinction between the SMEs with a turnover of less than 10 million euro and those with a turnover of more than 10 million euro.

3.4.2.4. Analysis by the export of goods

The neutral impact of the export of goods of the SMEs questioned:

The export of goods of the SMEs questioned has no impact on:

- their employment of cross-border workers from other European Union Member States. Whereas 15.4% of the SMEs which do not export employ such workers, the figure for those which do export is only 16.8%;
- the involvement of their workers in their management. The majority of SMEs exporting or not exporting goods stated that their employees are not involved in the management of their SMEs, i.e. 52.7% for the former and 53% for the latter;

- the obstacles they encounter to the free movement of workers. 97.6% of the enterprises which export stated that they do not encounter such obstacles;
- the tax problems they encounter within the intra-Community market. 4.9% of the SMEs which export stated that they encounter such obstacles and 5.6% of SMEs which do not export;
- the administrative problems apart from tax which they encounter within the intra-Community market. 6.9% of the SMEs which export stated that they encounter such obstacles and 5.2% of those which do not export.

The positive impact of the export of goods of the SMEs questioned:

The export of goods of the SMEs questioned has a positive impact on:

- the legal nature of their intra-Community commercial transactions. 64.1% of the exporting SMEs have greater recourse to ad hoc relations than the non-exporting SMEs with 58.7% of the respondents;
- their employment of cross-border workers living in countries located outside the European Union. The enterprises employing the most such workers are those which export, with 10.5% of the respondents. 7.9% of the SMEs which do not export employ such workers;
- the administrative problems other than tax which they encounter outside the EU. More exporting enterprises state that they encounter significant administrative obstacles outside the EU (9.6%) than non-exporting enterprises (3.5%).

3.4.2.5. Analysis by the sale of intra-Community services of the SMEs

The neutral impact of the sale of intra-Community services of the SMEs:

The sale of intra-Community services of the SMEs questioned has no impact on:

- their employment of cross-border workers of other European Union Member States. 14.4% of the SMEs not providing intra-Community services employ such workers, as do 19.8% of the exporting SMEs. The sale of intra-Community services of the SMEs questioned is unrelated to the involvement of their workers in their management. The majority of exporting and non-exporting SMEs stated that their employees are not involved in the management of their SMEs, i.e. 52.7% for the former and 53% for the latter;
- the obstacles to the free movement of workers. 96.8% of the enterprises providing intra-Community services and 98.1% of those which do not stated that they do not encounter such obstacles.

The positive impact of the sale of intra-Community services of the SMEs questioned:

The sale of intra-Community services of the SMEs questioned has a positive impact on:

- the nature of their intra-Community commercial transactions. The SMEs not exporting intra-Community services have greater recourse to the ad hoc form (66.1% of the respondents), than the exporting SMEs (57.1% of the respondents)
- their employment of cross-border workers living in countries located outside the European Union. 10.8% of the enterprises which provide intra-Community services, but only 8.8% of the SMEs which do not, employ such workers;

- the tax problems they encounter within the intra-Community market. A larger proportion of the enterprises providing intra-Community services (8.1%) than enterprises not providing such services (3.5%) stated that they encounter tax problems;
- the administrative problems other than tax which they encounter within the intra-Community market. A larger proportion of the enterprises providing intra-Community services (9.2%) than enterprises not providing such services (4.7%) stated that they encounter administrative obstacles;
- the sale of intra-Community services of the SMEs questioned depends on administrative problems apart from tax which they encounter outside the EU which they encounter within the intra-Community market. A larger proportion of the enterprises which provide intra-Community services (9.3%) than enterprises not providing such services (5.9%) state that they encounter administrative obstacles outside the EU.

3.4.3. Analysis in relation to legal forms

This was an analysis relating to the knowledge of the main legal forms of enterprise in Europe and the intention to avail themselves of them, an analysis of the attitude to the utility of a single European statute for SMEs in Europe, formalities to be eliminated in the country where the activities were performed and criteria influencing the decisions to establish in another country.

3.4.3.1. The impact of the country category on the knowledge of the main legal forms of enterprise in the EU

The impact of the country category of the SMEs questioned:

The country category questioned has an impact on:

- their knowledge of the main legal forms of enterprise in Europe. Whereas 19.7% of the «new entrant» countries knew the European forms, 12.5% of those in the «strict regulations» countries knew them and only 7.8% in the «liberal countries»;
- their curiosity concerning the main legal forms of enterprise in Europe. 77.9% of the SMEs of the «new entrant» countries replied in the affirmative to the question concerning the wish to be informed about the principal characteristics of European enterprises. 57.1% of the enterprises of the «liberal countries» replied in the affirmative, as did 45.3% of those of the «strict regulations» countries, compared to 54.7% which did not wish to be informed;
- their readiness to use the EEIG as a legal form for their enterprises. The SMEs of the «new entrant» countries, at 31.1%, are the most prepared to use this form. 12.5% of the SMEs of the «liberal countries» and 17.4% of those of the «strict regulations» countries are prepared to do so;
- their ability to use the SCE as a legal form for their enterprises. The enterprises of the «new entrant» countries, at 30.4%, are the most prepared to use this form. 11.4% of the SMEs of the «liberal countries» and 16.3% of those of the «strict regulations» countries are prepared to do so;
- their readiness to use the SE as a legal form for their enterprises. The enterprises of the «new entrant» countries, at 32.8% are the most prepared to use the SE. 13.6% of the SMEs of the «liberal countries» and 19.3% of those of the «strict regulations» countries are prepared to do so;

- their attitude in relation to the current system of the European directives. The enterprises of the «liberal countries», at 56%, are the most satisfied with this system. The enterprises coming in second place are those of the «new entrant» countries, 51.2% of which are satisfied. Finally, 49.3% of the enterprises of the «strict regulations» countries are satisfied;
- their attitude to the drawing up of a single European statute for SMEs. The enterprises of the «strict regulations» countries were the most in favour of a single statute of this kind, at 51.9%. 46.3% are in favour in the «liberal countries» and 41.4% in the «new entrant» countries;
- the formalities in need of improvement for the SMEs. The tax formalities are ranked first for the enterprises of two categories of countries: the liberal countries at 87.5%, and the new entrant countries at 45.8%. The legal formalities are in first place for the strict regulations countries at 44.2%. Finally, the social formalities come second for the enterprises of the strict regulations countries for 33.3% of the enterprises;
- the formalities which have to be eliminated in the country where activities are performed. The tax formalities come first for the SMEs of two categories of countries, the «new entrants» at 54.4% and the liberal countries at 44.8%. The legal formalities come in first place for the formalities to be eliminated for the strict regulations countries. Finally, the social formalities come third for the formalities to be eliminated in the country where the activities are carried out for the enterprises of the three categories of countries.

3.4.4. Analysis of the impact of the levels of turnover of the SMEs questioned on the perception of the forms and other formalities

The neutral impact of the levels of turnover of the enterprises questioned:

The levels of turnover of the enterprises interviewed have a neutral impact on:

- the curiosity of the entrepreneurs and business managers in relation to the principal legal forms of enterprise in Europe. The overwhelming majority of the SMEs questioned, whatever their level of turnover, wished to be informed about the principal characteristics of the European statutory forms;
- the formalities in need of improvement. Over 50% of the enterprises with a turnover of 1 to 5 million euro wished to see the legal formalities improved. 33.3% of the enterprises with a turnover of between 5 and 10 million euro wished to see the tax and legal formalities improved. Finally, 31.3% of the enterprises with turnover over 10 million euro wished to see the tax and legal formalities improved;
- the formalities which they consider should be eliminated in the countries in which they engage in their activities. 47.7% of the enterprises with turnover of less than 1 million euro considered that it was a matter of eliminating the tax formalities. The enterprises with a turnover of 1 to 5 million euro considered that it should be the tax formalities (39.3%) and the legal formalities (38.8%) which should be eliminated. 45.2% of the enterprises with turnover of over 10 million euro considered that the legal formalities should be eliminated. As far as the social formalities are concerned, there is no pronounced difference from one category of turnover to another, ranging from 18.9% of the enterprises with turnover of less than 1 million euro to 21.9% for the enterprises with turnover of 1 to 5 million euro.

The positive impact of the levels of turnover of the SMEs questioned:

The levels of turnover of the SMEs questioned have a positive impact on:

- the knowledge by the entrepreneurs and business managers of the principal legal forms of enterprise in Europe. The number of enterprises with knowledge of these forms increased along with turnover. The enterprises most familiar with these forms were those with the highest turnover (over 10 million euro). The enterprises with the lowest turnover have the weakest knowledge of the European forms of enterprise;
- the readiness of entrepreneurs and business managers to use the EEIG as legal form for their enterprise. It is seen that the smaller the enterprises and the lower their turnover, the more ready they are to use the EEIG as legal form for their enterprise. The largest percentage (21.6%) of enterprises prepared to use the EEIG is to be found among the SMEs with turnover less than 1 million euro, followed by those with turnover from 1 to 5 million euro, standing at 20.7% des enterprises. The category of enterprises least in favour of this statutory form was that with turnover of over 10 million euro, with 10.9% of enterprises in favour of this form;
- the readiness of entrepreneurs and business managers to use the SCE as legal form for their enterprise. It is seen, as for the EEIG, that the lower their turnover, the more ready they are to use the SCE as legal form for their enterprise. It was the SMEs with turnover below 1 million euro which are the most prepared to use the SCE, followed by the second turnover category at 19.6% of the enterprises. These enterprises with turnover of between 5 and 10 million euro are in third place with 15.9% of the enterprises and finally, the SMEs with turnover of over 10 million euros, only 8.1% of which are prepared to use this form;
- the readiness of entrepreneurs and business managers to use the SE as legal form for their enterprise. It is seen again that the smaller the enterprises and the lower their turnover, the more ready they are to use the SE as legal form for their SME. The enterprises with turnover of less than one million euro have the most favourable attitude to the SE (25.6% are prepared to use this form). They are followed by those with turnover of between 1 and 5 million euro (21.7% of enterprises in favour). 15.1% of the enterprises with turnover of between 5 and 10 million euro and 13.2% of the enterprises with turnover of over 10 million euro are in favour of this form;
- the attitude of entrepreneurs to the present system of European directives. A distinction can be made between two types of attitudes. On the one hand, the enterprises which are satisfied with this system; these are those with turnover from 5 to 10 million euro with 56.6% of the enterprises in favour and SMEs with turnover of over 10 million euro with 50.3% of respondents in favour. On the other hand the dissatisfied enterprises: these are the other two turnover categories, with 52.2% of replies against for the category of turnover of less than 1 million euro and 51.4% for the category of turnover from 1 to 5 million euros;
- the attitude towards drawing up a single European statute for SMEs in Europe. As for the previous question, two categories of SMEs can be distinguished. On the one hand, the more favourable towards a single statute; SMEs with turnover from 5 to 10 million euro are in the lead with 50.7% of enterprises in favour. They are followed by the category of turnover of over 10 million euro, with 44.9% of respondents. On the other hand, the SMEs in favour to a lesser extent of the single statute; these are the enterprises with the lowest turnover of less than 1 million euro, with 43.4% of replies in favour, and the enterprises with turnover of between 1 and 5 million euro with 39.8% of replies in favour.

3.4.5. Analysis by sector of activity in relation to the legal forms and formalities

The neutral impact of the sector of activity of the SMEs questioned in relation to the legal forms:

The sector of activity of the SMEs questioned has no impact on:

- their knowledge of the main legal forms of enterprise in Europe. There is very little difference in the knowledge about these forms from one sector of activity to another. The enterprises in construction (9.6%) and tourism (9.7%) are those with the least information on the legal forms. 10.7% of the enterprises in the IT sector knew the forms of enterprise in Europe. 12.1% and 12.2% of enterprises were aware of them in the industry and transport sectors respectively, 13.6% in the agri-foodstuffs sector and finally 14.2% in the textiles sector;
- their curiosity about the principal characteristics of the enterprise in Europe. The following percentages of SMEs wished to be informed about these forms, with little variation from one sector to another: industry 59.6%, textiles 57.2%, tourism 54.5%. IT 53.8% and construction 53.8%, transport 51.5% of the enterprises, with agri-foodstuffs bringing up the rear at 49.7%;
- their readiness to use the EEIG as legal form for their enterprise. The replies of the SMEs differ very little from one sector of activity to another. The IT and industry sectors, at 20.4% of the enterprises for both sectors, are the most disposed to use the EEIG as legal form. The textiles sector comes second at 19.9% of the enterprises, followed by the transport sector with 18.9% and the tourist sector with 18.5%. The industry sector is in sixth position with 16.1% of the enterprises prepared to use the EEIG, and finally the agri-foodstuffs sector with only 14.6% of the enterprises;
- their readiness to use the SCE as legal form for their enterprise. The enterprises in construction are the most in favour of the SCE at 19.2%. The IT sector comes second with 19% of the enterprises, followed by the textiles sector with 18.6% and the transport sector with 18.1% of the enterprises. Tourism comes fifth, with 17.1% of the enterprises and then industry with 15.8% of the enterprises. Finally, 13.1% of the enterprises in the agri-foodstuffs sector are prepared to use the SCE form for their SME;
- their readiness to use the SE as legal form for their enterprise. The results on the impact of the sector of activity on the readiness to use the SE as legal form are quite similar to those for the previous two forms, EEIG and SCE, despite a larger range between the least favourable enterprises (agri-foodstuffs only 14.2%) and the most favourable (IT 23.4%). Between these two sectors, textiles and tourism come second each with 22.5% enterprises in favour, followed by the transport sector with 21.3%, construction with 21% and in penultimate position, industry with 16% of the enterprises;
- their attitudes to a single European statute for SMEs. The majority of SMEs, all sectors of activity combined, are in favour of the introduction of such a statute. In descending order, it is in the textiles sector that the enterprises are most in favour of this statute with 53.7% of the enterprises, followed by transport with 50.6%. Tourism is in third place with 48.3% of the respondents; IT is fourth with 47.9% of the respondents. The last three sectors are construction, industry and agri-foodstuffs, with 46.4%, 43.9% and 40.9% of respondents respectively;
- the formalities in need of improvement for the SMEs. For the IT sector, it is the social formalities which are most in need of improvement for 50% of the enterprises. For the

industrial sector, it is the tax formalities for 45.5% of the enterprises. For the construction sector, it is the legal formalities which need improvement for 42.9% of the enterprises. In the textiles sector, 44.4% of the enterprises wish to improve the tax formalities. For the transport sector, it is a matter of the legal and social formalities, for 37.5% and 35% of the enterprises respectively. For agri-foodstuffs, priority is given to the improvement of the tax formalities by 38.9% of the enterprises. Finally, for the tourist sector, the legal formalities are in need of improvement as a priority, according to 44% of the enterprises.

The positive impact of the sector of activity of the enterprises questioned:

The sector of activity of the enterprises questioned has a positive impact on:

- their level of satisfaction regarding the current situation of the European directives as a sufficient means for the expansion of their activities within the market of the European Union. The enterprises of the IT sector and agri-foodstuffs satisfied with this system (48% and 47.3% respectively for the two sectors) only just exceed the percentages of enterprises which are dissatisfied (46.8% and 46.7% respectively for the two sectors). As regards the other sectors, the number of enterprises satisfied with the system of European directives is sufficiently higher than the number of dissatisfied enterprises
- the formalities for which improvement is necessary for them in the countries where they conduct their activities. For the IT, industrial, textiles and transport sectors, it is a matter of the tax formalities as a priority, with 49.1%, 42%, 42% and 41.1% of the respondents respectively for each sector. For the construction, agri-foodstuffs and tourist sectors, the legal formalities take priority, with 43%, 40.2% and 41.6% of the respondents respectively for each sector.

3.4.6. Analysis by export of goods in relation to the forms and the formalities:

The neutral impact of export of goods of the SMEs questioned:

The export of goods of the SMEs questioned has a neutral impact on:

- the formalities in need of improvement in the countries in which they pursue their activities. The tax formalities take the lead for 42.2% of the exporting enterprises and 41.7% of the non-exporting enterprises. The legal formalities come second with 38.1% for the exporting enterprises and 36.7% for the non-exporting enterprises. The social formalities come third, with 19.8% for the exporting enterprises and 21.6% for the non-exporting enterprises.

The positive impact of the export of goods of the SMEs questioned:

The export of goods of the SMEs questioned has a positive impact on:

- their knowledge of the main legal forms of enterprise in Europe. 13.6% of the exporting enterprises knew about the European forms, whereas 10.7% of the non-exporting enterprises knew about them;
- their curiosity about the principal legal forms of SMEs in Europe. 56.8% of the exporting enterprises replied positively to the question «Would you like to be informed about their principal characteristics?», whereas this figure was about 52.9% for the non-exporting enterprises;

- their readiness to use the EEIG as legal form for their enterprise. In reply to the question: «Are you prepared to use the EEIG?», 19.4% of the exporting SMEs replied «yes», compared to 17.4% of the non-exporting enterprises;
- their readiness to use the SCE as legal form for their enterprise. The exporting SMEs are more prepared to use the SCE (18.1%) than the non-exporting SMEs (17.5%);
- their readiness to use the SE as legal form for their SME. The exporting SMEs are more prepared to use the SE (21.4%) than the non-exporting SMEs (20%);
- their attitude to the system of company law directives. The non-exporting enterprises are the more satisfied with this system at 52.2%. 51.1% of the exporting enterprises are satisfied with it;
- their attitude to the drawing up of a single European statute. The exporting enterprises are more favourable towards this statute with 48.9% of the respondents. 46.1% of the respondents of the non-exporting enterprises are in favour;
- the formalities which should be eliminated for them in the countries where they conduct their activity. The tax formalities top the list of formalities to be eliminated for 42.2% of the exporting enterprises and for 41.7% of the non-exporting enterprises. The legal formalities take second place, with 38.1% for the exporting enterprises and 36.7% for the non-exporting enterprises. The social formalities come third with 19.8% for the exporting enterprises and 21.6% for the non-exporting enterprises.

4. The results of the study and recommendations

The study conducted in the 25 Member States involving a sample of 2146 enterprises enabled a group of specificities and constraints to be brought out with regard to the proposal for a statute for the SMEs of the European Union.

Whatever the results obtained and their specific interpretation for the implementation of a statute for European SMEs, it is part of an approach started in Nice and continued by various projects drawn up by groups of experts (Winter report), MEDEF (France) and VDMA (Germany) or through the studies conducted by the Paris Chamber of Commerce and Industry.

In order to image a possible impact of such a study on all the research groups concerned by the feasibility project for a European statute, it proved necessary to measure both its implications and the limits inherent in the analysis of the results obtained when implementing the questionnaire with the segmented enterprises.

To finalise the analysis, three approaches and proposals were put forward to assess the possibilities for the creation or implementation of one or more forms:

- a legal approach
- a tax approach
- a social approach.

These three approaches resulting from the work of three groups of experts converge on the essentials and bring out certain differences. They were refined for some by proposing a cost-benefit analysis of the introduction of a statute.

This analysis is supplemented by an economic study of the impact of a single statute for SMEs. This study takes stock provisionally of the costs and benefits of establishment in the

25 Member States. This country analysis provides a supplementary view of the impact of the feasibility of the statute for the future SPE and its implementation constraints.

The proposal for a good practice guide concerning the current customs in the countries of the European Union rounds off the work.

4.1. Legal analysis

The situation of SMEs in Europe is characterised by wide diversity in terms of their economic dimension and their position in their international environment. On account of this fact, it is essential, with the help of the results of the questionnaire, to define the identity of the SMEs which can really benefit from a new statute, on the one hand, and to outline the characteristics of the three prototype statutes which could be used by the target SMEs, given their specificities and the legal environment in which they operate, on the other.

In the context of the presentation of each statute, a first cost-benefit analysis is carried out and the outlines are traced which could justify the adoption of this version. Before introducing the main guidelines of each statute, a benefit analysis will be presented, even though it is not really possible to apply this methodological approach to a legal analysis. In this way, mention will be made of «justification» for the application of this particular statute.

As for the cost analysis, a tool which belongs to economic methodology, it will be possible to identify it through the effects which the introduction of each statute would bring to the legal systems of the Member States.

The analysis is carried out on the basis of the distinction already proposed between groups of countries. It must be stressed that a country by country analysis (relating to the precise effects of the introduction of the new statute) is scientifically impossible to carry out in the context of a feasibility study like the one conducted here.

From the point of view of its content, this approach should be assimilated to a detailed comparative law study comprising detailed research of the 25 company law systems of the Member States. From the point of view of its use, it would not be decisive, as the first part of the study has shown critical convergences and divergences in the legislations which may allow basic conclusions to be drawn.

This being so, it is considered obvious that the provisions of the company law directives can take priority over the provisions of the statutes which it will be attempted to propose.

4.1.1. The identification of SMEs which will benefit from a new statute

The empirical survey confirms the theoretical contributions of the first part of the study that the SMEs questioned encounter more or less the same obstacles. This finding holds beyond the specific characteristics of the targeted enterprises, i.e. their size, their dimension and the fact that they belong to a legal system which is «liberal» or with «strict regulations».

Furthermore, these same characteristics, relating to the size of the SMEs, their independence in relation to other companies, their inter-State dimension, and, above all, the legal environment of the country of the registered office, show that there is not necessarily just one solution to these common problems. The needs created by the necessity to improve the

European legal environment concerning the SMEs are more or less common to the majority of the enterprises concerned.

The enterprises wish for a legal medium which will enable them to carry out ambitious projects, at both national and inter-European level: to grow and to secure their position.

The SMEs questioned in the context of this study express to equal extents their points of view on the nature and importance of the legal, administrative and tax problems, as well as their concerns concerning the obstacles to their establishment abroad.

It appears that the need for a new statute, where it exists, is justified above all by the will to have a flexible legal medium, independent of the European dimension or tendency of the SMEs. An independent approach to the intra-European character of the new structure will therefore be proposed within each statute, which on the other hand will create more cumbersome effects for the national legal systems.

Finally, it will be seen that, despite a few exceptions, the main constraint which the «European label» tries to overcome, i.e. the lack of information and confidence between companies of different countries, seems to be a key factor which operates beyond the specific characteristics of the SMEs.

The regrouping of the legal cultures introduced in this study is made more for practical considerations.

Added to the distinction between the two models of society, designating the host countries as «liberal» or «with strict regulations» respectively is a new legislative environment category, that of the new Member States which are emerging from a Communist economy and hence from a Communist legal system: the «new entrant» countries.

Lacking a sound tradition in this field, on the one hand, and being fervent advocates of the neo-liberal current, on the other, these regimes are more open to a range of solutions proposed, but tend above all towards liberal and «European» solutions.

For their part, the companies of the «liberal» countries do not seem very motivated to use a new European statute. They consider that the obstacles to inter-European mobility can be resolved by the system of harmonisation of Community law on mergers and transfers of the registered office.

Conversely, the SMEs of the «new» countries seem to be more enthusiastic than the other categories in adopting a European statute.

4.1.1.1. The concept of the European label

The concept of «European label», although entrepreneurial in nature (marketing and communication) seems to constitute part of the added value which it is wished to associate with this new statute. It is considered that it will be easier in practice for a Latvian SME to do business with – and to gain the confidence of – a German or French enterprise if it possesses a European status with characteristics known to its partner.

In this way, it can be considered that, irrespective of the characteristics specific to a new statute, there will always be a clientele among the European SMEs which will opt for this

statute, solely according to the «European label». This clientele is to be found especially among the «smallest» SMEs, irrespective of their nationality, but also among the SMEs of the «new» Member States.

On the other hand, for a certain category of SMEs, the «European label» factor will not play a significant role and may be negative for the development of the activity of the enterprise.

It is therefore preferable to present an assortment of legal measures instead of being satisfied with a single solution potentially ranging from the most radical («radical» especially in the eyes of the countries with a strong regulatory tradition) even to rejection of the proposal for an independent European statute (which seems to suffice for the countries with a liberal tradition).

The constraints identified by the research corresponding to the scope of a new statute call for a solution to be proposed with characteristic traits concerning:

- on the one hand the elimination of the obstacles to the mobility of enterprises in the Union,
- on the other hand, simplification of the operation of the SME irrespective of its European nature.

4.1.1.2. The nationality of the SMEs

The nationality of the beneficiaries is legally the most obvious factor of the diversity. Hence the SMEs of the «new entrant» countries seem to be the most in favour of a European statute, the second most motivated being the SMEs of the «liberal» countries. The reason for this lies in the will of the former to consider themselves «European» and in the difficulty, and even the impossibility for the latter, on account of the flexibility of their legal system, to establish easily in countries with strict regulations.

One question has to be dealt with separately from the nature of the statute. It is linked to whether or not it has a «European» attribute.

It is considered that there are two main options:

- The first option would confer the European statute solely on SMEs operating on the markets of two or more Member States. In this way, its paramount use would be to facilitate or promote the intra-Community movement. However, the arguments are again to be found here that this obstacle would be resolved by the process of harmonisation alone, through the intervention of company law directives.
- The objective of the second option would be to offer the SMEs a flexible legal instrument available to any entrepreneur, irrespective of his presence or will to be present on the various national markets. In this sense, even a small enterprise operating on a limited geographical market in an urban quarter, without either customers or suppliers outside the national frontiers, could adopt this European statute.

4.1.1.3. Methodological analysis

The classification by group of country, however arbitrary it may appear, is created for the needs of this study and solely to serve its purposes, even through this type of classification has already been proposed by eminent legal experts.

This methodological instrument will assist in regrouping the major effects of the introduction of new statutes, according to the principal characteristics of the organisation of the host legal system rather than launching into a country by country analysis, with the inevitable result of projecting the divergences between legislations and, consequently, not serving to identify the true consequences and threats relating to the rules which are more or less common to groups of countries within the Union.

In addition, if several versions of a new European statute are proposed, their philosophy will generate separate effects, according to their «flexible» or «rigid» tendency.

It is self-evident that the introduction of a more regulated statute, like the French SAS, will meet with favourable repercussions among the counties with a Roman tradition, but will be appraised with reservations by the entrepreneurs who consider that more liberal statutes create more constraints than they are accustomed to.

4.1.2. The statutes

4.1.2.1. The radical statute: The «streamlined ultra-liberal» company model

Two factors in the legal reality of today point towards this solution: the tendency of several European States to create a «lightweight structure» for SMEs and the American case study of the Delaware LLC.

European entrepreneurs are tending to want a more flexible and liberal business environment, which is clearly shown by the results of the empirical study.

In addition, a strong preference can currently be discerned on the part of SMEs for more structured contractual relations («general» framework contracts) with a view to their establishment in another country of the Union.

The enterprises of the «liberal» countries with use «streamlined» structures seem to be the least disposed to use a European legal form. These enterprises are satisfied with their national, liberal, flexible statutes, conferring wide freedom of action on the managers. But the most obvious evidence which strengthens our position lies in the very low level of existence of legal constraints in the eyes of the entrepreneurs of the «liberal» countries (9.4%) compared to their colleagues from countries «with strict regulations» (44.2%).

In the view of the interviewees, the «European company» concept seems, quite naturally, to be that of a regulated company, like the other existing European autonomous structures, such as the EEIG and above all the SE.

Beyond the will of the entrepreneurs and economic necessity, an «ultra-liberal» version of a statute for SMEs may prove vital in view of the competition from national legislation, as several Member States are starting to create adapted structures for companies which are not quoted. The Netherlands, Sweden and even Belgium a showing a certain propensity towards a streamlined structure. This tendency derives from the pressure of the trade associations expressing the will of the market participants, and is expressed in theory by the «contractual» school.

- **The model which generates competition: the Anglo-Welsh «private limited»**

It is true that this tendency, which characterises the Central European laws, derives from the preference which the companies of their countries seem to have for a light form and when they demonstrate this preference in practice, they move or wish to move towards the «private limited» form of Anglo-Welsh law. This is the most serious competitor to the other forms of company and may serve as their reference point.

The English «private limited» is very flexible and exempt from procedural and administrative constraints.

In this way, the situation and dynamics of the national laws allow us to consider a first «streamlined» version of a statute for the SMEs which will be compared to the alternatives of the national laws.

The «streamlined statute» of Delaware

A comparative legal analysis taking into consideration an economic environment close to that of the European Union, i.e. that of the United States, may prove vital for the cause of the «streamlined» statute.

For a decade, the Delaware «limited liability company» (LLC) has become the preferred legal form of American entrepreneurs and of many international enterprises.

The LLC is a relatively new statute in American practice. It combines the principal advantages of the «corporation» and the «partnership». The essential characteristic of the corporation is the limited liability of the owners. That of the partnership is the flexibility of management and the fiscal transparency of the company and the shareholders.

The LLC is governed more by the principles of contractual freedom than by statutes strictly defined by State law. According to the Delaware LLC Act, almost all the aspects of company management and organisation are variable and can be determined by an agreement between the partners-shareholders.

Standard provisions exist in the Act but apply solely in the absence of specific agreement between the partners or in the case of non-application of their own agreement.

The height of flexibility and freedom is expressed in the LLC incorporation procedure. It suffices to complete a «Certificate of Formation» with the Department of the Interior of Delaware. Above all, the LLC is not required to publish accounts or other financial data.

The major weakness (and possibly the only one) which the legal experts attribute to the Delaware LLC is the difficulty to convert into a company which makes public offerings. However, this factor is of little relevance in our study, which is devoted solely to private enterprises.

4.1.2.1.1. Properties of the «streamlined, ultra-liberal» statute

The principle governing a «streamlined» statute consists of considering that almost nothing will be stipulated as mandatory. These statutes will make no reference to the national legislations. The «streamlined» European company will be a company of the «private limited» type of the United Kingdom and Wales or of the Delaware LLC type.

In this case, the contract between the partners will govern any question relating to the organisation, decision-making and management and the managers will have the greatest freedom in seeing themselves dispensed of any liability.

This flexible company will not be forced to possess and to publish articles of association, even if it is a matter of a mere shareholder/owner contract. Simple rules will merely be contained in a legal text and even in Regulations which would establish this new legal form of enterprise:

No minimum capital, legal autonomy, establishment by contract, registration of the name and publication in the Official Journal of the EC, contribution in cash and in kind by the shareholders, no minority rights unless provided for in the contract, every possibility regarding the decision-making process, no outside audit, no employee participation right, etc.

4.1.2.1.2. Effects of the introduction of a «streamlined, ultra-liberal statute»

Overall impact:

- Competition with the national statutes. Application «intra muros» of the proposed statute. the most serious implication of a statute of this type will be identified with the degree of success which can seriously be envisaged, given the level of freedom it will confer on the entrepreneurs. Competition will arise in the countries with a similar legal environment to that to be created by the «ultra-liberal» statute, i.e. in the countries following the Anglo-Saxon tradition, whose companies will be liable to adopt this statute if they consider that the contribution of added value through the «European label» is worthwhile for them.
- Abuse of the statute by large enterprises. Another overall effect will be the possible use of this statute – intended exclusively for SMEs – by large enterprises which are not quoted. In fact there is nothing to prevent an enterprise not meeting the economic criteria laid down by the Commission to be termed as an SME, but meeting the legal criteria of our statute, i.e. by remaining closed to the public so as not to come under the scope of the Societas Europaea, from using this statute.
- Impact in respect of money laundering and organised crime: The streamlined statute, and especially its provisions (or rather the absence of provisions) on disclosure and supervision will damage another overall interest common to the countries of the Union, i.e. security and combating organised crime. Despite the relevant measures taken or in the process of being taken by the Union, it is quite obvious that this ultra-liberal structure may serve as a medium for the laundering of the proceeds of crime or even to finance crime.

Impact on the «liberal» countries

It is true that the effects of the introduction of this statute in the «liberal» countries, and especially the United Kingdom, Ireland and Cyprus, will be less visible than in the other Member States. However, as has just been examined, the added value it brings, i.e. the «European label», will sweep up many companies in national form which adopt this new structure.

Impact on the countries «with strict regulations»

The «strict regulations» regimes will probably suffer the greatest effects from the introduction of this statute. Their degree will vary according to whether or not the «Community dimension» is applied. Hence, if the new statute for the SMEs is of universal, unconditional application, it is highly likely that some entrepreneurs (especially those who are shareholders in enterprises with limited spread of capital) will adopt this light, flexible statute.

Impact on the «new entrant» countries

The results of both the theoretical analysis and the questionnaire indicate that this category of countries will be the least affected.

On the one hand, because many countries belonging to this category have already opted for «liberalised» company law, in order, naturally, to attract investments.
On the other hand, because the others will not have a great deal of difficulty in adopting a liberal system in a legal culture which lacks roots. In addition, the attractiveness for investment which such a statute will probably generate will be the main grounds.

4.1.2.2. The « conservative» solutions: the simplified European company

Justification
The fact that entrepreneurs-managers and shareholders-partners of European SMEs may prove to be very conservative and, in this way, wish to preserve certain prerogatives and guarantees, which are more or less essential, regarding the form and operation of their national company, should not be disregarded.
Two series of solutions seem to satisfy this «conservative» tendency: the simple omission of a new European statute, on condition that the adoption of the system of the 10th and 14th Directives or, the adoption of a statute do not depart excessively from the characteristics of the majority of statutes adopted so far by the European SMEs, especially in the countries with a tradition of Roman law.

Harmonisation of company law
It may hence appear conceivable that once the major problems of mobility of enterprises within the Union have been resolved, i.e. cross-border mergers and transfer of the registered office, SMEs can content themselves with their national statutes, especially since, as has just been examined, the national legislative trends towards lightening the statutes are intended for private companies.
In fact, as the results of the field study proved, a dynamic SME will move more easily towards the statute of the «private limited» type, i.e. of an Anglo-Saxon country.
This argument can also be supported by the fact that over 80% of the SMEs questioned stated that they did not wish to adopt a European statute. Naturally, this refers to statutes which already exist and not a new single statute for SMEs. This position is also backed up by the fact that 51.70% of the SMEs questioned were satisfied with the system of company law directives, which may express the will of entrepreneurs to remain under a national statute.

Adoption of a similar statute to the national statutes of the countries with «strict regulations»

Justification
The intention of a very large proportion of the SMEs questioned to use a single European statute and therefore to opt for harmonisation only cannot be disregarded.
This statute can also draw on the example of the recent legislative operations in certain Member States.
These examples include:

- the French Economic Initiative Act of 1 August 2003, aiming to eliminate administrative constraints, the new SAS statute,
- the new Dutch Act of 9 July 2004 on the position of shareholders,
- the new provisions of the Belgian Company Code of 1999,
- the new Greek Bill to introduce a «streamlined» limited liability company.

Hence, to satisfy the «conformist» tendency, if this wins the day, this «conservative» statute should retain the protective provisions on decision-making arrangements, minority partners, third parties, etc. which are to be found in the legal forms most commonly used by European SMEs (such as the Sarl, GmbH, S.A., S.A.S.), whilst wishing to «correct» certain attributes of the national statutes which may prevent the operations of a dynamic SME with European tendencies.

4.1.2.2.1. Properties of the «simplified European Company» statute

Establishment by one or more natural persons with or without European dimension, a minimum capital of 15000 euro, recording in the company register of the State of its registered office, publication of the name in the Official Journal of the EC, administration in the country of the registered office, management with representative, board of directors or both, voting rights proportional to the value of the shares, minority rights, compulsory disclosure of the annual accounts, employee consultation from 50 employees, etc.

4.1.2.2.2. Effects of the introduction of a «simplified» statute

Overall impact
Flood of case-law and legal costs:
The mere referral to the national laws provided for in this statute will create a flood of case-law as the same aspects will be dealt with differently by the various national laws.
Law shopping
The same referral to the national legislations will generate a «perverse» effect: that of law shopping. Member States may therefore be tempted to shore up the national particularities, whereas the regulations are supposed to facilitate the unification or at least the harmonisation on a European scale.

Competition with the national statutes
Application «intra muros» of the proposed statute. If such a European statute were adopted, it appears that, even if it were of universal application, i.e. without Community dimension, the effects in the market of the national companies would not be radical.
In this way, if it is considered that the characteristics of this statute resemble the majority of the legal forms of the countries with «strict regulations», their dissociation towards liberalism would be negligible.
It is conceivable that in this category of countries, competition will come into play, especially in two main fields:

- for the SMEs established or wishing to establish in other Member States, the fact that the statute offers them the possibility of freedom of establishment or merger seems to suffice for its adoption.
- for the purely national SMEs which opt for this statute, it is the «European label» factor which will play a key role. In this way, in the case of the countries «with strict regulations», it is not really possible to speak of «costs» but of benefits. Conversely, it seems that, in view of its provisions with more strict regulations than those contained in the statutes of the companies of their countries, this statute would not meet with any particular success in the liberal countries. If the 10th and 14th Directives are adopted, the choice by an SME in favour of a «conservative» statute appears to be a rather remote possibility.

Finally, the «European label» can play the principal role in the choice of the «new entrant» countries, the legal environment of which is more pliable and the economy more dynamic and pro-European. In this way, for lack of other choices, and provided that this statute is not subject to the «European dimension» condition, it is perfectly conceivable that it will have a certain success as, in any case, it is less regulated than that of the SE, for example.

4.1.2.3. The «convenient» statute: The solution of the SPE

Justification

The final version of a single statute for European SMEs which could be envisaged can be recognised in the proposal for a «European Private Company» (SPE). This statute, which is the outcome of years of research, seems above all to suit the designs of the entrepreneurs of the countries «with strict regulations». However, it can also dovetail perfectly with the needs of the «new» countries as, apart from the fact that it will offer the «European label» to the SMEs of these countries, it is sufficiently flexible.

It is presented as a compromise between liberalism and conformism, as it also wishes to safeguard the core of the rights of minority shareholders and third parties. According to its authors, the SPE is above all freely accessible – still as an option – whatever the situations considered by the entrepreneurs and business managers: initial formation, joint subsidiaries, conversion of existing companies, subsidiaries of groups, merger or division. Only quoted companies currently have to be excluded, which is why the name of name of European Private Company has been given to it, opening up its prospects to the vast majority of enterprises.

The SPE is to provide its users with all the flexibility expected of a truly European corporate form, by guaranteeing them the option to establish in the country of their choice as soon as the registered office and the effective management of the company are established there and, where appropriate, to transfer them to another country without particular difficulties to accompany their development or facilitate the way they are managed. A basic condition for its effectiveness is that these structures must be fluid and adaptable to the specific case presented by each enterprise. It is this two-fold objective which led to deciding on a legal framework pared down as far as respect of the right of third parties permits, with the sole requirement of meeting the needs expressed by the European enterprises and naturally subject to the tax, social (notably relating to the involvement of employees) and penal rules of the country of establishment. A form offered, without conditions, at the choice of these enterprises therefore appears as both an effective tool to tackle the European market and, more generally, as an indirect factor for the development and harmonisation of the national laws.

It appears that large enterprises and groups are also interested in such a project. Their structure is still dispersed in holding companies, subsidiaries and sub-subsidiaries, most of which do not make public offerings and of which many are common to several groups. They house a variety of cooperative agreements, which may be temporary or evolve over time.

According to its authors, the SPE statute is confined to the definition of a legal system of a private company and does not tackle the problems associated with the right of establishment, i.e. the lack of European regulations on cross-border mergers and transfer of the registered office. This is a right guaranteed to all enterprises by the Treaty and which cannot merely be the subject of a solution under ordinary law. Finally, to avoid a flood of case-law which a European statute may generate in each country with a different legal culture, the project expressly provides that the statutes must regulate any question relevant to the management and organisation of the company and, failing this, standard statutes could be liable to apply.

4.1.2.3.1. Properties of the SPE statute

The properties of the SPE statute are described in the draft regulation presented by its authors:

- The private European company (SPE) is constituted by one or more natural or legal persons, whether or not nationals of a Member State. The commitment of each partner is limited to the amount he subscribes. The capital of the SPE is divided into shares of a specific amount. It amounts to at least 25,000 euro or equivalent. The registered office of the SPE must be located within the European Union. It must correspond to the place of its central administration.
- The company is represented in relation to third parties by one or more natural or legal persons vested with the most extensive powers to act under all circumstances on behalf of the company, etc.

4.1.2.3.2. Effects of the introduction of an SPE statute

On the «liberal» countries:
There are two conceivable categories of enterprises of these countries which will opt for this statute:

- those which prefer it on account of its «presentability», i.e. its facility of adoption by the administrations of the «strict regulations» countries, but also by the SME's commercial partners with their registered office in these countries.
- the SMEs with wide spread of capital which have provisions in their statutes which are already regulated and in accordance with the SPE statute.

On the countries «with strict regulations»:
In the countries «with strict regulations», it will be the national legislation (especially when the statute is not subject to the "European dimension" condition) which will probably have to adapt to this new competition.
It is possible that this competition between the SPE and the national forms of companies is fiercer compared to the competition with an ultra-liberal statute, as the SPE statute is akin to those already known to national entrepreneurs (SARL, GmbH, etc.).
It could also be tentatively asserted that the SPE statute, even after the adoption of the 10th and 14th Directives will serve as a tool for SMEs of more modest size.

On the «new entrant» countries:
The previous analyses show that the legal effects in this category of States will be more visible, in view of the «European» sensitivity of their legislations and entrepreneurs.
Since the statute of the «private limited» type seems to meet with the preference of the entrepreneurs of these countries (according to the results of our questionnaire), the previous syllogism also applies: the SMEs without the practical means of moving to a country where the «private limited» statute is feasible will opt for the second most liberal solution, i.e. the SPE.
Finally, apart from the «European label», this choice will confer on them recognition by the entrepreneurs of countries with a tradition of strict regulations, which, faced with a universal European statute, will know who they are dealing with.

4.1.2.4. Calculation of the benefits and the impact of the introduction of a new statute

The «ultra-liberal» version: The true intention of entrepreneurs?
It was considered necessary to introduce a «liberal» version in our assortment and the justification for this is far from theoretical and/or political considerations.
In fact, the basis was the clear intention of the entrepreneurs (study of the results of the questionnaire) and their preference in practice for «liberal» environments.
Nevertheless, it has been shown that the effects of the introduction of such a statute would be considerable, especially on the legislation of the Central European countries, probably going as far as overturning the company law structure, but at what cost?

The non-introduction of a statute: the function of harmonisation
The solution which could not be excluded (after the results of our questionnaire) is renouncing the introduction of a new statute. Indeed, it could prove that the mere process of the harmonisation of company law under Community law, especially after the adoption of the 10th and 14th Directives, could suffice for a number of beneficiaries (especially those of the «liberal» countries and those with a European tendency), who would henceforth be free to choose their favourable legal environment from among the systems of the Member States. However, this choice will imply the lack of a European character of the enterprises in question which will not be able to draw benefit from the «European label» and the alternative of a legal «short-circuit».

The «simplified» version: The question of added value
The «simplified» version will create limited, even non-existent negative effects, as this statute will be akin to the forms of companies already existing in these countries.
However, it is the lack of added value from this statute, and even of benefit, which must give the greatest cause for concern, as if this «simplified» version were to be a success within the frontiers of certain countries, it is above all on account of it having no more «streamlined» competitor.

The SPE version: *in media res*?
The authors of the «European Private Company» think they have found the legal instrument which appears as a creative compromise between the ultra-liberal tendencies of the entrepreneurs and the administrations wishing for a certain legal certainty.
The SPE statute is more liberal than the most «streamlined» statute of the «regulated» countries, which is liable to create unquestionable legal competition with the national statutes. In addition, not being completely «European», separated absolutely from national law, this statute could generate the risk of «law shopping». Finally, since the SPE still remains quite regulated in relation to the «streamlined, ultra-liberal statues», it is likely that a considerable proportion of European SMEs, and notably the SMEs of the Anglo-Saxon countries, will be reluctant to adopt this legal form.

4.2. Tax study

During the first stage of the study, the research carried out of the strengths, weaknesses, opportunities and threats in the field of taxation showed that the introduction of a new statute for SMEs in principle seems justified. On the other hand, the results of the questionnaire showed that the tax problems associated with the intra-European activity of SMEs are a reality.

4.2.1. The main results of the empirical study on taxation

The results of the questionnaire do not seem to be decisive from the general and tax points of view. The proposal for a new statute will have no negative or bothersome effect for the enterprises which are not interested in it or do not encounter cross-border problems, whereas the others will benefit from the tax measures to be proposed.

The most interesting result is the perception of taxation, which is a vital question for SMEs when they wish to establish abroad. A sensitive issue relates to the conduct of the managers of SMEs who are concerned about the tax rate.

It follows from this that, among the other tax problems, those of greatest interest to the managers of SMEs are the administrative and accounting formalities, but also multiple taxation, the practice of withholding tax and the lack of offsetting of cross-border losses.

Furthermore, the study also shows that the SMEs are quite concerned about the subject of the delay in the refund of tax duly or unduly paid. This is a practical issue which in fact affects SMEs more than other enterprises on account of the lack of basic reserves.

Although the vast majority of the replies to the question on the possible adoption by the enterprises of a legal statute such as SE, SCE or EEIG are negative, this is probably attributable to the absence of tax provisions in these statutes.

If a new single statute is proposed for SMEs, this will have to consider improvement of the actual situation as regards taxation, as the SMEs desire, especially for the enterprises with the lowest turnover (below 1 million euro).

The legal basis of a new statute, its characteristics, the sources of inspiration regarding the tax measures to be proposed and the questions which would arise on its implementation should first be stressed, before presenting concrete legislative proposals introduced with a justificatory report.

There are two proposals to be made: one more conservative and one more progressive.

4.2.2. The legal basis of the measures to be proposed. The legitimacy of the statute

Whereas the feasibility approach showed that substantive law in the taxation field represents an opportunity as its scope is limited, it nevertheless ensures the legitimacy of Community intervention towards the creation of a new statute for SMEs.

General principles of law

The tax situation and the specific needs of SMEs, analysed in the first stage, call on the application of the principles of tax law which are generally accepted by the legal systems of the Member States. The following general principles are mentioned in the case in point:

- the principle of the legality of taxes;
- the principle of the equal discharge of public burdens;
- the principle of proportionality.

The Treaty provisions

The EC Treaty contains no direct provisions on direct taxation, with the exception of Article 293.

Principles governing the tax proposal of the statute: optimisation of the statute

To define the tax provisions of a statute for SMEs, it is appropriate to consider the principles which form an evaluation framework for the measures to be proposed.

The work of the European Commission and the needs of the enterprises lead to certain converging directions. As regards taxation, the statute to be proposed must be:

- attractive;
- functional and flexible;
- simple and certain;
- rationally coherent and homogeneous;
- innovative.

Nature of the tax measures to be proposed to draw up the statute

The following are the main problems to be overcome:

- **How to ensure the simplicity and unity of the tax system?**

Proposals such as the extension of the scope of the tax directives, offsetting losses between the companies of a group, taxation according to the rules of the State of residence and the introduction of a basis for consolidated common taxation seem appropriate as solutions.

Two options are possible as regards taxation:

- examine the possibility of creating a new, separate, unique European tax on SMEs or
- create an optional European system in addition to the national systems, without replacing them.

The first option is more ambitious in so far as it is more complete and would consist in abolishing the national tax rules in the field of taxation of SMEs.

The main issues arising from such a hypothesis are the following:

- definition of taxable income;
- definition of the method of calculating taxable profit;
- establishing deductible expenses;
- treatment of losses;
- accounting and tax treatment of assets on entry into the accounts;
- evaluation and determination of the book value;
- amounts of depreciation to be recorded.

The contribution of the experts could not go very far as there is already a Common Consolidated Corporate Tax Base Working Group which has been working in this perspective since November 2004.

- **Whether or not to introduce a system of fiscal transparency?**

Fiscal transparency concerns the practice by which some companies are considered to be non-existent, with their profits being taxed at the level of their members.

- **To whom will the new system be applicable?**

Only to the SPE or all the companies affiliated with the SPE, its partners or shareholders, even if they do not hold the status of an SPE.

- **To establish a preferential system of tax incentives?**

The reply here was clear and could only be no, even if the experts considered paradigms such as that of the Delaware company.

Nevertheless, the system to be drawn up must create a certain competitiveness of the European economy, as defined during the Lisbon Summit.

- **To include the provisions on VAT, the taxation of the contribution operation and the other indirect taxes?**

The experts consider that the indirect taxes are already regulated by the European Union authorities in a uniform and general manner and independently of the form or the size of the enterprises. Furthermore, it is mentioned that the European authorities are working on improving the VAT system, with the «one-stop shop» project. Consequently, intervention is not legitimised in this field.

In general, the contribution of this study could only affect the direct taxation of the income of SMEs, even if they encounter more acute problems of delays in refunds of VAT during their inter-European transactions.

4.2.3. Origin of the measures to be proposed for the SME statute

The measures envisaged by the Commission are already drawn up and known to the services of the Member States which, consequently, will conform to the more easily.

The choices made:

As examples, the following hypotheses can be retained:

- optional or obligatory nature of the tax status;
- application either of the system of the registered office of the parent company, or possible option of the system of another Member State;
- application only of a consolidated taxable amount system and reference to the national rules for the rest, without applying any entirely new single tax system.

The tax measures can cover:

i. the application of the provisions of the tax directives to the new statute of the SMEs;
ii. the application of the system of the registered office of the parent company;
iii. the creation of a single new tax system specific to the SMEs, abolishing the national rules on the subject and introduction of a common tax rate;
iv. provision for offsetting losses;

v. establishment of fiscal non-transparency.

- **Questions on the procedure for the adoption of the statute: the implementation of the statute**

Any effort for the implementation of a new statute for SMEs will have to respond to questions concerning the adoption procedure. The level of European involvement in tax will define the adoption procedure by the Community authorities. Furthermore, the adoption of the statute by the legal systems of the States, apart from the legal measures to which it would give rise, would require promotion and information measures, i.e. a certain «marketing».

4.2.4. The proposals on taxation of the European SME statute

By virtue of the principle of the autonomy and realism of tax law, the tax solutions envisaged are not linked a priori to the solutions followed in the context of company law and social legislation. This means that the tax provisions proposed below are more or less independent of those of the other sectors.

4.2.4.1. 1st proposal (conservative) on the taxation of the European statute for SMEs

Its content could be as follows:

Brief presentation

Application to SPEs of the provisions of the tax directives.
Determination of the tax base and the taxable amount according to the system of the registered office of the SPE.
Drawing up of consolidated accounts.
Agreement of the States on a mechanism for the distribution of the tax collected.
The tax rate, tax procedures, accounting formalities and tax controls continue to be governed by national law.
Introduction of the fiscal non-transparency of the SPE.

The basis for the harmonisation of the legislation on direct taxation of the Member States is Article 94 EEC and Article 293, which refer to the abolition of double taxation, in the knowledge that the latter is the main phenomenon expressing the discrepancies between the national tax laws.

The ban on discrimination is one of the cornerstones of Community law as a whole. Small and medium-sized enterprises may be taxed in the same way as large enterprises, in relation to their legal form. The cost of ensuring compliance in taxation (formalities, accounting criteria to be respected, etc.) seems to decrease in inverse proportion to the size of the enterprises and therefore seems very high for the SMEs.

The tax barriers to cross-border activity of enterprises identified so far are in general more burdensome for small and medium-sized than for large enterprises. In addition, the majority of the Member States apply special provisions at national level to small enterprises which must be taken into account. These provisions essentially relate to the calculation of the tax base, the application of uniform rates or simplified methods to determine the taxable profit. Some Member States also grant special lower rates.

The effects of tax competition between the States often seem to be unfavourable to small and medium-sized enterprises because generally they are not in a position to be able to take advantage of the opportunities afforded by certain specific tax schemes. In general, they do not have the same possibilities for tax planning as the large enterprises.

Since the introduction of a common European statute for SMEs provides for the application of the provisions of the tax directives to the new statute for SMEs, the application of the system of the registered office of the parent company to determine the tax base and the taxable amount, the scheme for the offsetting of losses between group companies having their registered offices in several Member States (the administrative procedures, accounting formalities and tax controls will continue to be governed by national laws) and the establishment of a fiscal non-transparency of the statute of European SMEs, establish a simplified, common tax scheme.

The central idea of the text consists of laying down rules establishing a common means to determine taxable income, expenses deducted, the treatment of assets and depreciation, but also the calculation of the taxation (on the basis of the rules applicable to the State of the registered office of the SPE) of the profits made through its permanent establishments located in several Member States or of the parent company within a group of companies. In this context, the States will be able to retain the power to determine the tax rate. The advantage for the SMEs will be considerable and will consist in the simplification of the tax system, evading the cost of adaptation to the rules of the State in which they aim to develop their business and especially the possibility to offset the earnings of the parent company against the losses of the branches or subsidiaries of a Member State other than that of the registered office.

The income received in third countries does not fall under the scope of the aforementioned provisions and would have to be taken into account in accordance with the normal rules.

Fair taxation and the repeal of the conditions favouring tax jurisdiction among the States requires the States to agree on a distribution mechanism allowing, for a given company, a fraction of the consolidated taxable amount to be allocated to each Member State concerned, with the latter taxing it at its national legal rate.

The establishment of fiscal non-transparency for the SPE contributes to the simplicity of the system, the reduction in accounting costs and the abolition of any double taxation.

4.2.4.2. 2nd proposal (liberal) on the taxation of the European statute for SMEs

The most progressive proposal, if not to say radical, could contain provisions, followed by the corresponding justifications, abolishing the national tax rules, determining in an original manner the taxable persons, the place of taxation, the taxable income, the calculation of the tax, the assessment and defining a uniform tax rate for the SMEs.

Brief presentation:

Introduction of a new single system for the SMEs comprising an SME tax code, abolishing the national tax rules, determining in an original manner the taxable persons, the place of taxation, the taxable income, the calculation of the tax, the assessment and a common tax rate which represents the European average tax rate on company profits (20% proposed).
Application to SPEs of the provisions of the tax directives.

Determination of the tax base and the taxable amount.
Drawing up consolidated accounts.
Agreement of the States on a mechanism for the distribution of the tax collected.
The tax procedures, accounting formalities and tax inspections continue to be governed by national law.
Introduction of the fiscal non-transparency of the SPE.

The majority of the Member States apply special provisions at national level to small enterprises which must be taken into account.

These provisions essentially relate to the calculation of the tax base, the application of uniform rates or simplified methods to determine the taxable profit. Some Member States also grant special lower rates.

However, the effects of tax competition often seem to be unfavourable to small and medium-sized enterprises because generally they are not in a position to be able to take advantage of the opportunities afforded by certain specific tax schemes. In general, they do not have the same possibilities for tax planning as the large enterprises.

The administrative procedures, accounting formalities and tax controls continue to be governed by national law.

However, and in order not to restrict the chances of success, this does not preclude participation in the capital of an SPE of other forms of companies and that such companies are subject to the tax status of the SPE on account of this participation.

Properties of the statute:

An analytical text constituting a veritable SPE tax code, without reference to the national rules, has to be drawn up. It will comprise provisions such as:

the tax rate on the profits of the SPE is fixed at 20% of its taxable income, irrespective of the State of its registered office, the treatment of the assets and depreciation, the treatment of capital gains, the tax incidence in the event of restructuring of the enterprises.

4.2.5. The impact of the tax proposals for the SMEs above on the legislation of the Member States

- **Methodology**

A distinction is drawn according to practical and legal impact. It should be noted that the impact of the tax proposals was considered on an overall basis and not country by country. This is due to the fact that the impact of regulated intervention on taxation is in principle of the same nature and the same significance for all the countries and only a distinction between countries with strictly regulated tax (strict regulations) and countries with flexible taxation was applied.

- **Practical impact**

The introduction of a European statute for SMEs in the tax system of the Member States may lead to difficulties in its operation, such as:

- New or existing tax and accounting formalities on setting up an enterprise in accordance with the new European statute for SMEs;
- Ignorance of the new institution by the SMEs and inability for persons concerned to check the tax benefits compared to the legal instruments already in force;
- Ignorance of the tax rules governing the European statute by the tax authorities.

- **Political impact**

The tax system proposed for the SMEs aims to make the taxation of SMEs more flexible. However, it is considered that the countries with a rigid tax system, such as France, Sweden, Denmark, Finland, Greece and Austria, would find it hard to express their approval of establishing such a European statute.

The introduction of a new tax code and a low tax rate, such as that proposed of 20% or 25%, would accentuate this situation. However, a statute establishing a flexible tax system would constitute an additional attraction for foreign investment.

The case of countries which already have flexible taxation which is favourable to enterprises, such as Ireland, Luxembourg, Cyprus, Lithuania and Poland, is not comparable. For them, the proposed tax status will not compete with their system in force, but will probably lead to a possibility of capital exodus abroad.

The determination of the tax base and the taxable amount according to the system of the registered office of the SPE and the drawing up of consolidated accounts, even with agreement of the States on a mechanism for the distribution of the tax collected, will entail a loss of tax revenue for certain States and therefore difficulty in securing their approval.

Legal impact

Naturally, the co-existence of two types of tax systems, the national and the European, will make a conflict of tax rules of the statute between the SMEs and the existing institutions inevitable.

In such a case, the rule of primacy of the European rules will prevail.

The authors of the statute for SMEs will encounter difficulties in applying the mere concept of tax rules with several regulations in the legal systems of the States, notably the differences in approach between the Anglo-Saxon counties and the others. For example, mention is made of the conceptual and regulatory differences on the concepts of residence for tax purposes, permanent establishment, taxable income, etc.

When drawing up the statute, this will entail an additional task of defining the various tax concepts analytically (from the conceptual point of view).

The introduction and application of rules of law by definition lead to litigation. Fiscal disputes are taken to mean opposition to collection of taxation brought by taxpayers before the competent courts. In general, jurisdiction to settle tax disputes is determined by the

registered office of the tax authority which has issued the instrument giving rise to the dispute.

It will be very difficult to persuade the Member States to reverse this principle. This study did not consider such a prospect to be realistic. Furthermore, the dispute is linked to the questions of tax controls, which, according to the proposals presented above, remains within the competence of each State. This is the logic of the phenomenon of taxation as a sovereign power.

However, the elimination of the disputes affecting different tax systems in parallel will give rise to disadvantages and difficulties, even if the possibility to refer the dispute to the Court of Justice of the European Communities promises appropriate solutions.

On the other hand, the application of the measures of the directives, provided for in the statute to be proposed, does not pose any problems as the corresponding measures are already incorporated in the internal legal systems.

4.3. The social study

This analysis must enable replies to be given to four basic questions.

Is an SPE statute necessary from the point of view of the protection of social rights, participation and the free movement of workers (social rights in the broad sense of the term) in the context of the SPE?

Must the possible SPE statute pronounce on these subjects from the start?

Must the SPE statute include binding provisions of a «truly European» nature or must it grant primacy to the national laws (such as, for example, the law of the registered office of the SPE)?

What is the impact of a possible SPE statute on the legislation of the Member States?

4.3.1. The legislative point of view and the particularities of the social aspect

The legislative point of view

The objective of the study was, principally, to pronounce on the legal feasibility (and only secondarily on the practical feasibility, on the actual validity of the possible corresponding rules) and the compatibility of an SPE statute with the national and European laws (and on occasion the realities).

This report adopts the stricter legislative point of view, bringing out the analytical priority of the internal logic of the legal system.

Hence the present report must assess not only the feasibility of an SPE statute, but also its more specific characteristics and provisions with a view to its flexible incorporation in the legislative system and its harmonious integration in the European legal edifice.

The interim report examined the possibility of existence of an SPE statute very concisely, from the legal point of view.

The object of the present report is primarily to assess whether such a statute must exist, the desirability of such a statute from the legislative point of view and the specification of the characteristics deriving from it.

The particularities of the social aspect

The social issues present certain import particularities in relation to the other aspects of the research (general legal framework, tax aspect, «economic» approach, etc.).

The legislative proposals for the social aspect are not likely to be integrated in a strict cost-benefit analysis.
Likewise, an extensively detailed analysis of the practical, political, economic or geographical impact of these proposals would be redundant and would cause confusion which would be liable to distort the object of the study. In fact, the justification for these proposals derives as a priority from the legal point of view and the legislative logic which makes such recourse exhaustive or redundant.
This logic brings out the unity, the hierarchy and the order of the legal system and is almost independent of a large part of the empirical facts.

The basic presuppositions of regulation

The question raised must permit it to be ascertained whether these topics must be the subject of regulation in the context of a possible SPE statute and, if so, what the type of such regulation must be.

To reply to this question, it is essential first to examine the corresponding acquis communautaire (AC) and to obtain an overall view of its application within the national legal frameworks (legal basis of the regulation).

It is also essential to take into consideration the attitudes of the economic operators directly involved and concerned by this regulation, as well as the practical problems which it could resolve or create.

These attitudes and practices reflect the results of the empirical research conducted among European SMEs (empirical basis of the regulation).

4.3.2. Workers' social rights (social security – pension/retirement rights)

4.3.2.1. Preliminary comments

The experts focused their reflections on the rights of workers relating to social security and their pensions/retirement, taking into consideration both the overriding importance of these rights from the point of view of the workers and the basic stakes of the harmonisation and viability of these systems in European reality.

- **The acquis communautaire (AC) and the legal basis for the (non-)regulation by the SPE statute**

The AC comprises a network of provisions offering a consistent framework for the protection of the social rights of the workers. Employees who are moving from one Member State to work in another will enjoy unquestionable equality of treatment (in the context of the SPE) as regards social protection in the host country. This protection is announced, for guidance, by Recommendation No 22 of 18 June 2003 on the Gottardo case-law and by Council Directive 859/2003.

This extensive protection for cross-border workers is undoubtedly favourable to the legal introduction of an SPE, which does not seem to be pending additional regulation for the protection of the rights of its workers.

In addition, binding regulation of this framework at European level could, on the contrary, create complications and ultimately create obstacles to the harmonisation process which has to respect the constraints, realities and particularities of each Member State (and especially of the «new» countries).

Divergence – diversity in terms and procedures

The non-existence of a common vision between Member States in respect of social security and social rights goes hand in hand with a consequent diversity regarding the more specific principles of the social security systems and the terms, procedures and institutional frameworks designed in fact to achieve the social security objectives.

It appears that the corresponding formalities and the institutional and administrative procedures are complicated, cumbersome and divergent. This diversity also seems to characterise the way in which the vocational pension institutions work and the debate relating to terms for convergence and harmonisation of the systems is in the midst of change.

The empirical foundation of the (non-)regulation by SPE statute

Empirical research among European SMEs has shown that they encounter relatively few problems as regards the social rights of their workers. These problems have resulted from the application of a certain legal provision and not from the right itself. They could not be resolved by adopting a purely legal provision but, possibly through an incentive to take administrative measures.

Examining the reply to question 12 of the survey, the problems encountered by enterprises during their intra-Community transactions, in 93.6% of cases, are tax problems. These difficulties must normally and gradually diminish if harmonisation continues its course.

Finally, the social security problem in the European Union is too crucial and complex to become the target of an SPE statute.

- **Cost of labour within the SPE**

The introduction of the SPE, especially if it is accompanied by specific regulation of social rights, could lead to an additional increase in the administrative cost and logistics as a result of the need to bring into line and manage the social rights of the cross-border workers/workers frequently crossing borders.

The SPE could be obliged to employ specialised staff for this difficult management or to have recourse to external experts.

Likewise, the employers may consider that the level of protection guaranteed by Community legislation to employees who are to move is a considerable constraint on the establishment of an SPE. They will see the cost of labour increase considerably on account of the contributions they will be required to pay to be in conformity with the requirements of Community legislation.

It is true that detailed analysis of this cost is not possible at present, but it is also necessary to point out that this cost is not a direct effect of the establishment of the SPE, but rather of the corresponding AC.

4.3.2.2. Legislative proposals in relation to social rights

The «European factor»

The «Community dimension» or the «European factor» seems to be an overriding, essential principle of the definition of the SPE.

It should be pointed out that the two terms (and especially the term «European factor») do not have the normal precision required for legal terms.

It is essential to distinguish between legal and factual characteristics and conditions to construct a definition of the SPE (and more generally for the definition of the SME or the SE) etc.

«Liberal» proposal: no specific regulation of the social rights

As has already been pointed out, it is not appropriate for the SPE statute – which is a very specific regulation, the use of which tends to be optional – to intervene overall in the corresponding Community legal edifice or in the optimum application of this framework. The social problems at European level (such as, for example, social security in the European Union) are too crucial and complex to become the target of an SPE statute.

As far as this subject is concerned, the AC and the corresponding harmonisation process at least for the time being seem to be the only instruments available and of a suitable nature to achieve the objectives of the SPE, whilst allowing the introduction, from the legal point of view, of a new form of company (overall legal feasibility of the SPE statute). An additional binding regulation does not seem to provide essential assistance for this task.

It is true that the dangers of «social dumping» or «buying the jurisdiction» should not be overlooked, especially in relation to the social rights of the workers in the new conditions of the enlargement and the diversity of the corresponding national frameworks. These dangers cannot be avoided by excessive regulation of the SPE, but, possibly, by legislative/procedural measures with a far more general scope.

"Conservative" proposal: stipulation of a guideline for application

The SPE statute cannot pronounce differently on this subject from the corresponding AC (principle of the competence of the place of activity or occupation, Regulations 1408/71 and 574/72, Directive 96/71/EC, etc.).

In an almost more rigid version (which is in fact perfectly compatible with the "liberal version") and in order to supplement and strengthen the harmonisation process, it would be conceivable, following Directive 2001/86/EC to stipulate a provision on the lines of Article 11 of this Directive:

Article …… :

« Member States shall take appropriate measures in conformity with Community law with a view to preventing the misuse of an SPE for the purpose of depriving employees of social rights (to be specified) or withholding such rights.»

From the legislative point of view, this provision seems to be a prerequisite to avoid the problems of social regulation carried forward during the empirical research.

4.3.3. Free movement of workers and cross-border workers

4.3.3.1. Preliminary comments

The acquis communautaire (AC) is the legal basis for (non-)regulation by the SPE statute. The free movement of workers is a fundamental principle fundamental of the Treaty establishing the European Community.

As regards cross-border workers, from the legal point of view, no restriction or discrimination concerning his rights and treatments can be tolerated by the European legal edifice.

Consequently, and in relation to what has already been stressed as far as the social rights of workers are concerned, it would be inappropriate for the SPE statute to pronounce from the start on this subject.

The empirical basis for the (non-)regulation by the SPE statute

The empirical study confirms the proposal for non-regulation resulting from the legal point of view; only 2.6% of the enterprises questioned encounter problems relating to free movement of their workers, which is a relatively negligible percentage.

As regards the cross-border workers, 16.2% of the enterprises stated that they employed workers from cross-border countries with the home country of the origin of the enterprises questioned (question 7), whereas 10.1% stated that they employed workers living in countries across the border from the European Union (question 8).

Even accepting the representativeness of these results on the whole and even if it is accepted that these rates will rise drastically in the very near future following the enlargement, it is quite simply impossible to provide for supplementary binding measures for the protection of cross-borders in the SPE statute.

The legal framework of the acquis communautaire aims to improve the situation of the cross-border workers. It is essential that this legal status outlined very briefly above is in fact respected and applied correctly.

4.3.3.2. Single legislative proposal: no specific regulation

It is logically impossible (from the point of view of legislative logic and the unity of the European legal system) to include, in the SPE statute, specific provisions for the free

movement of workers and cross-border workers which exceed the provisions of the AC or even would supplement this AC.

The SPE statute cannot pronounce authoritatively on a subject of such importance.

The only provision which would possibly be conceivable (rather as a «reminder» than as a provision in the strict sense of the term) would be that already proposed above in relation to social rights, i.e.:

> Article …… :
>
> «Member States shall take appropriate measures in conformity with Community law with a view to preventing the misuse of an SPE for the purpose of depriving employees, and especially cross-border employees, of social rights (to be specified) or withholding such rights.»

However, even this provision would be mistaken: it would presuppose, implicitly, that a distinction between workers and cross-border workers relating to their respective rights is legally possible from the start; this implicit discrimination is, quite obviously, absolutely prohibited under Community law.

4.3.4. Worker involvement (information, consultation, participation)

4.3.4.1. Preliminary comments

The specificity of worker involvement

Among the topics of the social aspect, special attention must be paid, *ipso facto*, to the subject of worker involvement. Apart from the how important consensual labour relations are for a Europe of social consensus, which defends the extended participation of all citizens in economic life, the developments in the problem, the context and the degree of harmonisation of the acquis communautaire in this field have a certain flexibility, by allowing the formulation of what is nearly a legislative dilemma in relation to the corresponding regulation of the SPE.

- **The importance of worker involvement**

The subject of worker involvement in the SPE is crucial for all the aspects and contributes to the Community edifice.

It is apparent in the corresponding acquis communautaire, but also in the provisions on the subject applicable to the SE. Furthermore, the participation of employees, their feeling of safety at work, their motivation and legislative commitment to the specific objectives of the SPE are crucial for the viability and development of the enterprises, especially under the present conditions of globalisation.

- **Advantages**

<u>The legal framework for (non-)regulation</u>

Possible regulation of the involvement of workers in the SPE must lie between two milestones:

One is marked by the minimum regulation in any case applicable of the AC and, more specifically, of the relatively recent AC of Directive 2002/14/EC establishing a general framework for informing and consulting employees in the EC.
The other is specified by Directive 2001/86/EC (supplementing the Statute for a European company with regard to the involvement of employees).

4.3.4.2. Legal proposals

4.3.4.2.1 «Conservative» proposal: regulation of worker involvement identical or close to the regulation on the SE

Legal basis: Progress and deepening of the AC

The existing legal frameworks at national level often focus excessively on dealing with the processes of change after the event. Likewise, examination of Directives 2002/14/EC and 2001/86/EC (on involvement of workers in the SE) are based on a certain reticence to establish a consequent corresponding legal framework.

Homogeneity and integration of the regulations

The corresponding laws of the Member States and especially the «new entrants» are extremely varied and often have loopholes. European regulation of these topics could facilitate the introduction of a more or less unified legal framework, as well as the corresponding harmonisation process. Such integration of the framework for worker involvement in the SPE could facilitate European dimension economic activities. The European Union could in this way encourage the adoption of standard regulation of private companies in the Member States, together with an updating mechanism capable of meeting the development of the needs of the economic actors.

The empirical basis

The empirical basis revealed that 52.8% of the enterprises questioned stated that their employees do not participate in the management of the enterprises, 37.6% stress a low level of participation, 9.7% active participation in the management of their enterprises. These results argue in favour of rigid regulation of the SPE, on the lines of the SE regulations.

Such regulation could bring about a drastic improvement to the low and insufficient level of involvement of workers within the SMEs.

«Buying the jurisdiction»

The absence of relatively strict, binding regulations and the reference to national laws to settle the questions which are not resolved by the AC (Directive 2002/14/EC), could be used, in practice, as an instrument to get round the corresponding regulations. The enterprises would be capable of choosing the national law of their preference as the law of their registered office, which would the most flexible with regard to worker involvement. This «buying the jurisdiction» could lead to a serious weakening of the rights of the workers, as well as to disorientation of any participation scheme.

"Social dumping »

The introduction of a non-binding framework for the SPE in the field of worker involvement allows and could, in principle, facilitate «social dumping», especially as regards the workers from the «new Member States».

Security against potential violations of the provisions of Directive 2001/86/EC (involvement of workers in the SE)

By not introducing a binding framework which would impose rights with identical implications or akin to those provided for by Directive 2001/86/EC, there is a potential risk of indirect infringement of the provisions of this Directive though an artificial «division» of an enterprise which could qualify as SE its enterprises which could meet the size criteria (capital, possibly workforce) of the SPE. Proceeding in this manner would get round the provisions applicable to the SE as regards worker involvement.

In order to avoid this possibility, but also for reasons of precision, consideration could be given to adopting supplementary criteria for the definition of the SE and the SPE – for example by following the distinction in place since 01.01.2005 on the categories of workers within SMEs (workforce larger than 10, 50, 250 workers).

It could therefore be helpful to provide for a ceiling (according to capital, size, number of workers, etc.) beyond which an SME could not be transformed or established as an SPE.

4.3.4.2.2 «Liberal» proposal: application of the AC (Directive 2002/14/EC) and, if necessary, referral to the law of the registered office

The legal basis: redundant regulation given the acquis communautaire

The recent acquis communautaire (Directive 2002/14/EC of 11 March 2002) establishes a general framework for informing and consulting employees in the European Community**.** With the exceptions – possibly justified – of the rights of participation from its provisions, this Directive outlines the framework for the information and consultation of employees even in relatively small enterprises (20 employees).

This purpose of this general framework was also to avoid all administrative, financial and legal constraints which could hinder the creation and development of small and medium-sized enterprises.

Notwithstanding the importance of protecting «citizens' rights» in respect of work, it would not be appropriate to impose a framework of this kind on enterprises of a size that the rights to information and consultation of employees are often exercised de facto.

Diversity of the frameworks in practice and worker involvement

The Davignon report on the SE regulation specifies that the main social stake of the enterprise is employee participation. A solution therefore has to be found which meets the concerns of the countries with advanced participation schemes and which are worried that the European company statutes are used by companies wishing to get round the national rules on the subject. At the same time, this solution should prevent foreign standards being imposed on Member States which do not have systems for the direct designation of employee representatives to the company board of directors. In the case of the SE (Directive 2001/86/EC), this compromise led to weakened employee participation, in the strict sense of the term, based mainly on the national rules. Likewise, the appropriate measures to ensure compliance with the Directive are assigned entirely to the Member States. All the more so with regard to the SPE, the result of this compromise can only favour the specifically Community nature of all the rules in the field of participation.

The empirical basis

The results of the empirical study argue in favour of flexible regulation of the SPE, which would not exceed the limits of the AC. The low level of worker involvement in the SMEs requires its gradual, flexible reinforcement, following the lines of harmonisation.

In addition, rigid regulation could accentuate the reticence of entrepreneurs in relation to the adoption of the SPE.

Introduction of a rigid framework

The establishment of a legal framework, on the lines of the SE, does not facilitate the necessary flexibility, effective management and day-to-day operation of the enterprise. These factors nevertheless a cumbersome decision-making process is not compatible with the spirit of the SME, which draws its dynamism and comparative advantages from its ability to act spontaneously and rapidly. Excessive proactive harmonisation of this framework intended to be imposed in an authoritarian manner on the socio-economic operators would be ineffective and may be impossible. Such a regulation would result in pointlessly overburdening the operation of an SME, within which the management is based more on the amicable, informal settlement of disputes.

The spirit of the SME tends to go hand in hand with a certain flexibility regarding worker involvement, which could be governed appropriately by the national laws (for example, the law of the registered office of the SPE), especially compared with the corresponding acquis communautaire.

Moreover, such a rigid framework could wipe out the comparative advantages of the SME in relation to the SE. There would no longer be any particular reason to create a new legal form, which would not be clearly separate from another form already in existence.

Excessive, costly regulation of the relations of the SME

The SME is a company of partners. The rights of the workers are in fact guaranteed by the practice and reality of the economic activity of the SME within which the workers operate more as co-decision-makers (depending on the case) than passive actors.

Consequently, a legal framework providing for excessive worker involvement would possibly end in a crisis in the internal relations of the SME and in the legal imposition of an administrative burden. This consideration has been largely backed up by the corresponding empirical data.

In fact, the introduction of an excessive and restrictive framework in respect of worker involvement is liable to disrupt the institutional environment of the enterprise. Worker involvement could be governed by the AC and by reference to the national laws which, at lest under the current conditions, maintain a certain link with the social changes specific to each country and are capable of adjusting to the social, economic and institutional particularities of each Member State.

“Social dumping” and “Buying the jurisdiction”

These two risks, as well as getting round the provisions of Directive 2001/86/EC could be avoided by adopting additional criteria for the definition of an SPE (for example, threshold on the number of workers at less than 50 or turnover, etc.). However, even a solution like this

presents a fundamental defect. Against any legal logic, it would for an SPE which could develop to modify its legal form.

To sum up, the profile of the SME and the internal logic of the corresponding European legal system render the regulations on worker involvement exceeding the provisions of the AC restrictive.

This finding, which was also corroborated by the empirical study, is all the more valid for the other topics of the social aspect (social rights of workers, free movement of workers, cross-border workers, etc.).

It could be argued, for example:

- that absence of regulation of the social rights by the SPE statute, as has already been pointed out, could strengthen «social dumping», especially among the «new entrants»;
- that this absence would be more acceptable by the legal system of the «liberal» countries and could, on the contrary, pose problems of application in the countries adopting a «rigid» system (analysis in terms of the type of legal system);
- that it could lead to excessive mobility of workers or facilitate «buying of jurisdiction» (analysis of the possible political impacts).

It is precisely the importance of the social issues for the future of the European Union which necessitates non-regulation, at least until the corresponding AC has been properly applied by the Member States and integrated harmoniously in European transnational reality.

Extensive analysis in terms of socio-economic impact of this proposal becomes redundant as soon as this solution is imposed by the internal logic of the legal system which must necessarily prevail over any other consideration.

Consequently, the impact of this legislative proposal for the SPE statute on the legal and legislative systems of each Member State would not be an impact specific to the SPE statute, an effect attributable to the introduction of the SPE, but the inevitable and necessary impact of the corresponding AC.

Worker involvement could be governed by the AC and, when this proves necessary, especially during transitional periods, by an additional reference to national law.

This adaptability must be met especially in the present state of the European Union, which is in the midst of change and has to cope with problems which are vital and crucial for its development.

It is true that the risks of «social dumping», or «buying a jurisdiction» or of evading the provisions of Directive 2001/86/EC are real and important.

But it will always be preferable to add strict regulation provisions progressively if necessary (by comparing the original text with reality) rather than introducing a legal text from the start which will remain («black letter law») and which will be deprived of actual validity.

In this way, for the SPE, the rules of involvement and especially the application of the rules of participation must in principle constitute an instrument to be used optionally, whilst integrating into the context of the prescriptions of national law and the acquis communautaire in their present state.

5. Economic stocktaking of the introduction of a European statute for SMEs

An economic analysis of the introduction of a European statute for SMEs can be carried out using the following two approaches:

- researching the advantages and opportunities of the acquisition of a potential statute for European SMEs for the countries;
- evaluation of the costs and threats of the non-acquisition of the statute for European SMEs for the countries.

5.1 Strengths and opportunities in relation to a European statute for SMEs

The economic advantages of a European Statute for SMEs can be summed up as follows:
Strong development of SME-type structures. A European statute for SMEs in Europe will undoubtedly stimulate the spirit of enterprise in Europe. Whilst this statute is a means to improve the efficiency and competitiveness of enterprises, it is part of the tools which will allow development of the spirit of enterprise in Europe.
Capacity of action on the market thanks to the flexibility of operation: SMEs are today alone in being able to benefit from technical flexibility enabling them to adapt to the market and the competitive environment and therefore to provide themselves with means of action or reaction which penalise the large entities.
Improvement of know-how: Through their adaptability to the market, the SMEs are forming a response in terms of know-how (technical, administrative, marketing, commercial) which they set up as a strategy to ensure their development at international level.
Mobility of all or part of their activity: European SMEs know perfectly how to separate the various focuses of activity to construct parent-subsidiary structures on an international scale which enable them to optimise their performance in relation to their national competitors.
The European statute will provide an opportunity for European SMEs by:
Strengthening their international approach by means of homogeneous actions on the various markets.
The creation of commercial partnerships based on consistent models whatever the country on the intra-Community market.
The advantage of the European label, which is a means for SMEs to optimise their credibility on the international market.
Drawing up business plans with ambitious commercial objectives at international level, promoted by the clarity of the legal perspectives of the Community market and the legal security provided by the unification of the legal rules applicable in the 25 countries of the Union.
Other advantages can be mentioned:
The construction of reasonable development strategies with international partners.
The optimisation of business management with favourable contract law in each of the Member States.
The benefit of simple, less costly tax systems (problem of double taxation resolved – see final analysis).
The use of adaptable, effective labour in the various countries with advantageous contractual conditions for employers and employees.
The introduction of real strategies for the reorganisation of activities in the process of cross-border development.
The choice of apportionment of activities favourable to all parties.

The strengthening of partnerships in accordance with intercultural (cross-border) affinities.

5.2 Weaknesses and threats in relation to a European statute for SMEs

The following can be found:

The limits of the financial capacity of the SMEs and the difficulties they encounter in access to finance. These barriers to their development dissuade them from taking risks, especially at international level. This state of affairs also derives from the reluctance of bankers to accompany SMEs so wishing in embarking on exports, even at intra-Community level.
A constrictive and costly legislative environment. This gives rise to a lack of dynamism for the SMEs which are often confronted by cost management difficulties in certain Member States.
A lack of potential attributable to technical vulnerability (insufficient production capacity) to be able to position themselves on the international market.
Shortcomings in know-how at international level in certain Member States, especially among the new entrants.
Incapacity to develop management of effective teams at international level. Whilst financial resources are often the main reason behind this state of affairs, the lack of experience, visibility, know-how on foreign markets and entry costs are nevertheless other important causes.
A lack of guidance from institutional structures for exports (Chambers of Commerce and Industry, etc.). Despite the efforts made, these are often insufficient in terms of information on the markets, solutions to specific problems, etc.
Fragility in respect of the use of accounting management and analysis tools which make the development inclinations, particularly at international level, uncertain.
The lack of know-how at international level has repercussions in the low quality of the advisory services of consultants (accountants, etc.), in respect of the control of export support tools of their customers.
The family nature of a large number of SMEs with narrow views of development often limited by local or even regional business.

The threats created by a statute for SMEs in Europe are real and concern:

The risks of poorly controlled development on highly competitive markets.
Reliance on a European label which cannot be associated with certification /standardisation.
A will to search out only certain social, legal and tax advantages in certain Member States for certain SMEs aiming to expand.
Imbalance between expansion and reasonable development on certain cross-border markets.
Difficulty in choosing between a statute with a heavy framework and partnership through the benefits offered by very accessible (commercial) contract law.
Taking of sometimes poorly calculated risks in the field of investment due to the acquisition of a new statute.
The emergence of opportunist enterprises as a result of a European statute.

5.3. Conclusion

To sum up, and despite the constraints defined above, European SMEs are perfectly capable of integrating a European statute in so far as this could bring them a balance based on economic viability and protection in the tax, legal and social fields. However, it can be stated

that it will only be possible to achieve this balance if flanking measures and assistance (technical aid, training, etc.) are associated both at EU and Member State levels.

6. The introduction of a good practice guide

Since 1968, the European Commission has adopted eleven company law directives. The directive does not enter the legislative systems of the Member States directly. It imposes rules/objectives, but leaves the means of implementing these rules/objectives to the Member States. In other words, a directive is addressed to the States which must adopt appropriate legislation or regulations within the time limit given to achieve the objectives set by the directive.

Beyond directives or other Community acts, such as decisions, communications, regulations, etc, each country has its own business law with its own solutions concerning the legislation governing small and medium-sized enterprises. In addition, certain customs must be added (especially for the common law countries), which influence the operation of law. Legislation is surrounded by and lives in a very precise and often specific culture with a more or less effective or rapid administration and people who apply and respect it.

The aim of this part of the study is to show that each country has drawn up its own good practices and laws, beyond the directives, concerning small and medium-sized enterprises. These practices concern the enterprise throughout its life cycle.

Analysis of the good practices was carried out at three levels:

- level, for everything relating to the statute, formation, contact with the administration, etc.;
- social, for everything relating to personnel management, recruitment, facility of redundancy, the various types of contract of employment;
- tax, through the aid schemes to set up enterprises, the company tax rates, the recruitment aid schemes.

Certain good practices may be debateable, as there is a difference in perception by the employee and the employer – such as, for example, the absence of a minimum wage, or flexible legislation on redundancies.

A few typical examples allowed this exhaustive analysis to be carried out in all the European Union Member States:

In Germany, it is difficult to establish a good practice guide or to mention one practice – the best. It is a large market, with well established, strict rules. Despite this situation, our study/survey clearly showed that Germany is the first country in which SMEs wish to set up.

In Austria, the legislation is also very strict with the legal bases specified in federal laws on labour regulations (and an unemployment rate which remains one of the lowest in Europe). The only strong incentives are tax incentives.

In Belgium, there is an open-economy policy for enterprises. Investments are favoured which allow the development of specialised skills or which introduce innovation. The legal aspects (short period to register a company) are very important and the tax aspects are not negligible.

In Cyprus, a new entrant, tax incentives are dominant (10% of taxes on profits for companies with share capital).

Although Denmark is not in the euro zone, the enterprises established in this country can draw up their accounts in other currencies and notably in euro. It is a country which seeks new investment through tax concessions (reduction in company tax rate from 30% to 28%) and especially through good protection as regards labour law and a standard of living among the highest in the world.

Spain is a country divided at administrative level into autonomous communities. Each community seeks to draw enterprises by means of its own tax concessions. The Basque Country is probably in first place with its networks of cooperatives and the search for new investors in the region.

Estonia, a «new entrant» is a country totally exempt from any tax on profit for companies. As almost all the «new entrants», it attracts the formation of enterprises through tax incentives and the low labour cost (same for other Baltic countries – Lithuania and Latvia).

In Finland, small and medium-sized enterprises flourish. The company tax rate is 29%. The credit standing of the Finnish is good and the means of payment are rapid and inexpensive. There are tax incentives (but with time limits) for companies established in the Archipelago of Aland.

France, a founder country of the Union, thanks to its large size has a very large number of small and medium-sized enterprises. France encourages the creation of enterprises through multiple aid schemes for enterprises (national, regional, etc.) but which are unfortunately for a very short period of time - maximum 2 years.

The greatest success in recent years as regards good practices is quite simply a large communication campaign for the creation of the SAS – société par action simplifiée (simplified joint stock company).

In Greece, the tax incentives are among the greatest.

Hungary has a favourable tax system for direct investments and low labour cost. Its legal and fiscal environment are quite transparent.

The Italian market is well developed in the north and little developed in the south. The scheme which has existed for SMEs for several years (taking into account the family aspect of enterprises) includes a few tax incentives and State aid for the south of the country.

With its company tax rate of 12.5% and other tax incentives, Ireland is a country in which the good practices for SMEs are purely financial.

Apart from tax incentives and the low cost of labour, Latvia contributes to the good practice guide an administration capable of informing and assisting the future (or present) investors.

In Lithuania, a key advantage for the investor is the 15% company tax rate.

Malta is a country which depends entirely on its relations with the outside world. For this reason, foreign investment is very important and good practices consist of tax exemptions, aid

for staff training, financial loans for the acquisition of property or equipment. The legislation also encourages establishment of foreign companies within Maltese territory.

The Netherlands is a country in which tax, social and legal practices can still be placed at the same level. The social legislation allows enterprises easily to manage their resources (redundancy). This remains an advantage for the employer, but not always for the employee. In addition, the tax incentives for the creation of enterprises are not inconsiderable.

Two points should be retained for Poland: the fairly low company tax rate (19%) and the low cost of labour.

In Portugal, in view of a sharp rise in insolvency and bankruptcies (a 220% increase between 1995 and 2002), the government decided to innovate with regard to company recovery. The aim of the new Insolvency Code is to simplify the procedure for recovery and winding up by decision of the court, which allows better management of enterprises in difficulty. To supplement this, the existence in this country of development aid for SMEs in the under-developed regions is a not inconsiderable advantage.

Undeniably, in the Czech Republic, the tax incentives are practices which draw the most new investors, if the cost of labour and the low social security contributions are added.

In the United Kingdom, the tax practices are as important as the social and legal practices. The social security contributions paid by the employer are not high and the enterprise has the choice, among others, of the level of the form of company.

Apart from tax incentives, the best practice in Slovakia is the registration of a company in the trade register within a maximum period of 5 working days from the submission of the application.

In Slovenia, there are no measures promoting foreign investment. The tax incentives are little developed, but it is a stable country with skilled labour and efficient administration.

Sweden is an open, stable economy with an advantageous tax system for SMEs (28% company tax rate) but a lack of preferential tax areas (as in Spain and Italy, for example).

We find that the good practices at tax level are predominant in most of the countries. There are also countries which base their good practice guide on their economic stability, which is reassuring to new investors. Finally, there are the «new entrants» (with a small exceptions) which try to attract new investors and which encourage the creation of enterprises through a very high unemployment rate. At the same time, these are countries in which the cost of labour is the lowest.

Annexes

Annexe 1: Table 1: Economic study; cost-benefit analysis

The table below is a summary of the European Observatory for SMEs, 2002, of various press reports including the economic review, Les Echos, for the 10 new members, le Monde , l'Atlas Eco (media obs), Eurostat information in France Puissance Industrielle DATAR April 2004

COUNTRY	Economic strengths (from the point of view of SMEs)	Weaknesses (from the point of view of SMEs)	Interest in the SME survey
Germany	Dense fabric of SMEs of good size, skilled, varied. Developed social dialogue social; solvent internal market, highly developed external markets (leading intra-European exporter)	Significance / integration of East Germany; withdrawal of the banks from enterprises, under-capitalisation of SMEs (20% of the balance sheet); lack of dynamism of SMEs (15% wish to develop)	+++
Austria	Central geographical position in Europe; wishes to develop its SMEs; varied industrial sector; low unemployment (4.2%), industrial clusters.	Lack of dynamism (less than 15% state they wish to develop); significant bankruptcies	+
Belgium	Dynamic SMEs: over 25% of entrepreneurs are women	Very heavy social charges, high public debt, country divided by language	-
Denmark	Strong progression in the use of ITC. Solvent market and high standard of living; distribution platform Northern Europe	Few women entrepreneurs	++
Spain	Highly professional CCI support the SMIs; 3 competitive major industrial focuses	Size of SMEs small, below EU average	+
Finland	New markets with the close Baltic countries	Lack of dynamism, less than 15% of enterprises state that they wish to develop	+
France	Dense, varied fabric of SMEs; well organised network of relay operators, active federations, high level of Technology and Quality; 25% women entrepreneurs; external markets highly developed (2nd intra-EU exporter)	SMEs weak in own funds and size; taste for external trade and languages little developed; high charges on production costs, low ICT equipment rate (45%)	+++
Greece	SMEs progressing rapidly, ITC equipment rate 83%; strong will to develop (34%); Olympic Games context promoting economic activity	SMEs fewer than 2 persons on average, very few women entrepreneurs	+
Italy	Very large number of dynamic SMEs, country governed by entrepreneurs; external trade 55% with Europe; inflation 2.4% and unemployment 9.1% reasonable in 2002	Tax evasion, SMEs very small (fewer than 4 persons on average)	++
Ireland	SMEs good size	Remoteness and transport costs,	+

	(+10 persons); great desire to develop (40%), great progress in industrial jobs from 95 to 2002 High GDP/Population ratio	size of country, shortage of skilled labour and rise in labour costs, risk of exodus of foreign groups and collapse of the economy	
Luxembourg	SMEs of good size (av. 10 persons); over 25% women entrepreneurs, successful conversion to new technologies and financial sector	Very small size of country; the minimum taxation of savings project is liable to result in relocations to Switzerland; large proportion of non-resident, cross-border workers	-
Netherlands	SMEs of good size (av. over 10 persons); commercial culture and export and practice of foreign languages. 3rd world power in agriculture	Labour shortage	++
Portugal	Policy for development of industry, tourism and taste for international commerce	Low ICT equipment rate (43%), small size of SMEs (less than 4%); low skills level	+
United Kingdom	Dynamic and organised SMEs (41% wish to develop); very liberal system; language of international trade, 4th world power, 2nd European	45% of employment in large enterprises: the country, outside the euro zone is liable to lag behind	++
Sweden	Very open economy with large international enterprises; link with the Eastern countries and Russia; dynamic economy; R&D policy the most advanced in Europe	Employment is penalised by very heavy taxation on private entrepreneurs, transfers of undertakings. The rate of absenteeism from work for illness is becoming worrying (the highest in the world)	+

COUNTRY	Economic strengths (from the point of view of SMEs)	Weaknesses (from the point of view of SMEs)	Interest in the SME survey
Cyprus	Stable, close links with EU; advanced preparation of integration	Large sectors not liberalised (telecoms, energy, post, air transport)	--
Estonia	Legislation favourable to investment; cheap skilled labour (400 euro/month); links with Russian market; very dynamic ICT	Brain drain; small country	-
Hungary	Growing economy; continuous flow of direct investment since 1990, acquis communautaire well advanced	High inflation, public deficit	+
Latvia	Legislation favourable to investment, company tax 15%; trade links with Scandinavian countries; cheap labour (300 euro/month); link with Russian market; growth	Modest size of country	--
Lithuania	Legislation favourable to investment; cheap skilled labour (300 euro/month); trade links with Scandinavian countries	Modest size of country	--
Malta	3rd commercial fleet in the world; market economy and skilled labour, sustained growth	Small size of country, high public deficit (6.6% GDP)	---
Poland	Intellectual and cultural potential; very dynamic young people, hard working, used to international trade, development of SMEs (+1 655 000 SMEs)	Delays in upgrading and acquis communautaire; unemployment (+35% in certain regions)	+
Czech Republic	Flexible Labour Code; advanced harmonisation of legal framework / acquis com.	Infrastructure weak; unemployment high; large public deficit	+
Slovakia	Flexible Labour Code	Restructuring difficult of branches of heavy industry (chemicals and metallurgy)	+
Slovenia	A few “lead” enterprises setting the example (Gorenje, Kolektor, krka, Lek); efforts with a view to integration of euro zone	Small narrow market, illegal immigration, high inflation, enterprises oriented towards national market	-

Annex 2: Questionnaire for the survey of 2047 enterprises

Entry No:

Operator code .....

SURVEY OF EUROPEAN SMEs

QUESTIONNAIRE "LEGAL STATUS: FEASIBILITY" *Version 4- 23/7/04*

(note: SMEs in which a large enterprise has a holding of over 25% are not eligible for the survey)

Identification

A. Company name: .....
B. Address: .....
.....
C. Country: .....
D. Contact (optional): .....
E. Workforce: .....
F. Turnover: .....
G. Business sector: .....
H. Legal form of your company: .....
I. Financial links to another enterprise: .....
Membership of: *National group …… %*
European group …… %
Non-European international group …… %
K. Links apart from capital (e.g.: patents, property or branches/establishment, etc.) :.....
L. Subsidiaries and branches (of the SME questioned) abroad: country:……% participation.
M. Institution or enterprise registered? (Chamber of Commerce, local representation, etc.) :
.....

1- Does your enterprise already operate within Europe?

1.1 □ Yes
1.2 □ No
1.3 If not, have you any short-term or medium-term plans in respect of Europe?

2- Do you import (purchase) goods within the Community?

2.1 □ Yes
2.2 □ No
2.3 If so, what is the approximate share of these purchases in your overall purchases?
2.3 1 □ less than 10%
2.3 2 □ from 10% to 30%
2.3.3 □ from 30% to 50%
2.3.4 □ over 50 %

3- Do you export (sell) goods within the European Union Member States (25 countries)?

3.1 □ Yes
3.2 □ No
3.3 If so, what is the approximate share of these sales in your turnover?
3.3.1 □ less than 10%
3.3.2 □ from 10% to 30%
3.3.3 □ from 30% to 50%
3.3.4 □ over 50%

3.3.5 In which countries (mention the main 2)?.....

4- Do you supply intra-Community services?

4.1 ☐ Yes

4.2 ☐ No

4.3 If so, what approximate proportion do these sales represent in your turnover?

4.3.1 □ less than 10%
4.3.2 □ from 10% to 30%
4.3.3 □ from 30% to 50%
4.3.4 □ over 50%
4.3.5 In which countries (mention the main 2)?.....

5- Do you receive supplies of intra-Community services?

5.1 ☐ Yes

5.2 ☐ Non

5.3 If so, do these purchases account for a large proportion?

5.3.1 □ less than 10%
5.3.2 □ from 10% to 30%
5.3.3 □ from 30% to 50%
5.3.4 □ over 50%
5.3.5 In which countries (mention the main 2)?.....

6- Do these intra-Community transactions derive from a contract or are they undertaken ad hoc (on demand, on an ad hoc basis and by issuing corresponding invoices?)

6.1 ☐ contract

6.2 ☐ ad hoc

6.3 If there is a contract, is it

6.3.1 □ a general contract (identical for all your partners)?
6.3.2 □ a specific contract (drawn up after negotiation)?
6.3.3 □ an obligation of belonging to a group?

7- Do you employ cross-border workers from other member countries?

7.1 ☐ Yes

7.2 ☐ No

7.3 If so, what proportion of the workforce?

7.4 If so, are these workers permanent or temporary?

7.4.1 □ permanent
7.4.2 □ temporary

8- Do you employ cross-border workers residing in a country located <u>outside</u> the European Union?

8.1 ☐ Yes

8.2 ☐ No

8.3 If so, what proportion of the workforce? .....

8.4 If so, are these workers permanent or temporary?

8.4.1 □ permanent
8.4.2 □ temporary

9- Is there involvement of employees in the enterprise management?

☐ Yes, a little (e.g. information meetings, discussion of work, but no voice in final decision)

☐ Yes, a lot (e.g. participation in general meetings, trade union representation in the decision-making bodies)

☐ No (only the managers decide)

10- Do you find obstacles to the free movement of workers of your enterprise in the European Union (25 countries)?

10.1 ☐ Yes

10.2 ☐ No

If so, which?

10.3.1 □ obtention of work permit
10.3.2 □ obtention of residence permits
10.3.3 □ other : .....

11- Have you already encountered tax problems in your transactions in the European Union?

11.1 ☐ Yes

11.2 ☐ No

11.3 If so, did these problems give rise to litigation?

11.3.1 □ Yes
11.3.2 □ No
11.3.3 What type of problem was the most usually encountered?.....
.....
11.3.4 In which country was the litigation resolved?
11.3.4.1 □ Country of the registered office of the enterprise
11.3.4.2 □ Country of the foreign partner
11.3.4.3 □ Not yet resolved

12- Have you already encountered administrative problems, apart from tax problems, during your transactions with enterprises located in the European Union?

12.1 ☐ Yes

12.2 ☐ No

12.3 If so, did these problems give rise to litigation?

12.3.1 □ Yes

12.3.2 □ No

12.3.3 What type of problem was the most usually encountered?.....

12.3.4 In which State was the litigation resolved?
12.3.4.1 □ Country of the registered office of the enterprise
12.3.4.2 □ Country of the foreign partner
12.3.4.3 □ Not yet resolved

13- Have you already encountered administrative problems, apart from tax problems, during your transactions with enterprises located <u>outside</u> the European Union?

13.1 ☐ Yes

13.2 ☐ No

13.3 If so, did these problems give rise to litigation?

13.3.1 ☐ Yes

13.3.2 ☐ No

13.3.3 What type of problem was the most usually encountered?.....
.....
.....

14- Have you encountered any of the following problems in the application of European Union law in the context of your activities?

14.1 ☐ Technical standards

14.2 ☐ Social regulations

14.3 ☐ Company law

14.4 ☐ Customs legislation

14.5 ☐ Intellectual property

14.6 ☐ Know-how

14.7 ☐ Accounting

14.8 ☐ Other…….

15- Do you know the main legal forms of enterprise in Europe?

15.1 ☐ Yes

15.2 ☐ No

15.3 If so, which come to mind? .....
.....

15.4 If not, do you wish to be informed about their main characteristics?

15.4.1 ☐ Yes

15.4.2 ☐ No

16- Community law has created European legal forms, such as:

- **the European Economic Interest Grouping (EEIG),**
- **the European Cooperative Society (SCE),**
- **the European Company (SE).**

*(offer the interviewee the **explanatory notice** on these legal forms prepared by the consultants) –*

	EEIG		SCE		SE		OBSERVATIONS
	Yes	No	Yes	No	Yes	No	
Are you familiar with this legal form?							
Are you prepared to use it?							
If so, why?							
If not, why not?							

17- Do you think that the current system of company law Directives* would be sufficient for the expansion of your activity?

17.1 ☐ Yes

17.2 ☐ No

17.3 If so, why? .....
.....
.....

18- Do you think it helpful to establish a European statute for SMEs?

18.1 ☐ Yes

18.2 ☐ No

18.3 ☐ Don't know

18.4 If so, what would be the priority formalities to promote or improve? (Mention a maximum of 3) .....
.....
.....
.....
.....

18.5 What obstacles would need to be overcome? (Mention a maximum of 3) .....
.....
.....
.....
.....

19- If it were necessary to eliminate certain formalities (for establishment and management) in the country where you engage in your main activity, which would you think of? (tick the box(es) and specify if possible)

19.1 ☐ Tax formalities: .....

19.2 ☐ Social formalities: .....

19.3 ☐ Legal formalities: .....

20- Rank the following tax criteria which, in your opinion, influence the decision of an enterprise to establish in another country:

Criterion (No 1 – the most important to 6 – the least important)

20.1 ☐	Multiple taxation	**No ……..**
20.2 ☐	The practice of withholding tax	**No ……..**
20.3 ☐	The divergence of tax rules	**No ……..**
20.4 ☐	The company tax rate	**No ……..**
20.5 ☐	The impossibility to offset cross-border losses	**No ……..**
20.6 ☐	The administrative and accounting formalities	**No ……..**

21- Projects abroad: do you have a definite plan to establish in a member country?

21.1 ☐ Yes

21.2 ☐ No

21.3 **If so, in which country?.....**

21.3.1 Under which statute?.....

21.3.2 What is its activity? (maintenance, training, storage, distribution, commercial) .....

.....

21.4 **If not**, **do you think a plan in the longer term is possible?**

21.4.1 If so, in which country? .....

21.4.1 Under which statute?.....

21.4.2 What would its main activity be?.....

21.4.3 ☐ No…….

Thank you – End of the questionnaire

* *cf. enclosed notice.*

«Please check that the identity of the enterprise is duly completed, thank you.»

AETS and the members of the EBN network undertake to keep all the information contained in this questionnaire confidential and not to divulge it. The results of this survey will be processed collectively and it will not be possible to recognise any enterprise. The results will be the subject of future publications of the Enterprise DG.