European Enterprise Models – New Chances and Challenges

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Abstract

The introduction of supranational enterprise models is one of the major projects in the course of European economic integration. Thanks to respective EU regulations, entrepreneurs can now choose from three types of legal vehicles (EEIG, SE, SCE) to conduct their business transactions across borderlines, and a fourth is expected to be adopted soon (SPE). Given recent trends to promote European corporate forms, but also keeping in mind that such options may be associated with possible burdens, it is the objective of this article to clarify the special features and overall significance of European enterprise models, in particular from the international perspective of foreign investors. Starting with a brief description of the current regulatory framework, the major part of this article will focus on certain key mechanisms and principles, which are designed to facilitate cross-border business transactions. As a result, the consequences and practical impacts shall be evaluated, especially with regard to potential chances and challenges for entrepreneurs. In conclusion, lessons shall be drawn as to whether European business organizations might serve as useful models for entrepreneurs and investors from both within and outside the European Union (EU).

1. Introduction

Finding new ways for transnational business cooperation is one of the primary objectives of the EU common market. With the adoption of various European enterprise models an important step has been undertaken to realize this goal. The first supranational entity was introduced as a European Economic Interest Grouping (EEIG) in 1985. Following decades of protracted negotiations, a consensus for a European public limited-liability company (SE) was finally achieved at the outset of this millennium. On the basis of this model, a European cooperative (SCE) was shortly thereafter enacted in 2003.1 Furthermore, a recent proposal for a European private limited-liability company (SPE) has already reached the final stage of legislative procedures and is anticipated to be enacted soon. Last but not least, the

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1 The constitutional basis for European enterprise models is EC Treaty Art. 308 (ex Art. 235), now Treaty on the Functioning of the European Union Art. 352, which generally authorizes the Council to take all “appropriate measures” necessary to attain one of the EU objectives, following a Commission proposal and after obtaining consent from the European Parliament.
possible model of a European Foundation is currently under review, whereas previous proposals for a European Mutual Society and a European Association were withdrawn by the Commission in 2006.\(^2\)

Thus a wide range of options is now available when doing business in the EU. From a horizontal perspective, entrepreneurs may choose one of the traditional legal forms of their home country or – under reference to the jurisdiction of the European Court of Justice and the basic freedom of establishment – even incorporate under the laws of other Member States.\(^3\) From a vertical perspective, the business menu for entrepreneurs has been further enriched by a variety of supranational entities, which now supplement national company types.\(^4\)

Obviously, the advantage of extended choice is that entrepreneurs enjoy greater leeway when selecting the corporate design best tailored to their individual needs.\(^5\) For instance, European business entities may offer more flexibility with regard to corporate seat, internal governance, or group structure and should therefore be taken into account when planning future relocations, secondary establishments, or business expansions in other Member States. Moreover, enhanced freedom to select from a plurality of options may stimulate regulatory competition, thereby providing an incentive for Member States to make their company laws more attractive and adaptable to a highly competitive business environment,\(^6\) and thus ultimately strengthen an entrepreneurial spirit within the EU.

On the other hand, the benefits of added choice must be weighed against the disadvantages of a diverse and complex regulatory environment.\(^7\) After all, having to

\(^2\) This article will include references to the proposal for a European Private Company, but not further discuss previous proposals for a European Foundation, a European Mutual Society, or a European Association.

\(^3\) This is a remarkable consequence of European case law, which has – under reference to the basic freedom of establishment – opened the door to regulatory competition and the possibility of forum shopping. See e.g. Heribert Hirte, ‘Die “Limited” in Deutschland – Abkehr von der Sitztheorie’ in Heribert Hirte and Thomas Bücke (eds), Grenzüberschreitende Gesellschaften: Praxishandbuch für ausländische Kapitalgesellschaften mit Sitz im Inland (Carl Heymanns Verlag, Köln 2005) at 42 ff. For a discussion of recent private company law reforms in Germany in light of “increasing competitive pressure” especially resulting from the British private limited company, see also Ulrich Seibert, ‘Close Corporations – Reforming Private Company Law: European and International Perspectives’ (2007) EBOR 83, 84.


\(^5\) See e.g. Mike Edbury, ‘The European Company Statute: A Practical Working Model for the Future of European Company Law Making?’ (2004) EBLR 1283, 1292, pointing out that “variety, diversity and competition amongst Member States in their approach to corporate issues was to be celebrated and endorsed, rather than lamented”.

\(^6\) See e.g. Luca Cerioni, EU Corporate Law and EU Company Tax Law (Edward Elgar, Cheltenham 2007) at 217 ff (“Appendix I”) with examples of “legal competition among Member States in corporate taxation and company laws”.

\(^7\) See e.g. Allan W Vestal, ‘The Social-Welfare Based Limits on Private Ordering’ in Joseph McCahery and others (eds), Private Company Law Reform: International and European Perspectives (TMC Asser Press, The Hague 2010) at 317–318, arguing that search costs, negotiation costs, and monitoring costs must be weighed against each other.
select from a multitude of legal forms requires competent legal advice and careful strategic planning. This may constitute a relevant cost and time factor and thus be perceived as a burden. It therefore follows that European business organizations neither impose a “single best model” nor intend to replace traditional national forms, but rather complement the existing series of corporate vehicles. A recommendation with regard to the most suitable enterprise form can only be given based on a case-by-case analysis with reference to the Member State where the official seat is to be registered. Other relevant criteria must be considered, including strategic goals, operative costs, tax issues, as well as certain “soft factors”.²

Given recent trends to promote European corporate forms, but also keeping in mind that such options may be associated with possible burdens, it is the objective of this article to clarify the special features and overall significance of European enterprise models, in particular from the international perspective of foreign investors. Starting with a brief description of the current regulatory framework (Chapter 2), the major part of this article will focus on certain key mechanisms and principles, which are designed to facilitate cross-border business transactions (Chapter 3). As a result, the overall consequences and practical impacts shall be evaluated, especially with regard to potential chances and challenges for entrepreneurs (Chapter 4). In conclusion, lessons shall be drawn as to whether European business organizations might serve as useful models for entrepreneurs and investors from both within and outside the EU (Chapter 5).

2. European Enterprise Models

2.1. European Economic Interest Grouping (EEIG)

The European Economic Interest Grouping (EEIG) was the first supranational enterprise form to be realized in 1985 based on a French model.¹⁰ Similar to a partnership or joint venture, its objective is to facilitate cross-border cooperation by conferring independent legal capacity upon entrepreneurs from different national backgrounds.¹¹ Unlike typical companies, EEIGs do not seek to make profit for

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² Thomas Bückers, ‘Motive und Möglichkeiten grenzüberschreitender Gestaltungen’ in Heribert Hirte and Thomas Bückers (eds), Grenzüberschreitende Gesellschaften: Praxishandbuch für ausländische Kapitalgesellschaften mit Sitz im Inland (Carl Heymanns Verlag, Köln 2005) [hereinafter Bückers, Motive] at 95–96, referring to soft factors such as international image, access to business community, availability of qualified workforce, incentives for top management.


themselves, but serve the interests of their members. Because of their ancillary nature, EEIGs are excluded from certain activities (e.g., exercise of management or supervisory powers, shareholdings in other undertakings, employment of more than 500 persons, public investment). In practice, these activity restrictions have prevented a widespread use of this legal form.

Probably the greatest advantage of EEIGs is the fact that no minimum capital is prescribed. Instead of cash payments, it is possible to make contributions in kind, or to bring in intellectual properties, business relationships, as well as other assets. Even the formal procedure for setting up EEIGs is easy, since nothing more is required than a simple written contract by at least two natural or legal persons, who have their registered office, central administration or principal activities in different Member States. As far as membership is concerned, it is possible for companies with a central administration in the EU to become members of a grouping without having a registered office in the EU. Likewise, natural persons who carry on their principal activity in the EU may – regardless of their citizenship – become members of a grouping. Consequently, even non-EU citizens, including foreign companies registered in third countries, may qualify as founding members of EEIGs if their economic activities are primarily carried out in the EU. On the other hand, Member States may restrict membership in EEIGs to no more than 20 persons and even prohibit certain classes of natural or legal persons from participating on grounds of public interest.

Upon filing the founding contract at the registry of the Member State, in which the official address is located, EEIGs acquire legal capacity, as well as legal personality in most Member States. Once successfully established, EEIGs have the right to transfer their official seat within the EU, subject to the condition that it must correlate with the place of central administration or principal activity.

Considerable flexibility and freedom also exist with regard to internal organization and governance, which requires only two mandatory organs: On the one hand, the members acting collectively, and on the other hand, at least one manager with external representation powers. Decisions are generally taken unanimously with each member having one vote, unless otherwise provided in the formation contract. A strong personal bond is also reflected in the general principle of joint and several liability for debts of the EEIG.

Twelve years after this first supranational form was introduced, the European Commission sought to promote its use by issuing an official communication, wherein it

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12 See EEIG Regulation Art. 3.
13 See EEIG Regulation Arts 3, 23.
14 See EEIG Regulation Art. 4.
16 See EEIG Regulation Arts 13–14.
17 See EEIG Regulation Arts 17, 24.
clarified the special characteristics of EEIGs. Its stable yet flexible form may, after all, be an interesting alternative for cross-border cooperation in many fields, including research & development, marketing & distribution, freelance activities (e.g. consultants, lawyers), economic associations, virtual enterprises, etc. After an initial warm-up period, the number of EEIGs has in the meantime risen to more than 2000 with most establishments located in Belgium, Germany, and France.

2.2. European Company (SE)

While the EEIG was the first supranational enterprise form to be realized, the European Company (SE in abbreviation for its Latin name Societas Europaea) was in fact the first to be proposed as early as 1959 and thus represents one of the earliest projects in the history of European company law. Following decades of protracted negotiations, a compromise for this special type of public limited-liability company was finally reached at the beginning of this millennium. Despite significant abridgements of the original proposal, the enacted legislation still turned out to be a rather complex set of rules.

With a prescribed minimum capital amount of EUR 120,000, the SE is clearly located at the other end of the spectrum compared with EEIGs. Another obstacle during the initial incorporation process is the precondition that at least two legal persons with a cross-border element must exist (i.e. pre-existence of companies, which are governed by the laws of at least two different Member States or have for at least two years had a foreign subsidiary or branch). In practice, SE subsidiaries, conversions (transformation of domestic public limited-liability companies into SEs), as well as cross-border mergers (of public limited-liability companies), have frequently been employed as formation methods, whereas the setting-up of holding SEs (by public or private limited-liability companies) has been very rare. Once an SE has been validly
incorporated, it may (also by itself as a single shareholder) easily set up one or more SE subsidiaries.  

Under certain circumstances, this supranational company type might even offer interesting perspectives for foreign investors. According to the SE Regulation, Member States may allow a company, whose head office is situated outside the EU, to participate in the formation of an SE, if it “is formed under the law of a Member State, has its registered office in that Member State and has a real and continuous link with a Member State’s economy” (e.g. by having an establishment in that Member State and conducting operations therefrom). This optional provision, which more than a dozen EU Member States have adopted into their national legal orders (e.g. Luxembourg, Italy, United Kingdom, Belgium, Czech Republic), requires entrepreneurs from abroad to have an operating business entity incorporated within a Member State, or alternatively to establish an EU-based subsidiary, which is not merely a brass plate company.

Another challenge entrepreneurs have to face in the course of incorporation is the requirement to enter into negotiations with their employees. Only after concluding an arrangement for employee involvement – or at least making a good faith effort to reach such an agreement within a specified negotiation period – may SEs be registered in a Member State. The purpose obviously is to avoid that the setting up of SEs will be used as a construction to escape existing employee protection standards.

Once an SE acquires legal personality upon proper registration, it may subsequently transfer its official seat to another Member State without losing its corporate identity. However, it may do so only subject to adequate protection of stakeholder rights and in accordance with the real seat principle, i.e. the registered office and the head office must be located in the same Member State, or – in about two thirds of the EU Member States – even at the same place.

In terms of applicable law, SEs are subject to a complex legal framework, encompassing not only the provisions of the SE Regulation at the supranational level, but also the specific provisions of its statutes and articles of association, as well as the national law of the Member State in which an SE has its registered office (especially

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25 See SE Regulation Art. 3.
26 See SE Regulation recital 23 and Art. 2. This is in accordance with the general principle that foreign companies without legally recognized EU presence cannot invoke the right to freedom of establishment when denied access to the economy of a Member State; see Peter T Muchlinski, Multinational Enterprises and the Law (2nd edn Oxford University Press, Oxford 2007) at 246.
27 See Ernst & Young (n 24) at 34, 103 ff.
29 See SE Regulation Art. 12 with reference to SE Directive Art. 5, specifying a maximum negotiation period of six months, which can by joint agreement be extended up to one year.
30 See SE Regulation recital 27, Art. 7; Ernst & Young (n 24) at 34.
the national provisions, which have been adopted in implementation of the SE Regulation and those applicable to public limited-liability companies).

The organizational structure of SEs comprises on the one hand a general shareholders’ meeting, and on the other hand either a management and a supervisory organ or a single administrative organ. Entrepreneurs opting for this type of corporate vehicle therefore have the advantage of choosing between a one-tier or a two-tier board in terms of their internal governance structure. Compared with EEIGs, where unanimity is the default rule, decisions taken in SE organs usually merely require a majority of the votes validly cast.

Since the SE Regulation entered into force in 2004, more than 600 SEs have been registered in 21 EU Member States, especially in Germany and the Czech Republic. The fields of activities vary, but show a strong focus in the services sector (e.g. financial, insurance, and other service activities). A report on the application of the SE Regulation became due in 2009 and should soon be published, following a recent external “Study on the operation and the impacts of the Statute for a European Company” and a public consultation on the results thereof.

2.3. European Cooperative Society (SCE)

Following the model of the SE Regulation, a very similar regulation was adopted in 2003 introducing the European Cooperative Society (SCE). Designed against the background of the EU’s eastern enlargement, this social enterprise form falls into a category ranking between SEs and EEIGs. SCEs are required to have a minimum capital in the amount of EUR 30,000 in return for the general privilege of limited liability (unless the statutes expressly provide for unlimited liability).

Unlike capitalistic companies, however, the objective of SCEs is not to seek max-
imum profit from invested capital, but to serve the mutual needs of their members by developing their economic and social activities. Typically, SCE members are even directly involved (e.g. as suppliers, customers, employees), although investor members not expecting to use or produce the SCE’s goods and services may be exceptionally admitted.39

In contrast to SEs, SCEs may be formed “ex novo” by at least five natural persons, alternatively by a combination of at least five natural and legal persons, by at least two legal persons, or by means of merger between two national cooperatives, and finally by conversion of a national cooperative into a European cooperative. All five formation methods require a cross-border element (i.e. the involvement of at least two EU Member States) and – where a legal body is permitted to form an SCE even though its head office is located outside the EU – are subject to a genuine link requirement.41

As in the event of SEs, there is a legal obligation to enter into negotiations with employee representatives prior to the company’s registration.42 Once SCEs are properly registered in a Member State, they acquire legal personality with all the implications regarding applicable law (i.e. the national laws of that Member State – in particular the national provisions implementing the SCE Regulation and those applying to national cooperatives – become generally applicable, in addition to the SCE Regulation and the provisions of its statutes).43 Likewise, a subsequent transfer of the registered seat is possible but subject to the real seat principle.44

Also in terms of organizational structures and internal governance, many similarities exist with the SE Regulation (e.g. choice between a one-tier or two-tier board; simple majority votes as a general rule for decision taking), though the SCE Regulation is more detailed.45 An important distinctive feature, however, is the fact that SCEs emphasize democratic self-governance in accordance with the principle of “one man one vote”46. The general preference for equal control among members may be subject to weighted voting to reflect members’ contributions to the SCE.47

Even before the SCE Regulation became directly applicable in all Member States in 2006, the Commission issued a formal communication to promote the image and formation of cooperative societies.48 With reference to their “participatory manage-
ment structure”, SCEs are therein described as “schools of entrepreneurship and management” and an “excellent example of company type which can simultaneously address entrepreneurial and social objectives”. A detailed study on the implementation of the SCE Regulation was recently published in October 2010, finding that only 17 SCEs have so far been established in a few Member States, mainly in Italy. The low number of incorporations and thus limited success of SCEs was explained by both factual (e.g. “lack of cognitive awareness”) and legal reasons (e.g. complexity of SCE Regulation).

2.4. European Private Company (SPE)

In accordance with the 2003 EU Action Plan on “Modernising Company Law and Enhancing Corporate Governance” and the 2008 Commission policy initiatives regarding a “Small Business Act for Europe”, the Commission proposed a draft statute for a European private limited-liability company (Societas Privata Europaea, abbreviated SPE) in June 2008.

The SPE Proposal differs in many ways from previous EU regulations introducing the EEIG, SE, and SCE. Under formal aspects, a clear and simple structure is conveyed due to a reduced number of legal references. This effect is furthermore achieved by reserving a number of issues listed in an annex, which shall be regulated in the articles of association. The purpose of this legal technique is to enhance uniformity and legal certainty for future SPEs. It is remarkable that the SPE Proposal even incorporates new material law principles, most notably a deviation from the real seat principle by expressly allowing that “(a)n SPE shall not be under any obligation to have its central administration or principle place of business in the Member State in which it has its registered office”. Contrary to EEIGs, SEs and SCEs, the SPE Proposal also states that only natural persons may be appointed as directors.

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49 Ibid. at 5, 14.
51 SCE Study (n 50) at 147 ff (Fig. 4: Factors with potential negative (dissuasive) effect); 162 ff (Table 15: Possible amendments to the SCE Regulation).
55 SPE Proposal Art. 7.
56 SPE Proposal Art. 30.
Following substantial discussions in the European Parliament and the Council, detailed amendments have been tabled.\(^\text{57}\) Despite having reached the final stage of legislative procedures, certain issues still need to be resolved, such as the amount of minimal capital,\(^\text{58}\) details regarding employee participation, and the question whether a cross-border element should be required for SPEs.\(^\text{59}\) It is hoped and anticipated that the adoption of an SPE will provide significant incentives especially for SMEs in the near future and thus constitute an important new milestone for the development of EU company law.

3. Key Mechanisms and Principles

3.1. European Identity and Legal Personality

The discussion will now focus on certain characteristic features and key mechanisms, which qualify European enterprises as unique business vehicles for conducting cross-border operations. In this context, underlying basic principles shall also be discussed with respect to pursued goals and objectives.

The first and foremost characteristic feature, which distinguishes European business organizations, is the mandatory reference to “European” in their enterprise labels. In a vast and complex business environment, a mandatory indication of the specific legal form certainly helps to distinguish supranational undertakings from purely domestic entities.\(^\text{60}\) Trade names with the abbreviations EEIG, SE, or SCE thus serve to highlight European corporate identity, culture and image.

Two exceptions should, however, be noted in this context. On the one hand, enterprises using trade names, which were already registered before the respective EU company law regulations entered into force, may continue to do so without need to alter their names.\(^\text{61}\) On the other hand, it is possible that European labels are translated differently in various Member States. For instance, EEIGs are called “Groupement...”


\(^{58}\) While SPE Proposal art 19 refers to a symbolic amount of EUR 1, the European Parliament considers a minimum capital requirement of EUR 8,000 more adequate, if the articles of association do not “require that the executive management body sign a solvency certificate”. See EP Resolution (n 57) amendment 33.


\(^{60}\) See EEIG Regulation Arts 5, 25; SE Regulation Art. 11; SCE Regulation Art. 10; SPE Proposal Art. 6.

\(^{61}\) This is expressly provided for in SE Regulation Art. 11 and SCE Regulation Art. 10, but should analogously apply to EEIGs as well. See also Manfred P Straube and others, ‘Entwicklung, Rechtsgrundlagen, Normenhierarchie und Grundkonzeption der SE’ in Manfred P Straube and Josef Aicher (eds), *Handbuch zur Österreichischen Aktiengesellschaft* (Verlag Österreich, Wien 2006) at 17, 49, commenting that legal entities using the “SE” addition in their trade name are protected in their right to maintain their status quo, if they have been registered prior to 8 October 2004.
The European Enterprise Models (EEIG) in France or "Europäische wirtschaftliche Interessenvereinigung (EWIV)" in Germany. Therefore, not all enterprises displaying EEIG, SE or SCE as part of their trade name are automatically supranational legal entities, and not all European cooperatives can be identified under the abbreviation EEIG.

Not to be underestimated is the fact that European labels might also create a psychological "déjà vu" effect, promote trust and thus be advantageous for marketing purposes. After all, chances for local acceptance may be higher when appearing under a well known European enterprise flag rather than using a rare national legal form with which domestic authorities, customers, employees, creditors, or other third parties might not be familiar.

Most importantly, European enterprise forms are conferred distinct legal personality (or at least legal capacity) upon filing with a national company register. This key mechanism significantly facilitates transnational business cooperation by enabling entrepreneurs from various national backgrounds to act under a single identity. Being recognized as an independent entity, for instance, provides considerable advantages in interactions and negotiations with third parties (e.g. due to enhanced efficiency and creditworthiness) and thus promotes participation in European-scale projects.

Seen from the perspective of foreign investors, doing business through European corporate vehicles (possibly in form of subsidiaries) may not only help to promote acceptance and trust of local business partners and customers, but also have important legal implications with respect to liability issues. For instance, rather than operating a foreign branch for which the parent company remains fully liable, it might be more advantageous for entrepreneurs from third countries to set up a European business entity under a limited-liability form (e.g. SE, SCE, SPE). In this way, corporate synergies and other benefits may be achieved, while at the same time shielding off possible risks arising from an unfamiliar business environment.

In summary, supranational business labels serve various purposes. By indicating the European nature in their trade names, these undertakings emphasize common corporate culture and identity, thus achieving positive marketing effects. With respect to their independent legal personality and/or legal capacity, European entities certainly facilitate cross-border cooperation and may also be considered as a possible strategy for limiting the liability of foreign investors when operating in jurisdictions other than their home country.

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63 See e.g. Kim F Tan and Sven U Timmerbeil, ‘Choosing A Solid Base For Doing Business In Europe’ (2007) 53 The Practical Lawyer 43; Davies (n 22) at 29, noting that the “advantages from a company law perspective are mainly psychological.”
64 See EEIG Regulation Art. 1; SE Regulation Art. 16; SCE Regulation Art. 18; SPE Proposal Art. 9.
65 See e.g. Commission, EEIG (n 18) at 17–24.
66 See e.g. Bücker, Motive (n 9) at 95 f; Peter Hommelhoff, ‘The European Private Company Before its Pending Legislative Birth’ (2008) 9 German Law Journal 799.
3.2. Company Seat and Cross-Border Mobility

A second key feature of European enterprise models is the possibility of seat transfer. Once formally incorporated in a Member State, European enterprises may – under maintenance of their legal identity – subsequently transfer their registered seat to another Member State. Thanks to this special privilege, European vehicles enjoy enhanced mobility and flexibility to conduct their transnational business operations.

A relocation of company seat to another Member State can also be achieved in accordance with the Cross-Border Merger Directive under even more liberal conditions (i.e. wider accessibility encompassing limited liability companies in general, including private SMEs; no requirements with regard to location of head office or real seat; more flexible rules on employee participation). To a certain extent the Cross-Border Merger Directive may therefore have reduced the attractiveness of setting up SEs. Nevertheless, the SE Regulation cannot be completely replaced by the Cross-Border Merger Directive, as the latter will in the end only result in a national company type rather than a supranational company. Given these possibilities of seat transfer under the SE Regulation and the Cross-Border Merger Directive, the European Commission decided not to further pursue a previous proposal “on the cross-border transfer of registered office” (14th Company Law Directive).

Certain procedural and legal requirements must be observed in this context to safeguard the interests of third parties. First of all, a transfer proposal must be drawn up and published by the management or administrative organ. During a two-month waiting period shareholders, creditors, and public authorities have the right to oppose the plan. If stakeholders are adequately protected and positive approval has been given by the shareholders, the competent authority issues a certificate attesting the completion of all formalities. Once the new registration has been completed, the old registration may be deleted. Both facts must be published in the respective Member States.

67 The enhanced possibility for corporate mobility has indeed been perceived as one of the driving forces for setting up an SE; see e.g. Ernst & Young (n 24), reporting that about 10% of SEs have transferred their corporate seat to another Member State (e.g. United Kingdom, Cyprus); Europa Press Releases (n 32).


71 See EEIG Regulation Arts 13–14; SE Regulation Art. 8; SCE Regulation Art. 7; SPE Proposal Art. 35–37.
The possibility of seat transfer is, moreover, subject to following restrictions:\textsuperscript{72} From the very beginning, the scope of EU company legislation is restricted to cross-border issues in accordance with the principle of subsidiarity.\textsuperscript{73} These seat transfer provisions thus do not apply to purely domestic situations, which are subject to national laws and respective company statutes.\textsuperscript{74} On the other hand, the registered office or the head office may only be transferred to another Member State, not to a third country outside the EU.\textsuperscript{75} Most importantly, the official seat may only be transferred under the condition that the registered office and the head office remain in the same Member State – or must even be at the same place if a Member State so requires.\textsuperscript{76} Consequently, entrepreneurs wishing to move their corporate seat to another Member State may simultaneously have to relocate their administrative headquarters as well. In the event of non-compliance, the business entity is obliged to either transfer its head office or its registered office to the same Member State or else be liquidated. Legal sanctions and remedies ensure effective implementation of this requirement.\textsuperscript{77}

It follows that the respective EU company law regulations have adopted the real seat principle – mainly for reasons of effective supervision (e.g. to prevent tax fraud, money laundering) –\textsuperscript{78} even though the fundamental freedom of establishment is thereby restricted.\textsuperscript{79} Obviously aware of this controversial issue, the historic legislators expressly noted that the “real seat arrangement (...) is without prejudice to Member State’s laws and does not pre-empt the choices to be made for other Community texts on company law.”\textsuperscript{80} In any event, the practicability of the real seat arrangement shall be reconsidered in future status reports.\textsuperscript{81} The Commission has already expressed its willingness to take a new stance on this issue, as its SPE Proposal no longer requires that the central administration or principal place of business be located in the same Member State as the registered office.\textsuperscript{82}

\textsuperscript{73} See EU Treaty Art. 5.
\textsuperscript{74} See EEIG Regulation Art. 13, referring to the contract for the formation of the grouping where a seat transfer does not result in a change of applicable law; SE Regulation Arts 8-9; SCE Regulation Arts 7-8.
\textsuperscript{75} See EEIG Regulation Art. 12; SE Regulation Art. 7; SCE Regulation Art. 6.
\textsuperscript{76} See EEIG Regulation Art. 12; SE Regulation Art. 7; SCE Regulation Art. 6.
\textsuperscript{77} See SE Regulation Art. 69; SCE Regulation Art. 70.
\textsuperscript{78} See SPE Proposal recital 4, Art. 7.
\textsuperscript{79} Especially the European Court of Justice has in a series of landmark decisions referred to the fundamental freedom of establishment as a decisive argument to recognize both primary as well as secondary company seats without requiring that the place of registration coincide with the real seat of administration. See the famous judgments of the ECJ in Case C-212/97 Centros Ltd v. Erhvervs-og Selskabsstyrelsen [1999] ECR I-1459; Case C-208/00 Überseering BV v. Nordic Construction Company Baumanagement GmbH (NCC) [2002] ECR I-9919; Case C-167/01 Kamer van Koophandel en Fabrieken voor Amsterdam v. Inspire Art. [2003] ECR I-10155.

\textsuperscript{80} See SE Regulation recital 27; SCE Regulation recital 14.
\textsuperscript{81} See SE Regulation Art. 69; SCE Regulation Art. 70.
\textsuperscript{82} See SPE Proposal recital 4, Art. 7.
3.3. Mandatory Disclosure and Third Party Protection

A third key mechanism, with which European enterprises must comply, is the basic principle of mandatory disclosure and third party protection.\(^{83}\) The fact that the first EU company law directive (also known as Disclosure Directive) was enacted in 1968 for this very reason, shows the overarching role and importance of protecting third party interests by making public certain essential company details.\(^{84}\)

The basic methods for doing so – filing with a commercial register, publication in a national gazette (or equally effective means), and indication on business documents and internet websites – are applicable to European enterprises. The respective EU company regulations expressly refer to the act of formally filing basic company information and founding documents with an official registry as a constitutive requirement for successful incorporation.\(^{85}\) Due to their wide geographic scope of business operations, supranational entities are also required to publish a respective notice in the Official Journal of the European Union within one month in addition to publication in a national gazette (along with certain particulars, such as name, number, date and place of registration, reference to publication in Member State). The same applies, whenever such a registration is deleted or the registered seat is transferred to another Member State.\(^{86}\)

The objective is to inform creditors, shareholders, employees, and interested third parties about the occurrence of any significant changes from the initial formation stage on until the dissolution and winding-up of a company.\(^{87}\) In Europe it is therefore a

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\(^{83}\) See e.g. Grundmann (n 11) at 151 ff, noting that information rules dominate European company law.

\(^{84}\) First Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second para of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community; now Council Directive (EC) 2009/101 of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second para of Article 48 of the Treaty, with a view to making such safeguards equivalent [2009] OJ L258/11. See also Second Council Directive (EEC) 77/91 of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second para of Article 48 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent [1977] OJ L26/1; Eleventh Council Directive (EEC) 89/666 of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State [1989] OJ L395/36.

\(^{85}\) EEIG Regulation Art. 7; SE Regulation Arts 12–13; SCE Regulation Arts 5, 11; SPE Proposal Art. 9.

\(^{86}\) EEIG Regulation Arts 8, 11, 39; SE Regulation Arts 13–14; SCE Regulation Art. 12–13, 17; SPE Proposal Arts 11, 46.

\(^{87}\) Other means to safeguard the interests of third parties are notification obligations, publications of various (e.g. management and expert) reports, shareholders’ rights to obtain and inspect documents, certification requirements (e.g. by competent authorities), etc.
challenging but mandatory task to find a balance between entrepreneurial objectives on the one hand and stakeholder concerns on the other hand. This extensive requirement to take into account third party interests even stands out as a distinctive feature in contrast to U.S. corporate law, where directors tend to exercise a more dominant role as opposed to stakeholders.

In practice, the most severely affected stakeholders in the course of corporate restructurings are the employees. Significant legislative efforts have been undertaken to safeguard their rights (e.g. information, consultation, participation) and to maintain achieved employee protection standards according to the “before and after principle” even in the context of setting up European companies. For this purpose, the conclusion of an agreement regarding employees’ involvement – or proof of the fact that a consensus could not be reached within a specified negotiation period – must be evidenced prior to the official registration of European companies. Should the parties fail to reach a voluntary agreement for adequate employee involvement, supplementary mechanisms and standard principles are provided for in the respective EU directives complementing the SE and SCE regulations.

Nonetheless, these mechanisms designed to protect the interests of employees are not perfect and can be circumvented. For instance, one way of de facto reducing employees’ rights has in practice been achieved by incorporating empty shelf SEs without employees – hence without employee involvement –, then selling and activating them at a later stage. To prevent abusive use of SEs (e.g. as a means of circum-

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89 See e.g. Teichmann (n 15) at 363, 397, contrasting the legal orders of European countries with U.S. corporate law, finding that the latter is primarily focused on entrepreneurial interests and shareholder value rather than other third party interests (e.g. employees, consumers); Andenas/Wooldridge, Company Law (n 15) at 34, noting that “American company law may be less concerned with the protection of investors, creditors and employees than is European company law.”


91 See SE Regulation Art. 12; SCE Regulation Art. 11.

92 The general rule for SPEs is that they shall be subject to the participation rules of the Member State where they have their registered office. Special arrangements for the participation of employees may have to be negotiated where a transfer of the registered seat would not result in the same level of participation in the host Member State. In the event of cross-border mergers involving an SPE, the provisions of the Cross-Border Merger Directive 2005/56/EC shall apply. See SPE Proposal Arts 34, 38. However, the EP has proposed very detailed amendments in this context; see EP Resolution (n 57) amendments 9, at 71–77.

93 See e.g. Horst Eidenmüller et al, ‘Incorporating under European Law: The Societas Europaea as a Vehicle for Legal Arbitrage’ (2009) EBOR 1, 32, arguing that the SE might be used as “a vehicle to reduce the effects of mandatory co-determination at board level or to avoid such codetermination altogether”.

venting employees’ rights) Member States are obliged to take “appropriate measures”.95 In particular, there is an express mandate for Member States to ensure that arrangements concerning employee involvement can be renegotiated in cases of structural changes following the initial formation of a company.96

At least, modern technologies are now available, which on the one hand make it much easier to comply with legal publication and disclosure requirements in an efficient way, while on the other hand greatly facilitating public access to business and company information. For instance, legal provisions requiring the obligatory introduction of electronic filing methods in all Member States, along with further voluntary initiatives to interconnect national company registers, have certainly introduced new dimensions for obtaining European wide enterprise data at the press of a button. Basic company information and profiles from 18 EU Member States can now also be retrieved from the European Business Register (EBR).97 In the wake of the recent financial crisis, entrepreneurs, creditors and consumers have an even more urgent and justified interest to obtain current official business information with regard to their business partners. Further steps to improve legal transparency and certainty in cross-border settings can therefore be anticipated for the future.98

4. Practical Impacts and Consequences

4.1. Legal Structure and Transparency

Recent implementation reports and statistics indicate that over the past years a rising but still limited number of European enterprises have been incorporated. At the outset, lack of familiarity and practical experience served as manifest factors for a reluctant implementation of these new European business forms. But even more so, a sense of legal uncertainty resulting from a complex regulatory framework has effectively prevented a widespread use of EEIGs, SEs, and SCEs.99

In particular, complicated legal techniques using exclusions and references have contributed to a fragmented nature of the respective EU company law regulations. Not only are certain issues (e.g. taxation, competition, intellectual property, insol-
vency) expressly excluded, but even where matters fall within the regulatory scope, they may be difficult to resolve due to further legal or optional references. Hence, the provisions governing European enterprises do not form a single layer, but rather constitute a legal hierarchy, comprising European laws (e.g. the respective EU company law regulations), enterprise specific rules (e.g. articles of association, company statutes), as well as national laws (e.g. implementing provisions and other national rules applicable to public limited-liability companies or cooperatives respectively). Consequently, this potpourri of applicable laws has de facto created many national variations of EEIGs, SEs, and SCEs.

Given the “dissuasive effects” of such an intricate regulatory system for entrepreneurs, numerous recommendations for future legislative revisions have been proposed. In fact, it is remarkable that the recent SPE Proposal has already incorporated improved legislative techniques by evidencing a simple structure and by avoiding excessive use of options or references back to national laws.

Yet, it must be kept in mind that European laws are generally subject to the fundamental principles of subsidiarity and proportionality. Hence EU company law regulations do not pursue the objective of building a heavy and exclusive warship. Instead, they offer various types of corporate vehicles to help entrepreneurs reach their transnational destination by bridging national borders without eliminating the latter. In other words, it is for the purpose of creating a general framework and minimum level playing field with basic features, albeit not necessarily identical in every detail, that formal organizational structures and material law principles are prescribed in the EU company law regulations.

To the extent that the regulatory framework has thereby become clearer, more coherent and transparent, the anticipated consequence is that formation and operational costs may indeed be reduced, management efficiency increased, and the

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100 See e.g. EEIG Regulation preamble and Art. 36; SE Regulation recital 20; SCE Regulation recital 16.
101 See EEIG Regulation Art. 2; SE Regulation Art. 9; SCE Regulation Art. 8; SPE Proposal Art. 4.
102 SCE Study (n 50) at 79.
103 EU Treaty article 5.
104 See Teichmann (n 15) at 234, pointing out that EU companies share the fate of the internal market, which can only bridge the differences of national legal orders but not replace them.
105 It will always remain a challenging balancing act to weigh the benefits of harmonized adaptation measures against the detriments of imposed uniformity. Surely for European enterprises to achieve their objectives, a reasonably conforming framework must be provided within which they may still have to make choices and adapt to different environments while maintaining their transnational identity and structures. See also Teichmann (n 15) at 278, noting that complete approximation of national legal orders is practically hard to obtain and politically not desirable at the moment.
restructuring of whole company groups facilitated. For instance, cost-saving effects may be attributed to the fact that internal governance and board structures have become more uniform across borderlines. While the current enterprise models only represent a step in this direction, a real breakthrough success is hoped to be achieved with the future introduction of a private limited-liability company, which can be easily set up by SMEs without requiring high capital amounts. In any event, expectations are high that an SPE will soon be realized, thus paving the way to a more investor-friendly business environment.

4.2. Procedural Requirements and Costs

From a procedural perspective, European enterprises are subject to certain administrative measures and additional steps, which may be perceived as time-consuming and costly. When planning to opt for a supranational business entity, entrepreneurs must therefore take into account the special procedural implications arising from such cross-border business transactions.

During the initial formation stage considerable efforts must be made to protect the rights and interests of employees. As a precondition to their formal registration, European companies (not including EEIGs which can have 500 employees at most) must evidence that arrangements regarding employee involvement have been concluded or that an agreement could not be reached within the legally prescribed time of 6-12 months. In either way, entrepreneurs will be tested with regard to their negotiation skills and/or patience to wait at least six months before completing formal registration. Since the legal framework governing employee involvement is moreover very complex, this special procedural requirement may have a rather deterrent effect for entrepreneurs, especially in those cases where high employee protection standards already exist.

During the operational stage, special procedural obligations arise in the event of seat transfer to another Member State. In this context, the rights of public authorities, (minority) shareholders, creditors, and other stakeholders to oppose the intended change of seat, all constitute a factor of uncertainty, not to mention the costs resulting from various publication and certification requirements. Moreover, it is mandatory under the current regulations that EEIGs, SEs, and SCEs have their official address within the EU in the Member State – or possibly even at the same place – where its central administration or principal activity is carried out. This requirement, too, has financial implications, because in the event of non-compliance, the business entity is

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107 This does not refer to EEIGs, whose activities are legally restricted and who in particular may not exercise management powers or hold shares in a member undertaking; see EEIG Regulation 3.

108 See e.g. Grundmann (n 11) at 685, referring to “uniform freedom of choice of the structure”.

109 See Adriaan Dorresteijn et al, European Corporate Law (2nd edn Kluwer Law International, The Netherlands 2009) at 102, noting that “the EEIG is not subject to special EC legislation concerning the involvement of employees.”

110 See SE Regulation Art. 12 (n 28); SCE Regulation Art. 11.

111 See EEIG Regulation Art. 12; SE Regulation Art. 7; SCE Regulation Art. 6.
obliged to either transfer its head office or its registered office to the same Member State or else be liquidated.\textsuperscript{112}

Not only the procedural steps associated with relocations, but the choice of corporate seat itself has significant cost implications (e.g. with regard to taxation, labour issues, operative costs, other investment conditions). After all, the place of formal registration often determines the applicable law.\textsuperscript{113} It is also a general default rule of the EU company law regulations that the laws of the Member State shall apply where the business has its registered office.\textsuperscript{114} Hence every decision regarding business seat must take into account far-reaching legal and financial consequences, including tax considerations.\textsuperscript{115}

Under the current tax regime, European enterprises are generally treated in the same way as national entities based on the principle of tax neutrality.\textsuperscript{116} Like partnerships, profits of EEIGs are taxed in the hands of their members,\textsuperscript{117} whereas incorporated enterprises such as SEs may be subject to corporate income taxes, VAT, or capital transfer taxes in accordance with national tax laws. Special exemptions may apply where double taxation treaties or relevant EU provisions exist. For instance, the Merger Tax Directive as amended in 2005 extends the benefits of tax neutrality to cross-border asset transfers, including the case where an SE or SCE transfers its registered office to another Member State, and the case of an SE formation by means of cross-border merger.\textsuperscript{118} In accordance with the principle of deferral, these restructuring operations do not trigger tax payment obligations until the profits are in fact realized. Likewise, the Parent-Subsidiary Directive ensures tax neutrality for transnational corporate groups by avoiding double taxation of profit distributions between parent companies and subsidiaries, which are located in different Member States. An amendment was adopted in 2003 to include SEs and SCEs in the list of companies covered by this directive.\textsuperscript{119}

An overall evaluation of the procedural impacts thus leads to the result that entrepreneurs will have to weigh the expected benefits against the procedural costs. Taking

\begin{itemize}
\item \textsuperscript{112} See EEIG Regulation Art. 32; SE Regulation Art. 64; SCE Regulation Art. 73.
\item \textsuperscript{113} This principle not only applies in Europe, but even more so in the United States, where Delaware has become the favorite state of incorporation. See e.g. Teichmann (n 15) at 331 ff.
\item \textsuperscript{114} EEIG Regulation Art. 2, SE Regulation Art. 9, SCE Regulation Art. 8, SPE Proposal Art. 4.
\item \textsuperscript{115} See Grundmann (n 11) at 530, 543, pointing out that the change of applicable law connected with a seat transfer can “either be a side effect (potentially even unwanted) of a change which is economically meaningful or it can even be an aim in itself and the prime purpose of the transfer.”
\item \textsuperscript{116} See e.g. Roopa Aitken and Chris Morgan, ‘Societas Europaea: Is Tax an Incentive or a Barrier?’ (2004) EBLR 1343, 1346 ff.
\item \textsuperscript{117} According to EEIG Regulation Arts 21 and 40, the profits and losses resulting from the activities of a grouping shall be apportioned and taxable only in the hands of its members.
\end{itemize}
into account various considerations, it may still seem more efficient to employ a flexible supranational vehicle with coherent internal structures and the possibility to relocate to another Member State rather than reincorporating an entirely new business entity under observance of necessary legal requirements and financial costs.\textsuperscript{120}

4.3. \textit{Foreign Investment and Accessibility}

Finally turning to the question of accessibility, it can be noted at the outset that supranational business entities have the special mission to operate freely within the European economic area. As such they are widely accessible by natural and legal persons, including “companies and firms within the meaning of (...) Article 48 of the Treaty and other legal bodies governed by public or private law”.\textsuperscript{121} The only exception is the SE, which requires the pre-existence of companies or legal bodies and can therefore not be established \textit{ex novo} by natural persons. The SE Regulation also restricts the scope of accessibility at the incorporation stage by only permitting public limited-liability companies to form an SE by means of merger.\textsuperscript{122} This stands in contrast to the Cross-Border Merger Directive, which generally allows limited-liability companies (including private limited-liability companies) from different Member States to merge across national frontiers.\textsuperscript{123}

In light of their designated purpose to serve as cross-border vehicles, European enterprise models generally require at least two founding members from different Member States. Where only one legal person is directly involved in the initial incorporation (e.g. transformation of a domestic public-limited liability company into an SE; conversion of a domestic cooperative into an SCE), the cross-border element can be satisfied by evidencing that the founding member has for at least two years had a subsidiary in another Member State. According to the SPE Proposal it might even be possible for a single (natural or legal) person to set up an SPE, although the requirement of a cross-border element is still disputed in this context.\textsuperscript{124}

\begin{itemize}
\item \textsuperscript{120} See also above (n 106).
\item \textsuperscript{121} EEIG Regulation Art. 4; SCE Regulation Art. 2. EC Treaty Art. 48 – now Treaty on the Functioning of the European Union Art. 54 – defines companies broadly as “companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non profit making”.
\item \textsuperscript{122} SE Regulation Art. 2.
\item \textsuperscript{123} See Rickford (n 69) at 1393, 1400 f.
\item \textsuperscript{124} See EP Resolution (n 57) amendment 1, generally agreeing with the Commission’s SPE Proposal that a “cross-border component should not be an obstacle for the founding of a European private company (SPE)” but pleading that the “Commission and Member States should, however, without prejudice to the requirements of registration and within two years of registration, conduct ex-post monitoring in order to examine whether the SPE has the required cross-border component”. As can be seen from EP Resolution (n 57) amendment 70, the EP adopts a broad cross-border concept, which covers not only “establishments in different Member States” or “a parent company registered in another Member State”, but also regarding as sufficient “a cross-border business or corporate object” or “an object to be significantly active in more than one Member State”.
\end{itemize}
From an international business perspective it is of significant interest that foreign entrepreneurs and investors have a chance of participating in the formation of European enterprises. The minimum precondition for EEIG members is that they must at least carry out their central administration or principal activity within the EU.\(^{125}\) Even without their head office located in the EU, foreign companies may be entitled to set up SEs and SCEs, if they are formed and officially registered in accordance with the law of a Member State and have "a real and continuous link with a Member State’s economy."\(^{126}\) This option, which has been implemented by about one half of the Member States,\(^{127}\) therefore allows certain foreign companies (i.e. those who have an operating EU subsidiary or otherwise genuine link with a Member State) to participate as founding members of European corporate vehicles. By opening the door to entrepreneurs from third countries, who wish to expand their business within the European economic area, these legal entities might even become potential sources of foreign direct investment.\(^{128}\)

Finally, considerable leeway is given with respect to membership in the internal governance of European enterprises. This is certainly true for the flexible form of EEIGs, while the more rigid structures of SEs or SCEs at least provide an option to choose between a one-tier and a two-tier board. Subject to certain conditions (e.g. the law of the Member State in which the official address is located), it is possible that both natural as well as legal persons be admitted as EEIG managers or as members of SE/SCE organs. The participation of a legal person requires that a natural person be designated as representative, who shall exercise its functions and be subject to the same conditions and obligations as if he/she personally were a member of the organ or manager.\(^{129}\) In contrast, the SPE Proposal states that only natural persons may be appointed as directors.\(^{130}\)

From a practical viewpoint, it can thus be concluded that European business organizations offer material advantages to a wide circle of entrepreneurs, including foreign investors from third countries. Designed as broadly accessible and flexible corporate vehicles, supranational entities provide various possibilities in terms of formation, internal organization and governance structure, as well as external relationships with third parties. In light of certain restrictions and legal limitations, continued efforts to further improve and perfect these corporate vehicles should be supported. In any event, European enterprise models offer interesting alternatives for conducting cross-border operations and should be taken into consideration for projects and undertakings with European-wide dimensions.

\(^{125}\) EEIG Regulation Art. 4
\(^{126}\) SE Regulation Art. 2; SCE Regulation Art. 2.
\(^{127}\) See SCE Study (n 50) at 225 ff (Appendix 1a: SCE and SE Option Implementation: A Comparison).
\(^{128}\) See Michel Barnert et al, Societas Europaea (Wien 2005), foreword p IV, naming increased foreign direct investments as one of the SE’s advantages.
\(^{129}\) See EEIG Regulation Art. 19; SE Regulation Art. 47, SCE Regulation Art. 46.
\(^{130}\) SPE Proposal Art. 30.
5. Summary and Outlook

In conclusion, many interesting lessons can be learned from European enterprise models. Representing one of the first major projects in the course of European economic integration, the development of supranational legal forms to facilitate cross-border cooperations can indeed be regarded as pioneer undertakings with potential impact for investors from all over the world.

Designed as flexible transnational vehicles operating freely within the EU, these legal entities display special key features, such as European corporate identity, cross-border mobility, as well as European wide disclosure and third party protection. Given these attractive qualities, European enterprises offer interesting perspectives as well as new chances for doing business in the EU market. For instance, when planning corporate restructurings and groups as a whole, they might be useful tools to enhance corporate transparency and efficiency, to reduce administrative and legal costs, and to facilitate the setting-up of subsidiaries. Moreover, these supranational entities are generally widely accessible, including possibilities for investors from third countries to participate as founding members. To the extent that Member States make use of these options, European business organizations might even become potential sources of foreign investment and thus serve as new channels for international financial transactions.

On the other hand, supranational entities are “creatures of the law” and as such do not offer perfect solutions. As the result of negotiated compromises, the enacted EU regulations and rules suffer legal shortcomings and are generally rather complex, often providing further references to the laws of the Member States. Especially the SE reflects the chances and challenges of finding a common path for company law within the internal market. In practice, this has led to different national variations existing under apparently uniform business labels. Moreover, transnational vehicles may be restricted in the scope of their business activities (e.g. EEIG) or require considerable capital amounts (e.g. SE, SCE), which are difficult to fulfill for the vast majority of small and medium-sized enterprises. Thus a number of factual and legal challenges exist to explain the limited success of European enterprise models so far.

Continuing discussions and consultations (including impact assessments, implementation reports etc) are therefore under way and serve as a basis for drawing further lessons of how to improve and promote supranational legal forms. In particular, the adoption of a fourth model type – the SPE – is anticipated for the new future and hoped to provide a real breakthrough success for entrepreneurs. Surely, there are many reasons to conclude that European enterprises have opened new doors for investors from both within and outside the EU and may thus be regarded as interesting models for doing business in a transnational setting.

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132 See Teichmann (n 15) at 616.
<table>
<thead>
<tr>
<th>Legal form</th>
<th>EEIG</th>
<th>SCE</th>
<th>SE</th>
<th>(draft) SPE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum capital</td>
<td>€ 0</td>
<td>€ 30,000</td>
<td>€ 120,000</td>
<td>€ 1 (solvency certificate/ €8,000)</td>
</tr>
<tr>
<td>Natural persons</td>
<td>yes</td>
<td>yes</td>
<td>no</td>
<td>yes</td>
</tr>
<tr>
<td>Legal persons</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>Minimum founding members</td>
<td>2 natural/legal persons</td>
<td>2/5 legal/natural persons</td>
<td>2 legal persons</td>
<td>1 natural/legal person</td>
</tr>
<tr>
<td>Cross-border element</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>no (initial)</td>
</tr>
<tr>
<td>Geminal link element</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>not indicated</td>
</tr>
<tr>
<td>Membership restrictions</td>
<td>max. 20 members (if MS requires)</td>
<td>members actively involved, e.g. as customers, employees, suppliers (if MS + statutes permit)</td>
<td>no natural person as founding member</td>
<td>not indicated</td>
</tr>
<tr>
<td>Primary purpose &amp; objectives</td>
<td>facilitate/develop activities of its members, not profit for itself, personalistic</td>
<td>satisfy members' needs, develop their economic/social activities, e.g. agreements with members to supply goods/services, social objectives</td>
<td>investor-driven profit-making capitalistic</td>
<td>suitable for groups holding constructions capitalistic</td>
</tr>
</tbody>
</table>
Table 1. Cont.

<table>
<thead>
<tr>
<th></th>
<th>EEIG</th>
<th>SCE</th>
<th>SE</th>
<th>(draft) SPE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Activity restrictions</strong></td>
<td>ancillary activities</td>
<td>activities conducted for mutual benefit</td>
<td>not indicated</td>
<td>no public share offering/trade</td>
</tr>
<tr>
<td></td>
<td>NOT: management/supervision shareholding, &gt; 500 employees make loan, transfer property</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Holding construction</strong></td>
<td>no</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td></td>
<td>EEIG can’t be member of EEIG</td>
<td>secondary/second-degree cooperative</td>
<td>SE may set up SE subsidiary</td>
<td>SPE may set up SPE</td>
</tr>
<tr>
<td><strong>Legal personality</strong></td>
<td>yes (except Germany, Italy)</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td><strong>Mandatory organs</strong></td>
<td>members acting collectively manager(s)</td>
<td>general meeting</td>
<td>general meeting</td>
<td>shareholders</td>
</tr>
<tr>
<td></td>
<td></td>
<td>unitary/dual board</td>
<td>unitary/dual board</td>
<td>unitary/dual board</td>
</tr>
<tr>
<td><strong>Decision making</strong></td>
<td>unanimous</td>
<td>majority vote, 50% present (organs)</td>
<td>majority vote, 50% present</td>
<td>see articles of association</td>
</tr>
<tr>
<td>(default rule)</td>
<td></td>
<td>democratic self-governance, 1 man 1 vote, weighted voting allowed to reflect members’ contributions (general meeting)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Shareholder liability</strong></td>
<td>unlimited joint and several</td>
<td>(un)limited</td>
<td>limited</td>
<td>limited</td>
</tr>
<tr>
<td><strong>Real seat</strong></td>
<td>yes</td>
<td>yes (future review)</td>
<td>yes</td>
<td>no</td>
</tr>
<tr>
<td><strong>Seat transfer</strong></td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td><strong>Employee involvement</strong></td>
<td>no</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td><strong>Primary target group</strong></td>
<td>e.g. R&amp;D, marketing &amp; distribution economic associations</td>
<td>social enterprises</td>
<td>large companies, e.g. financial, insurance, service sector</td>
<td>SMEs</td>
</tr>
<tr>
<td></td>
<td>more than 2000</td>
<td>17</td>
<td>more than 600</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(e.g. Belgium, Germany, France)</td>
<td>(e.g. Italy)</td>
<td>(e.g. Germany, Czech Republic)</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>