



**ORGALIME COMMENTS ON THE COMMISSION'S PLAN TO MODERNISING
EUROPEAN COMPANY LAW AND ENHANCING CORPORATE GOVERNANCE IN THE
EUROPEAN UNION
Commission Communication COM (2003) 284 final**

Orgalime Position Paper

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1. Introduction

ORGALIME represents the interests of the European mechanical, electrical, electronic and metalworking industries at the level of the EU. Our members include, at the present time, 32 national trade federations representing some 130.000 companies in 21 European countries. These industries, which include mainly SMEs, employ some 7.3 million people and account for around 1.200 billion Euro of output. In 2002 exports of these products represented some 53% of the output of the industry and of this nearly 60% was within the EEA.

While Orgalime believes that the internal market generally functions well at the level of free circulation of goods, we do however believe that European companies still face serious problems and costs when setting up European-wide company structures. In particular, SMEs with their limited financial and personnel resources are significantly affected by these problems.

2. General Remarks

By launching the initiative to modernise European company law, the European Commission has initiated a very important debate. Orgalime particularly welcomes the Commission's approach not to focus only on the harmonization of stakeholders' rights and third parties' protection, as was the case in the past, but rather to create a framework of company law which fosters efficiency and competitiveness of businesses.

The Commission correctly comes to the conclusion that there are still problems in the internal market particularly for small and medium-sized enterprises (SMEs). In practice the export-oriented companies of the engineering industry face significant difficulties when setting up subsidiaries in different EU member states in order to establish a EU-wide distribution and service network. On the occasion of the previous consultation on modernisation of EU company law, one of Orgalime's members conducted a survey with respect to these difficulties. The results of this survey demonstrated that companies are not satisfied with the current situation with respect for setting up subsidiaries under 15 different legal systems and that they clearly need a EU-wide legal company statute facilitating the incorporation of subsidiaries in the EU.

While we fully support UNICE's position on the issue, in the present position paper we focus our comments on the Commission's action plan on the chapter on the European Private Company, which is of considerable importance for our industry.

3. European Private Company

Orgalime strongly welcomes the fact that the Commission has not followed the advice of the High Level Expert Group to take measures for the creation of a European Private Company only after the 10th Company Law Directive on cross-border mergers has been adopted. Such a prioritisation of measures would have meant an entirely unjustified postponement of a project which is of utmost importance for SMEs in Europe.

The Commission has recognised that the most important advantage of a EU-wide company form for SMEs is not in the first place the facilitation of cross-border mergers, but rather the efficient and quick incorporation of subsidiaries in different EU member states.

Orgalime supports the Commission's approach to start with a feasibility study in order to identify benefits and problems of a European statute for SMEs and to explore the framework conditions in EU member states with respect to company, social and tax law. The study should serve the purpose of avoiding similar problems as faced during the long negotiations on the statute for the "Societas Europae" (SE).

However, we feel that it is important that the study adopts a practical approach. In our view the selected contractor should be required to involve associations and companies concerned, in order to ensure that practical input is obtained. A mere academic exercise without taking into account the actual problems and needs of businesses would not be, in our opinion, a worthwhile approach.

The study must also consider the situation in the acceding countries and identify the benefits the European Private Company may create for enterprises in these countries. The European Private Company has the potential to make an important contribution to the effective integration of acceding countries into the internal market.

We therefore regret that, in discussions on the European Private Company to date, the most important advantage from our perspective- the incorporation of subsidiaries in different EU member states under the same conditions and thus enhancing the level of legal certainty for SMEs – has not played an important role. We therefore, strongly recommend that the Commission should already during the negotiations with potential contractors insist on including in the study an specific chapter dealing with this advantage for SMEs. The possibility to set up subsidiaries on the basis of model articles of association would help to overcome the still existing inhibition threshold to establish subsidiaries in other EU member states. Moreover, companies could easily and in a cost-efficient way set up a uniform distribution and service network.

4. Conclusions

Orgalime supports the efforts of the Commission to modernise European company law. In this context, the creation of a European Private Company is of special importance. We think that it is the right decision of the Commission to launch by the end of the year a feasibility study on the potential benefits and problems of the EPC. However, we request the Commission, when negotiating with potential contractors, to insist that the future contractor shall take following aspects into account:

- Involvement of companies and associations in order to guarantee practical relevance of the study;
- Consideration of the situation in acceding countries;
- Consideration of a specific chapter on the European Private Company as an instrument to facilitate the efficient establishment of a distribution and service network.

We would of course be pleased to provide further input and to collaborate with the Commission's services in any preparatory work.