

Proposal for a Directive on European single-member companies

Proposal for a Directive concerning the introduction of a new legal form of single-member companies (Societas Unius Personae)

The Commission's proposal dated April 9, 2014 (COM (2014) 212: Directive on single-member private limited liability companies) provides for the introduction of a new legal form, namely the single-member company (Societas Unius Personae, "SUP"). By means of the Directive, the legal framework for single-member companies shall be harmonized, so that, in particular, the establishment of this type of companies would be less time and cost-consuming.

The SUP could be particularly attractive for small and medium sized companies willing to establish subsidiaries in other EU-Member States but refrain from doing so because of the high legal expenses and organisation costs. Even larger corporations might be interested in making use of the new opportunity for a simplified formation of companies in other EU countries.

I. Legal Aspects of the SUP

The Member States would be bound by the Directive, as amended in the Commission's proposal, to implement a national company form with the EU-wide abbreviation "SUP" in their national jurisdiction. Accordingly, the SUP would not be introduced as a supranational company, but would be governed by harmonized national law.

II. Harmonization of National Rules

The establishment and organization of the SUP would be carried out according to the harmonized national rules. In particular, the establishment of the Company would be simple, fast and above all affordable. The foundation would indeed be possible through an online registration and the use of standard articles of association without notarization being necessary. Thus, the foundation would be possible without physical presence of the founder, his representative or even an authorized representative. The correspondence could be made using any EU official language. Another advantage in opting for establishing the SUP would consist in that the share capital will amount to only one Euro.

However, not only the new formation of a SUP, but also the transformation of an already existing national legal entity shall be permissible. Insofar, national laws with regard to the conversion of the legal form of an entity would apply.

The proposal for a Directive does not provide for an obligation for the SUP to set up reserves (unlike, for example for the limited liability entrepreneurial company (Unternehmergeellschaft, "UG haftungsbeschränkt")), which could lead to a lack in the protection of creditors. This is one of the main points of criticism raised with respect to the Directive.

III. Legislative Procedure

The intention of the Directive facilitating the cross-border business activities is no new one. Already in 2008, the European Commission presented a proposal for an European private company ('SPE'). Following to the failed unanimous adoption by the Member States, the proposal was abandoned and withdrawn by the Commission, but the aims pursued with the Directive never been given up. The current draft of the Directive on SUPs tries to take into account and to improve those points of criticism that had previously hindered the implementation of the SPE.

On 21st of May 2015, the Council has changed the original proposal for a Directive on specific points and already adopted a general approach. The relevant committees of the European Parliament are currently preparing their opinions; the first reading in plenary is expected to take place in September 2016.

Since the project is subject to the "ordinary legislative procedure", the Council and the European Parliament will have to agree on a common position. Thus, whether it comes to the necessary agreement or whether the Directive on SUPs will suffer the same fate as the

Directive on SPEs still remains to be seen.

With adoption of the Commission's proposal, the implementation by the respective national legislation would be required within 24 months. Therefore, an implementation prior to the end of 2018 will be unlikely.

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