

Position Paper

UEAPME¹ position on a proposal for a Directive of the European Parliament and of the Council on single-member private limited liability companies (COM(2014) 212 final).

On 9th April 2014 the European Commission adopted a proposal for a Directive of the European Parliament and Council on single-member private limited liability companies.

According to the Commission, the overall objective of this proposal is to make it easier for any potential company founder, and in particular for SMEs, to set up companies abroad. This should encourage and foster more entrepreneurship and lead to more growth, innovation and jobs in the EU.

Although the majority of SMEs conducting cross-border activities prefer to develop activities or provide services while keeping their establishment in their country, there might be other companies wanting to set up a separate legal entity in another EU Member State, e.g. in order to build up distribution structures.

The objectives of the SUP proposal – make it easier and less costly to set-up companies across the EU and facilitate cross-border trade, especially for SMEs – are consequently definitely welcomed. However, the proposal has a number of serious shortcomings. This position paper suggests some possible solutions to address these concerns. UEAPME also regrets the lack of consultation and dialogue by the Commission with the representative SME organisations in drafting the proposal.

UEAPME stresses that the objective should be to create healthy and sustainable companies. This requires preparation and tailored advice for the entrepreneurs. While this is of course not part of a legal proposal, it seems that the authors of the proposal underestimate its importance within the process of companies set-ups.

While any reduction of cost has to be welcomed, the expected reduction of costs will be quite limited. Indeed, the entrepreneur will in any case need legal advice on alternative company forms and related questions such as implications for taxation and access to finance. Furthermore, in case the SUP is opted for as company form, many issues, such as the choice of company name (registrability, e.g. danger of confusion), capitalisation of the company and the articles of association – which might cover more details than the ones foreseen by the template of articles of association to be adopted by an implementing act (art. 11) – have to be duly analysed. Reduction of these costs might only be possible if the entrepreneurs already possess sufficient knowledge through training or experience.

It should also be stressed that while there is one legal form suffix (SUP), the SUP will be a hybrid company form with potentially 28 different varieties, depending on the place of registration (art. 7.3). Therefore, it appears to be mandatory to complement the acronym SUP with the name of the country of registration.

¹ UEAPME subscribes to the European Commission's Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is [55820581197-35](#).

One of main elements of the proposal is to renounce to any substantial minimum capital requirement by stipulating that the share capital shall be at least € 1, or at least one unit of the national currency in a Member State in which this is not the EURO. In order to take account capital maintenance issues, a solvency test is being proposed (art. 18.3). This approach, well known from Anglo-American company laws, appears to conflict with some continental European law traditions.

In some jurisdictions, so far, a substantial minimum share capital is required in order to protect the interests of other SMEs such as creditors, clients, employees, and the public in general.

UEAPME² would like to stress that the markets in countries where the € 1 companies exist are starting to react and ask for other guarantees. For a small entrepreneur, in general, this means personal guarantees. Apart from nullifying the advantages of the limited liability, it is jeopardising the essence of a limited liability company and exposes the entrepreneur and its family to serious dangers. € 1 capital companies in some countries do not have a good reputation and risk to be mistrusted by other economic players. As they do not generate confidence, they will not be successful. Issues of capital contribution and maintenance were already highly controversial topics during the political debate on the proposal for an EPC statute. It would therefore be wise to leave the question open, thus depending on the place of registration.

In UEAPME's opinion, the directive should – contrary to what is proposed in article 16.4 – leave it up to the Member States to establish rules requiring the company to build up legal reserves.

Furthermore, the proposal does not take into account the differences in the entrepreneurial tradition among the member states. In some countries, sole entrepreneurship is the prevailing pattern, while the proposed directive only addresses companies. The Commission shall ensure that Member states allow entrepreneurs to set up a business either under the sole proprietorship status or under the single or multiple member company status.

The distinction between a company's registered office and its administrative headquarters – whereas SUPs are subject to the law of the Member State in which they are registered – can lead to unfair competition, at the expense of local active SMEs which do not have the possibility to choose the most favourable law. This mechanism also has the potential to facilitate the creation of so-called letter box companies.

The proposed uniform template is welcomed. However, the cost saving element should not be overestimated. Indeed, a start-up or an SME entrepreneur will regularly need legal advice on the meaning, consequences and implications of the different provisions. Assistance will be needed from business organisations, notaries or lawyers in many instances. Therefore, while we are in favour of the use of standard statutes, they should not be compulsory as suggested by the proposal. In practice they will have to be adapted to the particular needs of the individual SMEs. In the proposal, amendments are only possible after the registration, which is certainly not a good example of simplification or flexibility.

UEAPME warmly welcomes the possibility to complete the **registration procedure electronically at distance**. However, the necessary security measures should be in place in order to check the real identity of the owner and disclose it in a secure manner. The Internal Market Information System (IMI) could deliver a valuable contribution for assuring authenticity and integrity issues.

For example³, the company founder might only be required to present him- or herself in front of a competent authority or notary in the home Member State in order to purpose establishing the identity and validating the authenticity and integrity of relevant documents. The results of such checks could be documented in the IMI-system and then used by the competent authority in the Member State of registration.

² With the exception of the Federation of Finnish Enterprises.

³ With the exception of WKÖ and APCMA.

Regarding the question of labour rights, UEAPME is of the opinion that this should be left to subsidiarity.

In UEAPME's ⁴view, the possibility to create a SUP should also be limited to SMEs in order to ensure the directive is favourable for SMEs. The light legal structure is certainly not adapted to bigger companies. If the proposal is not limited to SMEs, the issue of labour rights and employee participation cannot be left to subsidiarity. Limiting the scope to SMEs will also imply that, when the SUP reaches a certain size, the company has to be turned into another company statute.

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4 With the exception of WKÖ