



European company law form designed for SMEs

This paper concerns small and medium-sized companies (SMEs) challenges to establish companies across EU due to linguistic, administrative, or legal differences between Member States. BusinessEurope is therefore advocating for a new instrument that facilitates expansion of activities in the EU.

CONTEXT

SMEs account for over 99% of companies in EU, but only 2% of the European SMEs invest abroad by establishing companies there¹. This is due to linguistic, administrative, and legal differences between Member States, which makes it difficult to create subsidiaries abroad.

Further, solely 3% of start-ups become scale-ups in Europe. This rate is too low and underlines the need for a legal vehicle allowing companies to better manage their expansion within the European Union. Business need common rules to structure themselves as European business.

LEGAL FRAMEWORK

The recently adopted European company law package is intended to facilitate some cross-border mergers (e.g. conversion, divisions, and mergers) but relies (and refers to) heavily on national laws on detailed procedures.

The Societas Europaea (European Company Statute), that already exists, has not picked up on the issue as expected due to its complexity, inaccessibility for smaller companies (e.g. minimum share capital of EUR 120.000) and numerous references to national law.

There is a gap between a company law form designed for SMEs which can take inspiration from the European Company Statute and previous proposals more focused on the smaller SMEs.

One of the central proposals of the Commission's 2008 Small Business Act tried to introduce a European company form (also known as Societas Privata Europaea).

¹ Annual Report on SMEs 2017/2018: Special Background Document on Internationalization of SMEs, p.7



Despite of the strong support of several Members States and the wide business community, the SPE proposal was withdrawn in 2013.

In 2014, the Commission brought forward a proposal to harmonise national company law on single-member limited liability companies (SUP), allowing companies to establish subsidiaries in any of the EU Member States. The proposal was, however, also withdrawn in 2018.

EXAMPLE

A Copenhagen-based bike sharing service that serves 10,000 bikes across 12 cities in Europe has established companies across EU to increase the chance of winning local tenders and to fulfil legal requirements regarding employees or leasing of vans. The company has among others bought existing companies in Spain and Germany and started new companies in the Netherlands and Hungary.

For the company, as an SME, it is a difficult and expensive process to acquire or establish companies in other EU countries. There are different legal conditions that apply across EU which the company needs to investigate each time: for example, what a director of a German or Hungarian company is liable for. In some Member States, it is required that all directors of the company are physically present when registering a company and setting up a bank account. However, in other Member States, it can all be done online. There are also burdens in connection to translation, traveling costs, and obtaining important documents. This creates a risk and financial burden every time the company wants to scale up and sell in a new EU country. Each time, they must do a lot of research before determining their investment.

HOW TO ACHIEVE BETTER RESULTS

Create a new European company law form designed for SMEs. EU should continue to explore the possibilities around providing an instrument that facilitates expansion of activities in EU. The form should among others:

1. **Be a limited liability company** available to all, on a voluntary basis, whether natural or legal persons, single or multiple shareholders.
2. **Have no compulsory cross-border character** but it should have the possibility to transfer the company to any Member State, without any dissolution or creation of a new legal person.
3. Be eligible to be **formed from scratch**, in order to foster entrepreneurship.
4. **Have significantly larger contractual liberty** with reference to the regulation, to the company's statutes and, only where necessary, to national law.
5. **Low entry minimum capital.**

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