

6 September 2013

SINGLE-MEMBER LIMITED LIABILITY COMPANIES

KEY MESSAGES



- 1 European company law should aim at improving the regulatory environment in which European companies operate whilst facilitating their mobility across borders.
- 2 The European Private Company Statute (SPE Statute) remains a priority for BUSINESSEUROPE members as a tool to enhance company mobility.
- 3 A possible initiative on the European single-member company could bring benefits to the internal market provided that certain conditions are met.

WHAT DOES BUSINESSEUROPE AIM FOR?



- *A possible initiative on a single-member limited liability should:*
 - *Take into account well working existing initiatives at member state level with their national specificities. Companies do not want to lose the simplified nature of those systems.*
 - *Reduce to a minimum cross-references to national legislations.*
 - *Contain simple and clear rules on formation and registration whilst avoiding making a distinction on the basis of size of companies.*
 - *Leave questions related to employee participation to national systems.*



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QUESTIONNAIRE ON SINGLE-MEMBER LIMITED LIABILITY COMPANIES

Introduction

BUSINESSEUROPE stresses that the European Private Company Statute (SPE Statute) remains a priority for its members as a tool to enhance company mobility in the EU although the prospects for political consensus on this proposal are narrow.

Harmonisation measures of a single-member company could be one alternative to the SPE Statute but not a direct replacement.

With regard a potential initiative on a single member company BUSINESSEUROPE would like to stress that it must take in to account:

- Well working existing initiatives at member state level with their national specificities. Companies do not want to lose the simplified nature of those systems;
- That flexibility is key for any successful harmonisation, especially in the company law arena;
- Questions related to employee participation should rather be left to national legislations;
- That cross-references to national legislation should be reduced to a minimum.

The need for harmonisation:

1. Do you agree with the finding that the overall participation of SME's in cross-border trade/activities in the EU is low in relation to their potential?

Yes

2. Is it difficult for SMEs to expand their commercial activities/trade by setting-up a branch or subsidiary abroad (within the EU)?

Yes

3. Is it difficult for SMEs to move their registered office, headquarters or principle place of business abroad (within the EU)?

Yes, but not only SMEs face difficulties.

Despite an already extensive jurisprudence of the Court of Justice of the EU on the matter, companies still face difficulties when they want to move their registered offices to another member state. In most cases this cannot be achieved without a dissolution of the company in the host member state. Therefore, businesses cannot yet fully enjoy the right to relocate and reap the potential of the Internal Market.



4. Why is it difficult to move or expand a commercial activity/trade, by setting-up a branch or subsidiary, abroad (within the EU)?

- a) *Compliance costs with foreign legislation on company law issues (translations, registration requirements/fees, capital requirements, reporting, operational/running costs including legal advice related to it, etc.);*
- b) *Legal advice costs related to the set-up of the company in the foreign legal system;*
- c) *Other: language, size of the company, geographical distance.*

5. Within compliance costs, which do you consider as being the biggest obstacle to moving or expanding the commercial activity/trade, by setting-up a branch or subsidiary, abroad (within the EU) ?

All the obstacles mentioned are important. However, the relative weight of each of these hurdles in the decision of companies to go across borders depends from country to country and from company to company.

6. Would the legislative harmonisation of requirements concerning single-member private limited liability companies at the EU level encourage/facilitate an increase in cross-border activity of SMEs within the EU? (harmonization could include, inter alia, registration, methods of formation, initial capital, protection of creditors, transfer of registered office, registration of branches)

Yes, provided that sufficient empirical evidence is found that such harmonisation could help fight some of the hurdles impeding companies to move or expand their business across-borders.

What would otherwise increase such activity of SME's?

Information campaign

A potential initiative on single member companies:

1. Should the potential initiative include simple rules for company registration on-line with one common standard registration form throughout the EU?

Yes

There should be as minimal formalities as possible. This should be without prejudice to potential safeguards related to authentication procedures.

2. Should the potential initiative include rules on on-line creation of branches abroad (within the EU) via the central platform of interconnection of national business registers ?

Yes

However, BUSINESSEUROPE members also believe that other types of companies other than the single member company should be able to create branches within the EU through online registration.

3. Should the potential initiative harmonise the amount of minimum legal capital required for the setting-up of a single-member private limited liability company ?

There is no consensus among the membership of BUSINESSEUROPE on the amount. It should be taken into account that in some Member States no minimum capital is required.



4. Should the potential initiative include rules on distributions/dividends if a company would be unable to continue paying its due debts after the distribution/paying the dividends?

Yes

5. In case of minimum capital being more than 1 euro, should the potential initiative include rules on the opposition of creditors to a significant reduction of capital?

Creditors should be protected in accordance with existing EU rules. In addition, any provisions included in a potential instrument should be consistent with insolvency rules in order to prevent an overlap.

6. Should the potential initiative include rules on the transfer of registered office?

Further harmonisation of rules on cross-border transfer of seat is needed not only at the level of single-member companies but it should be extended to all companies.

A fundamental improvement would be to recognise the separation of registered seat and principle place of business.

8. Should the potential initiative provide for limits as to how many single-member private limited liability companies one natural or legal person can create?

No. Any restriction would risk being arbitrary and limit too much entrepreneurial rights. This should however be without prejudice of measures addressed at fighting tax fraud and other misuses.

9. Should the potential initiative include special rules for SMEs which would make the setting-up of single-member private limited liability companies easier and cheaper for them than for bigger companies?

No. If the objective is a harmonised company law regime for single-member companies, there is no justification for making a distinction between large and small single-member companies. Making such distinction could lead to fragmentation. Restricting the harmonised regime to SMEs only would overlook that successful SMEs could outgrow the regime and then would have to convert. In addition, one should not forget that groups of companies are often, themselves, composed by many SMEs.

10. Should the potential initiative provide for a new common abbreviation (like SEUP – Societas Europea UniPersonam) for all single-member private limited liability companies in the EU in order to increase the trust in “foreign” company law forms?

No. Using this designation would only make sense if there is a truly uniformity on the main elements of the initiative, for example if the possible initiative would effectively create an European company form (as the European Company Statute) but addressed to single member companies.

11. Should the potential initiative cover, not only single-member private limited liability companies, but also single-member public limited liability companies ?

No. The potential initiative should first only focus on single-member private limited liability companies.
