

SINGLE MEMBER COMPANY PROPOSAL (SUP)

Background

The European Commission has [proposed a directive](#) to harmonise rules for the creation of companies in the EU with a single member/shareholder. The aim is to make it easier for SMEs to operate across borders by breaking down legal barriers to the creation of subsidiaries in another Member State. It focuses on the harmonisation of those areas of national law (e.g. formation, minimum capital, registration, articles of association, distributions, etc) which are needed to set up a company rather than the creation of a new EU legal form. Companies formed under the new rules would bear a common label in every Member State: 'SUP' - *Societas Unius Personae*.

Key BUSINESSEUROPE messages

- 1 The Single Member Company proposal has some potential to help cross-border mobility of companies in the EU. Small and medium size companies (SMEs) but also groups of companies could be benefited.
- 2 BUSINESSEUROPE would have preferred a renewed attempt to adopt the European Private Company Statute.
- 3 Existing national single member company forms should not be put at stake by this proposal.
- 4 Low minimum capital, possibility to set-up online and a uniform template of the articles of association are fundamental elements from an entrepreneurial point of view.
- 5 Safeguards regarding the verification of the single shareholder's identity are essential.
- 6 Workers participation provisions should be left to national legislations.
- 7 The current proposal will need some adjustments and clarifications in order to bring real added value for companies (see comments at annex).

KEY FACTS AND FIGURES

Only 2% SMEs invest abroad by setting up companies in other countries	It is not yet possible to set up a company online in every Member State (only 16)	5.2 million SMEs in Europe (out of 21 million) are single-member
Companies often face legal, administrative and language barriers when transferring or setting-up a subsidiary abroad	National minimum capital requirements for single member companies vary from 0€ to 12 394€	Costs of setting-up a subsidiary can vary in 20 000€ if it is done 'abroad' or at 'home'



ANNEX: Technical comments

Preservation of national single-member company forms

In the past years, Member States have developed simplified forms of companies which have been very successful among entrepreneurs because of their simplicity and flexibility (e.g. *SASU* in France or *eenpersoons-BV* in the Netherlands). For BUSINESSEUROPE, it is key that these company forms are not put at stake. We should avoid the risk of submitting these existing company forms to requirements that would make them less attractive to entrepreneurs. The SUP should therefore be a separate company form alongside existing national company forms.

Contracts between the single member and the company – Article 5(2)

If contracts are considered to be concluded under market conditions in the ordinary course of business they should not be by definition detrimental to the company. BUSINESSEUROPE believes that this paragraph should be rephrased in order to avoid that these operations are submitted to unnecessary burdens.

Participation of SUP in other companies – Article 6(2)

BUSINESSEUROPE supports this provision allowing SUPs to be single members in other companies.

Common abbreviation *Societas Unius Personae* (SUP) – Article 7(3)

BUSINESSEUROPE believes that using this abbreviation would only make sense if there would be a true uniformity on all elements of the initiative which is not the case at hand. For example, if this initiative would effectively create a European company form as the European Company Statute (SE), then the common abbreviation as such would be more suitable.

However, because this proposal includes several references to national legislation it will be difficult for third persons (e.g. creditors, suppliers, clients) and authorities to assess which national law is applicable to a particular SUP. Therefore, adding the country name after the abbreviation SUP should be considered.

Law of the Member State of registration of the SUP – Article 7(4)

For the sake of clarity, BUSINESSEUROPE believes that it would be useful to list in a recital – in a non-exhaustive way - examples of elements that shall be governed by the national laws of the Member State where the SUP is registered (e.g. legal capacity, issues related to legal personality, illegality, reporting obligations).



Seat of the SUP – Article 10

BUSINESSEUROPE welcomes the flexibility provided for in this article regarding the possibility for an SUP to establish the central administration or principal place of business in different places within EU. This is a major step forward allowing companies to take full advantage of their fundamental freedom of establishment foreseen in the EU Treaties.

We regret that the issue of transfer of registered office of a single member company is not covered in the draft proposal.

Standard template for the articles of association – Article 11

The proposal provides for a standard template for the articles of association covering minimum elements (e.g. formation, share capital, organisation, accounts etc). For BUSINESSEUROPE, the potential of this directive is highly dependent on the existence of a standard form in different languages. Particularly in the case of online registration this template would become both a time and cost-saving tool and an extra safeguard where an intervention by a notary is not critical.

Future users of the SUP – benefiting from their experience with other company forms – should be able to give their input on the content of the template. The latter should not be ‘materialised’ by a simple implementing act of the Commission.

The template should reflect the freedom of choice of the founder on different components. It could provide a minimum set of binding articles alongside a set of ‘either/or’ articles (e.g. choice of one or two tier board organisation). This would allow a newly created SUP to choose, at the moment of its registration, the most simple combination of articles and at a second stage, it could adapt its articles of association (according to its needs and growth) and still fall within the scope of the harmonised template.

Without any flexibility regarding the template as well as on the possibility to amend the articles of association as the business evolves (foreseen in Article 12), the current harmonisation will quickly become a burden rather than a useful tool to help companies benefiting from their freedom of establishment within the internal market.

In addition, for BUSINESSEUROPE it would be important to clarify whether compliance with all the articles of association of the template is necessary in order for a SUP to be created *ex nihilo* or through conversion.

Registration formalities – Articles 13, 17 and 22

According to paragraphs 1 and 2 of Article 17, the share should be fully paid to the bank where the SUP has an account at the moment of online registration. Paragraph 3 further establishes that a Member State shall accept the evidence of payment if the cash payment is done into an EU bank account. However, the proposal is silent on the type of proof of payment required.



BUSINESSEUROPE believes that there should be a possibility for the registration body to demand a proof of the payment of the share in case it needs to verify the reliability of the statement of payment made by the founder.

Article 22 on the managing bodies of the SUP allows for the establishment of a supervisory board. If the founder chooses to have a management structure with a supervisory board, this information should be included in the disclosure elements of paragraph 1 of Article 13.

Obligation to disclose the identity of the beneficial owner - Article 13(1)(d)

A revision of the EU rules on anti-money laundering is currently taking place where the issue of disclosure of the beneficial owner is one of the elements being discussed. BUSINESSEUROPE believes that the SUP proposal should avoid imposing overlapping or inconsistent requirements in relation to that revision. It should suffice to request the identification of the founding member and, where applicable, the representative that registers the SUP on behalf of the founding member.

Possibility for online registration – Article 14(3)

One of the main features of the SUP proposal is the possibility for online (electronically) registration. This follows a trend witnessed in sixteen Member States where it is already possible to create a company online.

BUSINESSEUROPE supports this element of the proposed directive. This feature is a key cost-saving tool when creating a subsidiary, in particular in the cross-border context.

Rules on verifying the identity of the founding member – Article 14(5)

This paragraph gives Member States the freedom to issue rules for verifying the identity of the founding member or its representative as well as the acceptability of documents and other information submitted to the registration body.

In BUSINESSEUROPE's view, identity verification is a fundamental requirement, especially in the case of SUPs registered online. In order to avoid that different approaches are taken at national level, minimum requirements should be developed at the EU level in order to help national registration bodies to accurately and swiftly check the identity of the founding member. For this purpose, this proposal should be in line with Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market.

Making sure that national registers hold a power to deny registration of the SUP in case of insufficient identification or incomplete documentation should be considered.



We believe that these adjustments in the proposal would help preserving the public faith deposited in national commercial/company registers and in the information they preserve. This would be consistent with the fight against money-laundering, as mentioned above.

In addition, given that the draft directive requires that the registration certificate is issued within three working days from receipt of all the necessary documentation, ensuring a reliable and quick verification is even more important.

BUSINESSEUROPE welcomes the reference to the Internal Market Information System (IMI). We believe that this instrument could play an important role in helping authorities to share information relevant to the creation of the company (e.g. knowing if a director has been disqualified in another member state for fraudulent behaviour). However, further efforts are needed to ensure that as many authorities as possible are registered and that the range of matters integrated in the IMI system are expanded.

Registration non conditional to pre-existing license or authorisation – Article 14(6)

The Directive should not in itself require a license or authorisation prior to registration of SUP's engaged in certain types of activities, but should also not prevent Member States from requiring such authorisation for activities where such authorisation is also required for other types of companies (e.g. banking or other financial services).

Minimum capital of 1 EUR - Article 16

Low capital requirement for simplified forms of companies is not something new in the EU. At least 14 Member States allow for the creation of a company with a minimum capital requirement of 1 EUR or no minimum capital.

BUSINESSEUROPE supports the setting up of a share capital at 1 EUR. This will open the door in Europe for the creation of single member start-ups, potentially the biggest users of this tool. Inevitably, a combination of safeguards will be necessary to avoid abuses.

Paragraph 5 of this article establishes the obligation to state the capital subscribed in letters, order forms or other communication tools, which can sometimes be misleading about the company's real financial situation. As an alternative, it would be more useful to require the publication of the place of registration and the registration number as foreseen in Article 5 of Directive 2009/101/EC on coordination of safeguards for the protection of the interests of members and third parties.

Decisions by the single member – Article 21(2)

For BUSINESSEUROPE, 'creation of reserves' and 'mergers and divisions' should be added in paragraph 2 to the list of elements the single member shall decide.



Powers of the supervisory board – Article 22(3)

It is unclear which competences can be attributed to a supervisory board. In addition, only members of the “management body” are included in the definition of “directors” in Article 2(5). This should be amended in order to take account of the possibility of a supervisory board.

Change of a company director – Article 22 and Article 13

It should be clarified whether the change of managing director would imply undergoing the same requirements foreseen in Article 13 relating to the verification of identity.

Shareholders instructions and group interest debate – Article 23

This article provides an opportunity for the single member to give instructions to directors which would be binding except where they are contrary to the articles of association and the applicable national law.

In a situation where the single member is a legal person, this provision could lead to the recognition of an *'interest of the group'* at European level. The question on whether or not to recognise such an interest is part of a wider European debate where after several years of discussions no consensus has been reached amongst Member States, practitioners and stakeholders.

Moreover, this provision leads to a situation where the single-member can be considered as *de facto* director. In that respect, as soon as the single-member would give instructions to the management body, he or she would *de facto* become a director within the definition of Article 2(5).

Therefore, BUSINESSEUROPE does not see the added value of tackling this issue in the proposal.

Workers participation

BUSINESSEUROPE supports leaving workers participation provisions to national legislations.
