Proposal for a Directive on Single-member Private Limited Liability Companies

June 2014

On 9 April 2014, the European Commission presented a proposal for a Directive on single-member private limited liability companies. The proposed Directive aims to facilitate establishing companies with a single-shareholder across the EU.

After the failure to adopt the proposal for a European Private Company Statue, regulating the so-called Societas Privata Europaea (SPE), the European Commission intends to address at least some of the obstacles the SPE was meant to resolve.

The proposed Directive facilitates cross-border activities of companies by requesting member states of the EU to provide in their legal systems for a legal entity that follows the same rules in all member states: the Societas Unius Personae (SUP).

Incorporation costs for the SUP will be diminished as a result of a harmonised online registration procedure and by using a uniform template for the articles of association. More tailor-made articles of association are permitted if the relevant member state

In Detail

Harmonised national requirements and one common name

Currently, there is already a Directive on single-shareholder private limited liability companies in force which was adopted in 1989 and codified in 2009. However, this Directive provides only for limited harmonisation of national laws by requiring that companies may have a single-shareholder in all member states and regulating the powers of that single-shareholder in relation to the company. As the Directive does not address issues such as formation, registration requirements, creditors’ protection or minimum capital requirements, it does not make it easier for businesses to set up companies abroad. The proposed Directive would in practice replace the existing Directive.

The proposed Directive provides that an SUP can be formed by way of (i) incorporation by a natural person or a legal
entity, or (ii) by way of conversion of a legal entity listed in annex 1 to the proposal. Legal entities mentioned in this annex are, among others, the Dutch BV, the German GmbH, the French Sàrl and the UK Limited. Formation of an SUP by conversion does not result in any winding-up procedures, any loss or interruption of the legal personality or affects any rights or obligations existing prior to the conversion.

An SUP, as currently proposed by the European Commission, has inter alia the following characteristics:

- Legal personality will be acquired on the date of the registration in the companies register of the member state where the SUP will have its registered office;
- The law of the member state where the SUP is registered, is the governing law;
- An SUP can only have one shareholder to whom only one share can be issued;
- The share capital has to be at least EUR 1 (or equivalent to one unit of a member states’ currency if the euro is not the national currency of that member state);
- Distributions can be made on the basis of
recommended of the management board; Distributions are only allowed insofar as the net assets will not become lower than the amount of the share capital plus the reserves prescribed by the articles of association. The SUP shall not make a distribution if, as a consequence, the SUP will not be able to pay its debts as they become due and payable after the distribution;

The single-shareholder is allowed to adopt resolutions without convening a general meeting. No formal restrictions apply (including restrictions on place and time); and, The single-shareholder is entitled to give binding instructions to the management board. **Action**

The proposal will be submitted to the European Council and the European Parliament for their consideration and final adoption. Once adopted, the new Directive has to be implemented into the national laws of all EU member states.

The European Commission expects the Directive to come into effect in 2015.

As a result of the Directive, it should be easier and less costly for
businesses to incorporate subsidiaries in other member states.

Who to contact

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