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EU Commission Proposes Further Harmonisation of Single-Member Companies

The proposed directive seeks to coordinate national requirements concerning the formation, registration, and operation of single-member companies.

On 9 April, the European Commission published a provisional draft of a new directive on single-member private limited liability companies (Directive),¹ which aims to make it easier and less costly to set up private limited liability companies with a single shareholder across the European Union (EU). The Directive is intended to benefit small and medium-sized enterprises (SMEs) active outside their country of incorporation.

Background

According to the European Commission, SMEs produce 58% of EU GDP and account for 67% of all jobs in the private sector. However, they often find it costly and difficult to conduct business outside their own country, and only around 2% of all SMEs have presence abroad in the form of a subsidiary, branch, or joint venture. This is in part because setting up a subsidiary (the legal form most commonly used by European SMEs) abroad is often burdensome due to conflicting company law requirements in national legislations across the EU.

There is already a directive at the EU level on single-member private limited companies (Directive 2009/102/EC), which came into force in late 2009.² It provides for limited harmonisation of the national company laws by requiring all EU member states (Member States) to allow companies to have a single shareholder and by regulating the powers of such single shareholder in relation to a company, although it is limited in scope. The Directive provides a more detailed set of harmonised rules for single-member private limited liability companies, with the aim of reducing financial and administrative burdens facing European SMEs that wish to expand into other Member States.

The Directive would not, however, introduce a new legal form at the EU level. Instead, it seeks to make available at a national level a company form with a number of harmonised requirements and a common name, *Societas Unius Personae* (SUP). The Member States would have the choice of how to introduce such a company form, e.g., by creating an additional form of single-member companies or by replacing an already existing form with SUP.

When adopted, the Directive will effectively replace Directive 2009/102/EC, which will be repealed two years after the adoption of the replacement Directive.

Key Provisions of the Directive

The Directive retains the main provisions of Directive 2009/102/EC, including requirements regarding disclosure of the sole member's identity, decision-making by the sole member, and contracts between the sole member and the company.

1. View the Directive at http://ec.europa.eu/internal_market/company/docs/modern/cgp/smcd/140409-smcd_en.doc.

2. View Directive 2009/102/EC at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:258:0020:0025:EN:PDF>.

It also introduces the rules and procedures for establishing SUPs, including the following:

- An SUP will have full legal personality.
- A sole member of an SUP will not be liable for any amount exceeding the subscribed share capital.
- An SUP and its articles of association will be governed by the national law of the Member State where the SUP is registered.
- An SUP may be incorporated by a natural or legal person (including another SUP).
- An SUP may be formed as a new entity or by converting a company that already exists under another company form³ by following a conversion procedure prescribed by applicable national laws.
- An SUP may be converted into another company form following the relevant procedure laid down by applicable national laws.
- Any founder who is resident or who has a seat in the EU will be able to establish an SUP in another Member State electronically, without a need to travel to the country of registration (types of registration other than online will also be available).
- Certain information and documentation will be required for an SUP's registration, including its name, registered office address, business object, information about the founder and/or beneficial owner, and share capital.
- Standard-form articles of association will need to be adopted by an SUP if registered online; however, if another mode of registration is chosen, the articles could be customised, provided they comply with the Directive.
- An SUP will have only one issued share, which shall not be split, but which can be owned by more than one person (in which case, such persons will be regarded as one member in relation to the SUP).
- The share capital of an SUP shall be at least €1 (or, if the Member State's currency is other than Euro, one unit of its currency). It shall be fully paid and shall not be subject to a maximum value.
- A distribution to the sole member may take place if the SUP satisfies a balance sheet test, demonstrating on the basis of the most recently adopted balance sheet that, after the proposed distribution, the remaining assets of the SUP will be sufficient to fully cover its liabilities. In addition, the management body of the SUP (comprising one or more directors) must provide a solvency statement to the sole member before any distribution is made, certifying that the SUP will be able to pay its debts as they fall due in the normal course of business in the year following the date of the proposed distribution.

The Directive also covers the decision-making powers of the sole member (including an exhaustive list of reserved matters), the workings of the SUP's management body, and the SUP's representation by its directors in relation to third parties. Only natural persons can become SUP directors, unless the applicable national laws allow legal persons to do so. The sole member would have the right to give instructions to the management body and to remove directors, by means of a decision in writing, at any time.

Next Steps

The Directive will be submitted to the Council of the European Union and the European Parliament for their consideration and final adoption. Once adopted, the Directive would have to be implemented into the national laws of all Member States within two years after the date of adoption.

³ The list of national company forms that may be converted into SUPs will be listed in Annex I to the Directive, which has not yet been published.

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