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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on single-member private limited liability companies

(Text with EEA relevance)

{SWD(2014) 123 final}

{SWD(2014) 124 final}

{SWD(2014) 125 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Improving the business environment for all companies, and in particular for SMEs, is one of the main priorities of the EU's ten-year growth strategy, Europe 2020¹ -making business easier and better. A number of actions relevant to SMEs were set out in the Communication on "An Integrated Industrial Policy for the Globalisation Era"², one of Europe 2020's seven key flagship initiatives. The review of the Small Business Act³ and the Single Market Acts I⁴ and II⁵ also included actions designed to improve access to finance and to further reduce the costs of doing business in Europe.

Companies find it costly and difficult to be active across borders and only a small number of SMEs invests abroad. The reasons for this include the diversity of national legislations, in particular differences in national company laws, and the lack of trust in foreign companies among customers and business partners. In order to overcome the lack of trust, companies often establish subsidiaries in other Member States. The advantage of this being that they are able to provide customers with the brand and reputation of the parent company, whilst also offering them the security of dealing with a company which has the legal status of a national rather than foreign company. Establishing a company abroad involves, among others, the costs of meeting legal and administrative requirements in other countries, which are frequently different to what companies are used to "in the home country". Those costs (including the additional necessary legal advice and translation) are likely to be particularly high for groups of companies, since any parent company, and particularly an SME parent, is presently faced with different requirements for each country in which it wishes to establish a subsidiary.

European small and medium-sized enterprises (SMEs) - have an essential role to play in strengthening the EU economy. However, they still face a number of obstacles, which hamper their full development within the Internal Market, and therefore prevent them from making their full potential contribution to the EU economy.

The European Commission aimed to address these costs in its 2008 proposal for a European Private Company Statute (SPE).⁶ This proposal was intended to offer SMEs an instrument facilitating their cross-border activities, which would be simple, flexible and uniform in all Member States. It was issued in a response to a number of calls from businesses for the creation of a truly European form of a private limited liability company. Despite strong support from the business community it has not been, however, possible to find a compromise allowing for the unanimous adoption of the Statute among Member States. The Commission decided that it would withdraw the SPE proposal (the REFIT exercise⁷) and instead announced to come up with the proposal of an alternative measure designed to address at least some of the problems addressed by the SPE. This approach is consistent with the 2012 Action

¹ COM(2010) 2020, 3.3.2010.

² COM(2010) 614.

³ COM(2011) 78, 23.2.2011.

⁴ COM(2011) 206, 13.4.2011.

⁵ COM(2012) 573, 3.10.2012.

⁶ Proposal for a Council Regulation on the Statute for a European private company, COM(2008) 396.

⁷ The withdrawal of the SPE proposal was announced in the Annex to the Communication on "Regulatory Fitness and Performance (REFIT): Results and Next Steps", COM(2013)685, 2.10.2013.

Plan on European company law and corporate governance⁸, which reaffirmed the Commission's commitment to launch other initiatives, further to the SPE proposal, in order to enhance cross-border opportunities for SMEs.

The overall objective of this proposal, which provides an alternative approach to the SPE, is to make it easier for any potential company founder, and in particular for SMEs, to set-up companies abroad. This should encourage and foster more entrepreneurship and lead to more growth, innovation and jobs in the EU.

The proposal would facilitate cross-border activities of companies, by asking Member States to provide in their legal systems for a national company law form that would follow the same rules in all Member States and would have an EU-wide abbreviation - SUP (*Societas Unius Personae*). It would be formed and operate in compliance with the harmonised rules in all Member States which should diminish set-up and operational costs. In particular, the costs could be reduced by the harmonised registration procedure, a possibility of on-line registration with a uniform template of articles of association and a low legal capital required for the set-up. The creditors would be protected by the obligation imposed on the SUP directors (and in some cases on the SUP single-member) to control distributions. To enable businesses to reap the full benefits of the internal market, Member States should not require that an SUP's registered office and its central administration be necessarily located in the same Member State.

In parallel to this proposal, the Commission is also carrying out related work aimed at improving legal certainty for companies and more generally regarding the law applicable to them when operating in other Member States, in line with the 2009 European Council's Stockholm Programme on an open and secure Europe serving and protecting citizens⁹.

This proposal, once adopted, will repeal Directive 2009/102/EC and amend Regulation 1024/2012¹⁰ in order to allow for the use of the Internal Market Information System (IMI).

2. CONSULTATIONS WITH INTERESTED PARTIES AND IMPACT ASSESSMENT

The initiative builds on the research conducted in the preparation of previous EU initiatives such as the 2008 SPE proposal and on a number of relevant consultations and discussions which have taken place subsequently to this proposal.

As a part of the reflection process on the future of EU company law, in April 2011 the Reflection Group of company law experts published a report with a number of recommendations.¹¹ The report called for increased efforts to simplify the legal regime applicable to SMEs. It mentioned in particular the need to simplify the formalities before a company can be established (e.g. registration, access to electronic procedures). The report also proposed introducing a simplified template for single-member companies across the EU,

⁸ COM(2012) 740, 12.12.2012; "Action Plan: European company law and corporate governance – a modern legal framework for more engaged shareholders and sustainable companies".

⁹ The Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens (2010/C115/01)

¹⁰ Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System (IMI) (OJ L 316, 14.11.2012, p. 1).

¹¹ The Report of the Reflection Group:
http://ec.europa.eu/internal_market/company/docs/modern/reflectiongroup_report_en.pdf.

which would allow both single shareholder start-ups and holding companies with wholly owned subsidiaries to reduce transaction costs and avoid unnecessary formalities.

On the basis of this report, the Commission launched a broad public consultation on the future of European company law in February 2012. The conclusion included the opinions of interested parties on possible measures to provide further support to European SMEs at EU level. Nearly 500 responses were received, from a wide range of stakeholders including public authorities, trade unions, business federations, investors, academics and individuals. A vast majority were in favour of Commission actions supporting SMEs, but views differed as to the means to achieve it. The Commission has also benefited from input from company law experts involved in the Reflection Group, e.g. as regards advice on the key aspects of the potential future Directive on single-member companies.

A more detailed on-line public consultation on single-member companies was launched in June 2013¹², examining whether the harmonisation of national rules on single-member companies could provide companies, and in particular SMEs, with simpler and more flexible rules and reduce their costs. A total of 242 responses were received from a broad range of stakeholders including companies, public authorities, trade unions, business federations, universities and individuals. Of those respondents who expressed an opinion 62% of respondents considered that the harmonisation of rules for single-member private limited liability companies could facilitate cross-border activities of SMEs; 64% considered that such an initiative should include rules relating to on-line registration with a standardised registration form throughout the EU.

On 13 September 2013, the Commission's Internal Market and Services Directorate-General met a number of EU business representatives¹³. Most participants supported the initiative emphasising the positive impact it could have on companies in the EU. However, they stressed that this initiative should not be considered as a fully-fledged alternative to the SPE and that the efforts towards the SPE should continue.

Other stakeholders, such as notaries, were also generally supportive of the initiative, but raised a number of concerns relating specifically to the security of on-line registration of companies and to the need to guarantee the appropriate level of control over the procedure. In addition, some stakeholders were of the opinion that the reduction of the minimum capital requirement should be accompanied by appropriate measures e.g. a solvency test or restrictions on the distribution of dividends.

The Impact Assessment carried out by the Commission discards a number of options at the outset (most notably, the introduction of a new supranational legal form; harmonisation of company law related to establishment of subsidiaries with only SMEs as founders or both in the form of public and private limited liability companies) due to their infeasibility and/or a lack of support from stakeholders.

The options considered following the assessment envisaged the creation of forms of national company law for single-member private limited liability companies with harmonised conditions, in particular in respect of the registration process and the minimum capital requirement.

¹² http://ec.europa.eu/internal_market/consultations/2013/single-member-private-companies.

¹³ Business Europe, Council of Notaries of the EU, European Small Business Alliance, Council of Bars and Law Societies of Europe, Chambre de Commerce et d'Industrie de région Paris et Ile-de-France, Association Nationale des Sociétés par Actions and Eurochambers.

The chosen policy option, that would provide for the possibility of on-line registration, with the standard template for the articles of association, a minimum capital requirement of EUR 1, accompanied by a balance sheet test and a solvency statement, was chosen. Compared to the other policy options, it provides the best overall solution, as measured by its effectiveness in achieving the objectives (in particular a reduction in costs for companies), its efficiency and its level of coherence with EU policies.

The Impact Assessment Board adopted an overall positive opinion on the Impact Assessment on 20 November 2013. The comments received from the Board resulted in the modification of the sections regarding: the problem definition and problem tree, the size of the market and the policy options and their impacts. In addition, the description of the situation in Member States was converted into tables and the summary of the results of the 2013 on-line consultation was added. In particular, following the opinion of the Impact Assessment Board, the Impact Assessment includes now the options on a minimum capital requirement and creditors' protection as well as regarding on-line registration and the use of the uniform template for the articles of association. Moreover, the size of the market concerned is showed more prominently in the Impact Assessment: there are around 21 million SMEs in the EU out of which approximately 12 million are limited liability companies and around half of them (5,2 million) are single-member private limited liability companies.

3. LEGAL ELEMENTS OF THE PROPOSAL

Legal basis, subsidiarity and proportionality

The proposal is based on Article 50 of the Treaty on the Functioning of the European Union (TFEU) which is the legal basis for the EU competence to act in the area of company law. In particular, Article 50(2)(f) TFEU provides for progressive abolition of restrictions on freedom of establishment as regards the conditions for setting-up subsidiaries.

The draft proposal does not establish a new supra-national legal form for the single member company but rather contributes to the progressive abolition of restrictions on freedom of establishment as regards the conditions for setting up subsidiaries in the territories of Member States. In principle, the objective of the draft proposal could thus have been achieved through the independent adoption of identical laws by the Member States. Under these circumstances, Article 50 provides a sufficient legal basis for the proposal and recourse to Article 352 TFEU is not necessary.

According to the principle of subsidiarity the EU should act only where it can provide better results than intervention at Member States' level.

The solutions adopted so far by individual Member States with regard to the reduction of set-up costs have not been so far coordinated at EU level. Such coordination among Member States, which would aim at introducing in national legal systems identical requirements for a particular national company law form, although theoretically possible, also appears unlikely in the near future. Instead, it is likely that individual actions by Member States will continue to result in divergent outcomes, as illustrated in detail by the Impact Assessment.

In particular, individual actions by Member States, most often, focus on their specific national context and usually would not seek to facilitate the cross-border establishments. For instance, a requirement of a physical presence before the notary or any other authority of the Member State of registration, although not directly discriminatory, has a different impact on residents and non-residents. The costs for foreign founders are likely to be more significant than for domestic founders. Also, on-line registration accessible in practice only to nationals or

residents, which appears acceptable in the national context, generates additional costs for foreign companies, which are not incurred by domestic ones.

It appears, therefore, that without any action at EU level only non-harmonised national solutions would be available and SMEs would continue to face barriers making their expansion abroad more difficult and the resulting costs would in particular affect foreign founders. The simplification resulting from harmonised rules is theoretically possible to be achieved by Member States acting individually, but it is highly unlikely. In this context, the targeted EU intervention appears to comply with the principle of subsidiarity.

As regards the principle of proportionality, the EU action should be appropriate to achieve the objectives of the policy pursued and should be limited to what is necessary to achieve them. It is appropriate to harmonise the conditions of setting-up and operation of single-member limited liability companies to achieve a higher cross-border participation of SMEs in the Internal Market. This action should facilitate and encourage the set-up of companies, and in particular lead to the increase of the number of subsidiaries within the EU. It does not go beyond what is necessary to achieve this objective, since it does not attempt to fully harmonise all aspects related to the operation of single-member limited liability companies, but is limited to those aspects which are the most important in the cross-border context. The new Directive, which repeals the existing Directive on single-member companies, also ensures that the content and form of the proposed EU action does not go beyond what is necessary and proportionate in order to achieve the regulatory objective.

Detailed Explanation of the Proposal

Part 1: General rules for single-member private limited liability Companies

The general rules for single-member private limited liability companies apply to all companies listed in Annex I, including the companies referred to in the second part of this Directive (Articles 1-5). The Twelfth Council Company Law Directive 89/667/EEC, which was codified by Directive 2009/102/EC, has introduced a legal instrument allowing for the limitation of liability of a company with a single-member throughout the EU. Furthermore, the provisions of the first part of this Directive require disclosure of information about a single-member company in a register accessible to the public and regulate both decisions taken by the single member and contracts between the single member and the company. If a Member State also grants public limited liability companies the possibility of having a single shareholder, the rules of the first part of the Directive apply to those companies as well.

Part 2: Specific rules for the *Societas Unius Personae* (SUP)

Chapter 1: General provisions

The provisions of the second part of this Directive apply to single-member private limited liability companies established in the form of an SUP (Article 6).

Where a matter is not covered by this Directive, relevant national law should apply.

Chapter 2: Formation of an SUP

The Directive restricts the possible ways of founding an SUP to either establishing a company *ex nihilo* (founding an entirely new company) or converting a company which already exists under another company law form. Certain provisions for each of these two methods are made in the Directive (Articles 8 and 9) and the process of forming an SUP is also governed by national rules for private limited liability companies.

An SUP can be formed *ex nihilo* by any natural or legal person, even if the latter is a single-member limited liability company. Member States should not prevent SUPs from being single-members in other companies.

Only private limited liability companies listed in Annex I are allowed to form an SUP by conversion. A company which converts to an SUP preserves its legal personality. The Directive refers to national law with regard to conversion procedures.

According to this Directive, an SUP must have its registered office and either its central administration or its principal place of business in the EU (Article 10).

Chapter 3: Articles of association

The Directive provides for the standard template for the articles of association, the use of which is obligatory in the case of on-line registration. It further sets out the minimum content of the template, as will be included in the implementing act to be adopted by the Commission (Article 11).

The articles of association can be changed after registration, but the changes must comply with the provisions of the Directive and national law (Article 12).

Chapter 4: Registration of an SUP

Provisions relating to the registration procedure form the main part of this Directive being a critical issue in facilitating the establishment of subsidiaries in EU countries other than the home country of the company. The Directive requires Member States to offer a registration procedure that can be fully completed electronically at a distance without requiring the need of a physical presence of the founder before the authorities of Member State of registration. It must therefore also be possible for all communication between the body responsible for registration and the founder to be carried out electronically. The registration of the SUP must be completed within three working days in order to allow companies to be formed quickly (Article 14).

Moreover, the Directive contains an exhaustive list of documents and details which Member States may require for the registration of an SUP. After registration, the SUP may change the documents and details in accordance with the procedure specified by national law (Article 13).

Chapter 5: Single share

As an SUP has only one shareholder, it is only allowed to issue one share that cannot be split (Article 15).

Chapter 6: Share capital

The Directive prescribes that the share capital shall be at least EUR 1, or at least one unit of the national currency in Member State in which this is not the euro. Member States should not impose any maximum limits on the value of the single-share or the paid-up capital and should not require an SUP to build legal reserves. However, the Directive allows SUPs to build voluntary reserves (Article 16).

The Directive also contains rules regarding distributions (e.g. dividends) to the single-member of the SUP. A distribution may take place if the SUP satisfies a balance-sheet test, demonstrating that after the distribution the remaining assets of the SUP will be sufficient to fully cover its liabilities. In addition, a solvency statement must be provided to the single-member by the management body before any distribution is made. The inclusion of the two requirements in the Directive ensures a high level of protection of creditors, which should help the label 'SUP' to develop a good reputation (Article 18).

Chapter 7: Structure and operational procedures of an SUP

The Directive covers the decision-making powers of the single member, the workings of the management body and the representation of the SUP in relation to third parties (Article 21).

In order to facilitate cross-border activities of SMEs and other companies, the Directive grants the single-member the right to take decisions without the need to organise a general meeting and lists subjects that must be decided by the single member. The single-member should be able to take other decisions than mentioned by this Directive, including the delegation of its powers to the management body, if it is permitted by national law.

Only natural persons can become directors of SUPs, unless the law of the Member State of registration allows legal persons to do so. The Directive includes certain provisions on the appointment and removal of directors. The directors are responsible for managing the SUP, and also represent the SUP in its dealings with third parties. It is envisaged that the SUP may be an attractive model for groups of companies and the Directive therefore allows the single-member to give instructions to the management body. However, these instructions must comply with national laws protecting the interest or of other parties (Article 22).

The SUP can be converted into another national legal form. In case the requirements of this Directive are no longer fulfilled, the SUP is required to either transform into another company law form or to dissolve. If it fails to do so, national authorities must have the power to dissolve the company (Article 25).

Part 3: Final provisions

The Directive requires the Member States to lay down appropriate penalties for breaches of the Directive, of national law or of the articles of association (Article 28). It also empowers the Commission to adopt delegated and implementing acts.

In order to keep the list of company law forms in Member States up-to-date, the Commission will propose an amendment to Annex I, when necessary, through a delegated act, which will not require reopening of the Directive and going through the legislative procedure (Article 1 (2)). Also, it is proposed to delegate the power to adopt two implementing acts to the Commission – with regard to the templates for registration and articles of association (Articles 11 (3) and 13 (2)). The templates contained in the implementing acts would be easier to adapt to changing business environment than the ones adopted in the ordinary legislative procedure. In drafting the templates, the Commission will be assisted by the Company Law Committee.

The Directive repeals Directive 2009/102/EC which is replaced by this Directive and amends Regulation 1024/2012¹⁴ in order to allow for the use of the Internal Market Information System (IMI) (Articles 29 and 30).

Member States must transpose the provisions of this Directive no later than two years from the date of its adoption. In the meantime, the Commission will adopt the necessary implementing acts. Member States are invited to start the process of implementation immediately after the entry into force of the Directive.

¹⁴ Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System (IMI) (OJ L 316, 14.11.2012, p. 1).

4. EXPLANATORY DOCUMENTS

According to the Joint Political Declaration of 27 October 2011, the European Commission should only request explanatory documents if it can "justify on a case by case basis [...] the need for, and the proportionality of, providing such documents, taking into account, in particular and respectively, the complexity of the directive and of its transposition, as well as the possible administrative burden".

The Commission considers that in this particular case it is justified to ask Member States to provide it with explanatory documents in view of the existing implementation challenges that arise, *inter alia*, due to the considerable degree of variations in the ways in which company law is regulated in Member States (e.g. in civil codes, company law codes and companies acts).

Implementation measures will have a number of effects at a national level, and will influence, for example national company law, the registration procedure, communications between the body responsible for registration and the founder, websites of the competent authorities and on-line e-identification procedure. In particular, the provisions of the second part of the Directive will most likely be transposed into several national acts. This could particularly be the case in Member States with more than one central business register.

In this context, the notification of transposition measures will be essential to clarify the relationship between the provisions of this Directive and national transposition measures, and therefore to assess the conformity of national legislation with the Directive.

The simple notification of individual transposition measures would not be self-explanatory and would not therefore allow the Commission to ensure that all the EU legal provisions were faithfully and fully implemented. The explanatory documents are necessary to gain a full understanding of the way in which Member States are transposing the provisions of the Directive into national law. Member States are encouraged to present the explanatory documents in the form of easily readable tables showing how the individual national measures adopted correspond to the provisions of the Directive.

Given the above, the following recital is included in the proposed Directive: *"In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified"*.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on single-member private limited liability companies

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 50 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Directive 2009/102/EC of the European Parliament and of the Council of 16 September 2009 in the area of company law on single-member private limited-liability companies¹⁵, has made it possible for individual entrepreneurs to operate under limited liability throughout the Union.
- (2) Part I of this Directive takes over the provisions of Directive 2009/102/EC as regards all single-member limited liability companies. It requires that in case all shares come to be held by a single shareholder, its identity should be disclosed to the public by the entry in the register. This Directive also provides that decisions taken by the single shareholder exercising the power of the general meeting as well as the contracts between the shareholder and the company should be recorded in writing, unless they relate to contracts concluded under market conditions in the ordinary course of business.
- (3) Establishing single-member limited liability companies as subsidiaries in other Member States entails costs due to the diverse legal and administrative requirements which must be met in the Member States concerned. Such divergent requirements continue to exist among Member States.
- (4) The Commission Communication entitled "Integrated Industrial Policy for the Globalisation Era - Putting Competitiveness and Sustainability at Centre Stage"¹⁶ encourages the creation, growth and internationalisation of small and medium-sized enterprises (SMEs). This is important for the Union economy as SMEs account for two-thirds of employment in the Union and offer significant potential for growth and for the creation of jobs.

¹⁵ OJ L 258, 1.10.2009, p. 20

¹⁶ COM(2010) 614 final, 28.10.2010.

- (5) The improvement of the business environment, especially for SMEs, by reducing transaction costs in Europe, promoting clusters and promoting the internationalisation of SMEs, were the key elements of the initiative “Industrial policy for the globalisation era” outlined in the Commission Communication on the Europe 2020 strategy¹⁷.
- (6) In line with the Europe 2020 strategy, the Review of the Small Business Act for Europe¹⁸ advocated further progress in making smart regulation a reality, enhancing market access and promoting entrepreneurship, job creation and inclusive growth.
- (7) In order to facilitate the cross-border activities of SMEs and the establishment of single-member companies as subsidiaries in other Member States, the costs and administrative burdens involved in setting-up these companies should be reduced.
- (8) The availability of a harmonised legal framework governing the formation of single-member companies, including the establishment of a uniform template for the articles of association should contribute to the progressive abolition of restrictions on freedom of establishment as regards the conditions for setting up subsidiaries in the territories of Member States and lead to a reduction in costs.
- (9) Single-member private limited liability companies formed and operating in compliance with this Directive should add to their names a common, easily identifiable abbreviation – SUP (*Societas Unius Personae*).
- (10) To respect Member States’ existing traditions of company law, flexibility should be afforded to them as regards the manner and extent to which they wish to apply harmonised rules governing the formation and operation of SUPs. Member States may apply Part 2 of this Directive to all single-member private limited liability companies so that all such companies would operate and be known as SUPs. Alternatively, they should provide for the establishment of an SUP as a separate company law form which would exist in parallel with other forms of single-member private limited liability company provided for in national law.
- (11) To ensure that the harmonised rules are applied as widely as possible, both natural and legal persons should be entitled to form SUPs. For the same reason private limited liability companies that were not formed as SUPs should be able to benefit from the SUP framework. They should be able to be transformed into SUPs in accordance with applicable national law.
- (12) To enable business to enjoy the full benefits of the internal market, Member States should not require the registered office of an SUP and its central administration to be in the same Member State.
- (13) In order to make it easier and less costly to establish subsidiaries in other Member States, the founders of SUPs should not be obliged to be physically present before any Member State's registration body. The register should be accessible from any Member State and a company founder should be able to make use of existing points of single contact created under Directive 2006/123/EC of the European Parliament and of the

¹⁷ COM(2010) 2020 final, 3.3.2010.

¹⁸ COM(2011) 78 final, 23.2.2011.

Council¹⁹ as a gateway to national on-line registration points. It should, therefore, be possible to establish SUPs from distance and fully by electronic means.

- (14) In order to ensure a high level of transparency, all documents registered at the register of companies should be made publicly available via the system of interconnection of registers referred to in Article 4a(2) of Directive 2009/101/EC of the European Parliament and of the Council²⁰.
- (15) To ensure a high level of uniformity and on-line accessibility, the documents used to register SUPs should follow a uniform format available in all official languages of the Union. Each Member State may require registration to be completed in an official language of the Member State concerned, but are also encouraged to allow for registration in other official languages of the Union.
- (16) In line with the recommendations set out in the European Commission's 2011 Review of the Small Business Act²¹ to reduce the start-up time for new enterprises, SUPs should receive the certificate of registration in the relevant register of a Member State within three working days. This facility should only be available to the newly created companies and not to existing entities that wish to convert to SUPs as the registration of such entities by their very nature, may take more time.
- (17) Each Member State should designate a competent electronic registration point. To support the designated bodies in exchanging information about the identity of the founder, Member States may use the means provided for under Regulation (EU) No 1024/2012 of the European Parliament and of the Council²².
- (18) Provisions concerning the establishment of single-member private limited companies should not affect the right of Member States to maintain existing rules concerning the verification of the registration process, provided that the whole registration procedure may be completed electronically and at a distance.
- (19) The use of the template of articles of association should be required if the SUP is registered electronically. If another form of registration is allowed by national law, the template does not have to be used, but the articles of association need to comply with the requirements of the Directive. The minimum capital required for the formation of a single-member private limited liability company varies among the Member States. Most Member States have already taken steps towards abolishing the minimum capital requirement or keeping it at a nominal level. The SUPs should not be subject to a high mandatory capital requirement, since this would act as a barrier to their formation. Creditors, however, should be protected from excessive distributions to single-members, which could affect the capacity of an SUP to pay its debts. Such protection should be ensured by the imposition of minimum balance sheet requirements (liabilities not exceeding assets) and the solvency statement prepared and signed by

¹⁹ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36).

²⁰ Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent (OJ L 258, 1.10.2009, p. 11).

²¹ COM(2011) 78 final, 23.2.2011.

²² Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') (OJ L 316, 14.11.2012, p. 1).

the management body. There should be no further restrictions placed on the use of capital by the single-member.

- (20) In order to prevent abuse and simplify control SUPs should neither issue any further shares nor should the single share be split. Nor should SUPs acquire or own their single share whether directly or indirectly. Rights attached to the single share should only be exercised by one person. Where Member States allow for co-ownership of a single share, only one representative should be entitled to act on behalf of the co-owners and be considered as a single-member for the purpose of this Directive.
- (21) In order to ensure a high level of transparency, decisions taken by the single-member of an SUP exercising the powers of the general meeting should be recorded in writing. Such decisions should be disclosed to the company and their written record kept for at least five years.
- (22) The management body of an SUP should be composed of one or more directors. Only natural persons should be appointed as directors, unless the Member State of registration allows legal persons to act as directors.
- (23) In order to facilitate the operation of groups of companies, instructions issued by the single-member to the management body should be binding. Only where following such instructions would entail violating the national law of the Member State in which the company is registered, the management body should not follow them. With the exception of any provision in the articles of association which limit the company's representation to all directors jointly, any other limitation of powers of the directors, following from the articles of association, should not be binding insofar as it concerns third parties.
- (24) The Member States should lay down rules on penalties applicable to the infringements of the provisions of this Directive and should ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive.
- (25) In order to reduce the administrative and legal costs associated with the formation of companies and to ensure a high level of consistency in the registration process across Member States, implementing powers to adopt the templates for registration and for the articles of association of an SUP should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council²³.
- (26) In order to accommodate future changes to the laws of Member States and to Union legislation concerning company types, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to update the list of undertakings contained in Annex I. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at experts' level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

²³

Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (27) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents²⁴, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (28) Since the objectives of this Directive, namely, to facilitate the establishment of single-member private limited liability companies, including SUPs cannot be sufficiently achieved by the Member States, but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve those objectives.
- (29) Since substantial amendments are being made to Directive 2009/102/EC, in the interests of clarity and legal certainty that Directive should be repealed.

HAVE ADOPTED THIS DIRECTIVE:

²⁴ OJ C 369, 17.12.2011, p. 14.

Part 1

General Provisions

Article 1

Scope

1. The coordination measures provided for in this Directive shall apply to the laws, regulations and administrative provisions of the Member States relating to:
 - (a) the types of company listed in Annex I;
 - (b) *Societas Unius Personae* (SUP) referred to in Article 6.
2. Member States shall inform the Commission within two months of any changes to the types of private limited companies provided for in their national law affecting the contents of Annex I.

In such a case the Commission shall be empowered to adapt, by means of delegated acts in accordance with Article 26, the list of companies contained in Annex I.
3. Where a Member State allows other companies than those listed in Annex I to be established as or become single-member companies, as defined in Article 2 (1), Part 1 of this Directive shall also apply to them.

Article 2

Definitions

For the purposes of this Directive, the following definitions shall apply:

- (1) "single-member company" means a company whose shares are held by a single person;
- (2) "conversion" means any process by which an existing company becomes or ceases to be an SUP;
- (3) "distribution" means any financial benefit derived directly or indirectly from the SUP by the single-member, in relation to the single share, including any transfer of money or property. Distributions may take the form of a dividend, and may be made through a purchase or sale of property or by any other means;
- (4) "articles of association" means articles of association or statutes or any other rules or instruments of incorporation establishing a company;
- (5) "director" means any member of the management body either formally appointed or who de facto acts as a director.

Article 3

Disclosure

Where a company becomes a single-member company because all its shares come to be held by a single person, that fact, together with the identity of the sole member, must either be recorded in the file or entered in the register as referred to in Article 3(1) and (3) of Directive 2009/101/EC or be entered in a register kept by the company and accessible to the public.

Article 4
General meeting

1. The single-member shall exercise the powers of the general meeting of the company.
2. Decisions taken by the single-member exercising powers referred to in paragraph 1 shall be recorded in writing.

Article 5
Contracts between the single member and the company

1. Contracts between the single-member and the company shall be recorded in writing.
2. Member States may decide not to apply paragraph 1 to contracts concluded under market conditions in the ordinary course of business which are not detrimental to the single-member company.

Part 2

Societas Unius Personae

Chapter 1

Legal form and General Principles

Article 6

Legal form

1. Member States shall provide for the possibility of registering private single-member limited liability companies in accordance with the rules and procedures set out in this Part. Such companies shall be referred to as SUPs.
2. Member States shall not hinder SUPs from being single-members in other companies.

Article 7

General principles

1. Member States shall grant SUPs full legal personality.
2. Member States shall provide that the single-member shall not be liable for any amount exceeding the subscribed share capital.
3. The name of a company, which has the legal form of an SUP, shall be followed by the abbreviation 'SUP'. Only an SUP may use the abbreviation 'SUP'.
4. The SUP, and its articles of association, shall be governed by the national law of the Member State where the SUP is registered (hereinafter 'applicable national law').
5. Member States shall provide that the SUP is set up for an unlimited period of time, unless provided otherwise in the articles of association.

Chapter 2

Formation

Article 8

Incorporation

An SUP may be incorporated by a natural or legal person.

Article 9

Conversion into an SUP

1. Member States shall ensure that an SUP may be formed by the conversion of the types of companies listed in Annex I.
2. The formation of an SUP by conversion shall not result in any winding-up procedures, any loss or interruption of the legal personality or affect any rights or obligations existing prior to the conversion.
3. Member States shall ensure that a company shall not become an SUP unless:

- (a) a resolution of its shareholders is passed or a decision of its single-member is taken authorising the conversion of the company into an SUP;
- (b) its articles of association comply with the applicable national law; and
- (c) its net assets are at least equivalent to the amount of its subscribed share capital plus those reserves which may not be distributed according to its articles of association.

Article 10
Seat of the SUP

An SUP shall have its registered office and either its central administration or its principal place of business in the Union.

Chapter 3

Articles of Association

Article 11
Uniform template of articles of association

1. Member States shall require that the articles of association of the SUP shall cover at least the subject matters provided for in paragraph 2.
2. The uniform template of articles of association shall cover the questions of formation, shares, share capital, organisation, accounts and the dissolution of an SUP.

It shall be made available by electronic means.

3. The Commission shall adopt the uniform template of articles of association by an implementing act. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 27.

Article 12
Amendments to the articles of association

1. An SUP may, after registration, amend its articles of association by electronic or other means in accordance with applicable national law. This information shall be entered in the register of companies in the Member State of registration.
2. The amended articles of association of the SUP shall cover at least the subject matters provided for in the uniform template referred to in Article 11(2).

Chapter 4

Registration

Article 13
Formalities relating to registration

1. Member States may only require for the registration of an SUP the following information or documentation:
 - (a) the name of the SUP;

- (b) the address of the registered office, the central administration and/or the principal place of business of the SUP;
 - (c) the business object of the SUP;
 - (d) the names, the addresses and any other information necessary to identify the founding member and, where applicable, the beneficial owner and a representative that registers the SUP on the member's behalf;
 - (e) the names, addresses and any other information necessary to identify the persons who are authorised to represent the SUP in dealings with third parties and in legal proceedings and whether they have not been disqualified by laws of Member States referred to in Article 22;
 - (f) the share capital of the SUP;
 - (g) the nominal value of the single-share, where relevant;
 - (h) the articles of association of the SUP;
 - (i) where applicable, the decision authorising the company's conversion into an SUP.
2. The Commission shall establish, by means of an implementing act, a template to be used for the registration of SUPs in the registers of companies of the Member States in accordance with paragraph 1. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 27.

Article 14 **Registration**

1. An SUP shall be registered in the Member State in which it is to have its registered office.
2. An SUP shall acquire legal personality on the date on which it is entered in the register of companies of the Member State of registration.
3. Member States shall ensure that the registration procedure for newly incorporated SUPs may be completed electronically in its entirety without it being necessary for the founding member to appear before any authority in the Member State of registration (on-line registration).
4. National on-line registration web-sites shall include links to the registration web-sites in other Member States. Member States shall ensure that the following templates are used for on-line registration:
 - (a) the uniform template of articles of association referred to in Article 11, and
 - (b) the registration template referred to in Article 13.

Member States shall issue a certificate of registration confirming that the registration procedure has been completed. The certificate of registration shall be issued no later than three working days from the receipt of all the necessary documentation by the competent authority.

5. Member States may lay down rules for verifying the identity of the founding member, and any other person making the registration on the member's behalf, and the acceptability of the documents and other information submitted to the registration

body. Any identification issued in another Member State by the authorities of that State or on their behalf, including identification issued electronically, shall be recognised and accepted for the purposes of the verification by the Member State of registration.

Where, for the purposes of the first subparagraph, it is necessary for Member States to have recourse to administrative cooperation between them, they shall apply Regulation (EU) No 1024/2012.

6. Member States shall not make the registration of an SUP conditional on obtaining any licence or authorisation. The registration of the SUP, all documents provided during the process of registration and subsequent changes to them, shall be disclosed in the relevant register of companies immediately after registration.

Chapter 5

Single share

Article 15

Single share

1. An SUP shall not issue more than one share. This single share shall not be split.
2. An SUP shall not, directly or indirectly, acquire or own its single share.
3. Where in accordance with the applicable national law, a single share of an SUP is owned by more than one person, those persons shall be regarded as one member in relation to the SUP. They shall exercise their rights through one representative and shall notify the management body of the SUP, without undue delay, of the name of that representative and any change thereto. Until such notification, the exercise of their rights in the SUP shall be suspended. The owners of the single share shall be jointly and severally liable for the commitments made by the representative.

The identity of the representative shall be recorded in the relevant register of companies.

Chapter 6

Share Capital

Article 16

Share capital

1. The share capital of an SUP shall be at least EUR 1. In Member States in which the euro is not the national currency, the share capital shall be at least equivalent to one unit of that Member States' currency.
2. The capital of the SUP shall be fully subscribed.
3. Member States shall not impose any maximum value on the single share.
4. Member States shall ensure that the SUP is not subject to rules requiring the company to build up legal reserves. Member States shall allow companies to build reserves in accordance with their articles of association.
5. Member States shall require letter and order forms whether in paper form or in any other medium, to state the capital subscribed and paid up. If the company has a website, that information shall also be made available on it.

Article 17
Consideration for the share

1. The consideration for the share shall be fully paid up at the moment of registration of an SUP.
2. In case of on-line registration, the consideration shall be paid into the bank account of the SUP. The subsequent increase or decrease of share capital shall be allowed at least in cash and in kind.
3. In case of cash payment, the Member State of registration of an SUP shall accept payment into a bank account of a bank operating in the Union as evidence of payment or increase in the share capital.

Article 18
Distributions

1. An SUP may, on the basis of a recommendation from the management body, make a distribution to the single-member provided that it complies with paragraphs 2 and 3.
2. An SUP shall not make a distribution to the single-member if on the closing date of the last financial year the net assets as set out in the SUP's annual accounts are, or following such a distribution would become, lower than the amount of the share capital plus those reserves which may not be distributed under the articles of association of the SUP. The calculation shall be based on the most recently adopted balance sheet. Any change in the share capital or in the part of the reserves which may not be distributed occurring subsequently to the closing date of the financial year shall also be taken into account.
3. The SUP shall not make a distribution to the single-member if it results in the SUP being unable to pay its debts as they become due and payable after distribution. The management body must certify in writing that, having made full inquiry into the affairs and prospects of the SUP, it has formed a reasonable opinion 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 (a "solvency statement"). The solvency statement must be signed by the management body and a copy of it must be provided to the single member 15 days before the resolution on the distribution is adopted.
4. The solvency statement shall be disclosed. If the company has a website, this information shall also be made available on it.
5. Any director shall be personally liable for recommending or ordering a distribution if that director knew, or, in view of the circumstances, ought to have known that the distribution would be contrary to paragraph 2 or 3. The same applies to the single-member with regard to any decision to make a distribution referred to in Article 21.

Article 19
Recovery of distributions wrongfully made

Member States shall ensure that any distributions paid out contrary to Article 18(2) or (3) are refunded to the SUP, where it is established that the single-member knew, or, in view of the circumstances, ought to have known that the distribution would be contrary to Article 18(2) or (3).

Article 20
Share capital reduction

Member States shall ensure that reductions of the share capital of an SUP that lead *de facto* to a distribution to the single-member comply with Article 18(2) and (3).

Chapter 7 **Organisation**

Article 21
Decisions of the single member

1. Decisions taken by the single-member of an SUP shall be recorded in writing by the single-member. Records of decisions taken shall be kept for at least five years.
2. A single member shall decide on the following:
 - (a) approval of the annual accounts;
 - (b) distribution to the member;
 - (c) increase of share capital;
 - (d) reduction of share capital;
 - (e) appointment and removal of directors;
 - (f) remuneration, if any, of directors, including when the single member is a director;
 - (g) change of the registered office;
 - (h) appointment and removal of the auditor, where applicable;
 - (i) conversion of the SUP into another company form;
 - (j) dissolution of the SUP;
 - (k) any amendments to the articles of association.

The single member may not delegate the decisions referred to in the first subparagraph to the management body.

3. The single-member shall be allowed to take decisions without calling a general meeting. No formal restrictions shall be imposed by Member States on the power of the single member to take decisions, including as regards the place and the time at which such decisions may be taken.

Article 22
Management

1. An SUP shall be managed by a management body comprising one or more directors.
2. The number of directors shall be specified in the articles of association.
3. The management body may exercise all the powers of the SUP that are not exercised by the single member or, where applicable, by the supervisory board.
4. The directors shall be natural persons, or legal persons, where allowed by applicable national law. They shall be appointed for an unlimited period of time, unless

otherwise specified in the single-member's decision appointing them or in the articles of association. The single member may become a director.

5. The single-member may remove a director, by means of a decision, at any time. Once removed from the office, a director shall be immediately deprived of the authority and power to act as a director on behalf of the SUP. Any other rights or obligations under the applicable national law shall not be affected.
6. A natural person who is disqualified by either the law or a judicial or administrative decision of the Member State of registration cannot serve as a director. If the director has been disqualified by a judicial or administrative decision taken in another Member State and this decision remains in force, the decision must be disclosed upon registration in accordance with Article 13. A Member State may refuse, as a matter of public policy, the registration of a company if a director is the subject of an outstanding disqualification in another Member State.

Where, for the purposes of this paragraph, Member States need to have recourse to administrative cooperation between them, they shall apply Regulation (EU) No 1024/2012.

7. Any person, whose directions or instructions the directors of the company are accustomed to follow, without having been formally appointed, shall be considered a director as regards all duties and liabilities to which directors are subject. A person shall not be considered a director solely on the grounds that the management body acts on advice given by him or her in a professional capacity.

Article 23

Shareholder's instructions

1. The single-member shall have the right to give instructions to the management body.
2. Instructions given by the single-member shall not be binding for any director insofar as they violate the articles of association or the applicable national law.

Article 24

Authority to act and enter into agreements on behalf of an SUP

1. An SUP's management body, comprising one or more directors, shall have the authority to represent the SUP, including when entering into agreements with third parties and in legal proceedings.
2. Directors may represent the SUP individually, including when entering into agreements with third parties and in legal proceedings, unless the articles of association provide for joint representation. Any other limitation of the powers of the directors, by the articles of association, by a decision of the single-member or by a decision of the management body, may not be relied upon in any dispute with third parties, even if that limitation has been disclosed. Acts undertaken by the management body shall be binding on the SUP, even if they are not within the object of the SUP.
3. The management body may delegate the right to represent the SUP insofar as it is allowed by the articles of association. The duty of the management body to file for bankruptcy or to commence any similar insolvency procedure shall not be delegated.

Article 25

Conversion of an SUP into another company law form

1. Member States shall ensure that their national law requires SUPs to be dissolved or transformed into another form of company if SUPs cease to comply with the requirements laid down in this Directive. If an SUP fails to take appropriate steps to convert into another company law form, the competent authority shall be granted the powers necessary to dissolve the SUP.
2. An SUP may, at any moment, decide to convert into another company law form following the procedure laid down by applicable national law.
3. A SUP that has been converted into another company law form or dissolved in accordance with paragraphs 1 or 2, shall cease to use the abbreviation SUP.

Part 3

Final Provisions

Article 26

Exercise of delegated powers

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Article 1(2) shall be conferred on the Commission for an indeterminate period of time.
3. The delegation of power referred to in Article 1(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 1(2) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

Article 27

Committee procedure

1. The European Commission shall be assisted by the Company Law Committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 28

Penalties

Member States shall provide for penalties applicable to infringements of the national provisions adopted to implement this Directive and shall take all the measures necessary to ensure that those penalties are enforced. The penalties provided for shall be effective, proportionate and dissuasive.

Article 29

Repeal

1. Directive 2009/102/EC is repealed 24 months after the date of adoption of this Directive plus one day.
2. References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

Article 30

Amendment to Regulation (EU) No 1024/2012

In the Annex to Regulation (EU) No 1024/2012, the following point 6 is added:

"6. Directive [...]/.../EU] of the European Parliament and of the Council of [...] on Single-Member Private Limited Liability Companies*: Articles 14 and 22.

* OJ L [...]."

Article 31

Transposition

1. Member States shall adopt and publish 24 months after the date of adoption of this Directive at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.
2. They shall apply those provisions from 24 months after the date of adoption of this Directive plus one day.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 32

Entry into force

The Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 33

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President