Proposal for a Directive on single-member private limited liability companies COM(2014) 212

Introduction & general remarks
On April 9th 2014 the European Commission published a proposal for a Directive on single-member private limited liability companies. The goal of the proposal is to simplify the set-up of companies abroad 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).

The proposal includes a harmonized registration procedure (with registration template), the possibility of completing the whole registration process electronically at a distance, a uniform template for the articles of association and a minimal capital requirement of one euro. For the protection of creditors, a balance sheet test and a solvency statement is required before distributions to the single member can be made. A SUP can founded by establishing a new company or converting a private limited liability company. The registered office and its central administration do not need to be located in the same member state.

The Netherlands Chamber of Commerce agrees with the European Commission that the proposal entails a considerable simplification with regard to the formalities of setting-up a subsidiary abroad and that consequently the set-up costs decrease. In short: it will be easier and less costly for companies to establish a subsidiary abroad. Furthermore, it is indeed very likely that without measures on EU level, the differences in legal and administrative requirements to set-up a company will remain and that mentioned cost savings with regard to cross-border establishment will not be realised.

At the same time, the number of entrepreneurs that will establish a subsidiary abroad should not be exaggerated. Only a small percentage of SMEs invests abroad, namely 2% (of which 42% by means of a subsidiary, 22% via a joint venture and 20% via a branch office, rest DK). The reasons for this low percentage mentioned in the proposal are (different) legal and administrative requirements to establish a company abroad and associated costs. However, the proposal fails to mention that most companies simply do business across borders without establishing themselves in another Member State, because there is no need to do so (26% exports, 29% imports). The need for an own establishment usually arises when it is deemed necessary to be close to the customers, to be seen as a local company or in case of local production.

Nevertheless, the proposal makes it considerably simpler and cheaper for companies that have this need and want to set-up a subsidiary abroad. This is mainly due to the possibility of direct electronic registration, a uniform template for the articles of association and a minimal capital requirement of one euro. In addition, the SUP has potential for domestic use, because many of the same benefits apply. Overall, the Netherlands Chamber of Commerce is positive about the proposal.

---

2 Ibid, p. 20
3 SWD(2014) 124 final
4 Of course national legislation in the area of taxes, social security, insurance and employment law aspects still needs to be taken into account.
Identity control and exchange of information

Article 14 (5)

The Netherlands Chamber of Commerce has concerns that the direct on-line registration procedure could be misused for fraudulent aims, through, for example, identity fraud. It should be noted however, that this risk also exists with “offline registration” and that 16 Member States already have a direct-online registration procedure and also had to deal with this issue⁵.

To make this risk as small as possible, sufficient safeguards need to be put in place to ensure that the single member / single shareholder and any other person acting on behalf of the SUP are properly identified by using electronic identification means with a high security level. This can be done by making a referral to article 6 of the eIDAS Regulation (no. 910/2014)⁶. We have included a proposal for amendments (amendment 1 & 2) below.

Formalities related to registration

Article 13 (1)

In the Dutch Commercial Register Act 2007 and the Commercial Register Decree 2008 it is stipulated which data have to be registered on limited liability persons. Since the SUP will be a harmonized national company law form and to ensure consistency with other national limited liability companies, we deem it necessary that the same data are mandatory for the SUP. For example, activities of the SUP, trade names, number of employees and means of communication with the SUP are required for registration of a limited liability company in the Netherlands. Other member states will have similar requests. Therefore, instead of including all the data all Member States require, we suggest to work with national templates instead of a uniform EU template with a maximum list. This will have little impact on the easiness of registration as templates will be available on-line via several contact points (preferably in multiple languages). (see amendment 3 & 4 below).

Matters not regulated by this directive: filing of annual accounts

Article 7 (general principles)

In the text proposed by the Commission it is insufficiently clear what happens in case of matters not regulated by this Directive. One of these matters is the filing of annual accounts (accounting) to which all limited liability companies are subject (and the SUP should be no exception). Annual accounts contain information on the basis of which liquidity and solvability risks can be assessed and therefore provide more certainty in doing business. Companies use this information to assess the ability of potential business partners to fulfil their payment obligations. In the current economic situation this has become even more important. Furthermore, there is a large demand for annual account information: they are requested 2 million times annually at the Dutch Business Register (especially in digital form). Finally, the long-term non-filing of annual accounts is one of the grounds on which in the Netherlands empty legal persons can be dissolved.

Therefore, the Netherlands Chamber of Commerce believes that in the SUP proposal a reference should be made to the applicability of the accounting directives (see amendment 5 & 6 below). We would like to point out that small companies fall under a highly simplified regime (simplified balance sheet and profit & loss account + limited notes).

---

Suggested / recommended amendments

Amendment 1

Article 14 (Registration) – paragraph 5

Text proposed by the Commission

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 recognized 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.

Amendment

5. Member states may lay down rules for verifying the identity of the founding member, a representative that establishes the SUP on the member’s behalf and any person representing the SUP, and the acceptability of the documents and other information submitted to the registration body. The rules and conditions regarding these processes are governed by national law.

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.

Justification

Recognizing “any identification” (deleted) makes registration susceptible to fraud. Therefore a reference should be made to the eIDAS directive\(^7\), as is done by below amendment (No. 2).

Amendment 2

Article 14 a (new)

Recognition of identification means for the purposes of on-line registration

1. For the purposes of on-line registration of a SUP, the registration authorities shall recognize:

   a. Electronic identification means issued in another Member State complying with Article 6 of Regulation (EU) No 910/2014
   b. Electronic identification means issued under an electronic identification scheme approved for the purpose of on-line registration of SUPs by the Member State of registration;

2. The registration authorities may also recognise other electronic or non-electronic identification means. When non-electronic identification means, issued in the Member State of registration, are recognized by

\(^7\) Regulation (EU) No 910/2014 of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market
the registration authorities for the purpose of online registration, the same type of non-electronic identification issued in other Member States shall be equally recognised.

3. Member States may decide to refuse the on-line registration of SUPs in the cross-border context in all cases where a founder uses electronic identification means that are not e-IDAS compliant.

4. This Directive is without prejudice to the actions Member States may take in accordance with national law in case of genuine suspicion of fraudulent identity, including measures requiring a physical presence before an authority of a Member State on a case by case basis.

5. Member States shall ensure that any measures taken to comply with this Article or Article 14 (a) do not affect the possibility of on-line registration referred to in Article 14(3).

Amendment 3

Recital 15

Text proposed by the Commission

15. To ensure a high level of uniformity and on-line accessibility, the documents used to register SUPs should follow a uniform template 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.

Amendment

15. To ensure online-accessibility and facilitate cross-border set-ups of SUPs, Member States should make available online templates for on-line registration. Those templates should be governed by national law, inter alia, as to their outlook, form, number, name or substance. Member States should make such templates available in their own official language(s) and at least the English language. Member States should endeavor to make them available in other EU languages, especially in language(s) commonly used in international business.

Amendment 4

Article 13 (formalities relating to registration) – paragraph 1

Text proposed by the Commission

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

Amendment

1. Member States shall allow SUPs to be registered via a national template of registration available on-line, governed by national law. In this template Member States may require some or all of the following information or documentation for the registration of the SUP:
(a) The name of the SUP
Etc.

NB. Since this would mean that no uniform EU template will be established, the reference to implementing acts (article 13 (2)) can be deleted. Member States will establish the templates themselves, according to national law.

Amendment 5

Recital 11 a (new)

Amendment

(11a) To ensure consistency, in case of matters not regulated by this Directive, the rules applicable to private limited liability companies limited by shares in the Member State of registration of the SUP should apply to SUPs, including Directive 2009/101/EC8 and Directive 2013/34/EU9. This Directive should be without prejudice to Directives 96/71/EC and 2014/67/EU and furthermore be without prejudice to any national provisions governing matters outside its scope, such as matters related to labour law, posting of workers, tax, accounting or insolvency.

Amendment 6

Article 7 (General principles) – paragraph 4

Text proposed by the Commission:

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”).

Amendment

4. A SUP shall be governed

(a) By national laws adopted by the Member State in which the SUP is registered in order to comply with this Directive, and,
(b) In case of matters not regulated by this Directive, by national laws applicable to private limited liability companies limited by shares listed in Annex I in the Member State in which the SUP is registered.

This Directive is without prejudice to any national and European Union laws governing matters outside its scope, such as matters related to labour law, posting of workers, taxation, accounting or insolvency.

---

8 Directive 2009/101/EC 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

9 Directive 2013/34/EU of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings
Amendment 7

Article 16 (Share capital), paragraph 5

Text proposed by the Commission

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.

Amendment

deleted.

Justification

This article should be deleted since it is does not seem very useful and would constitute an unnecessary administrative burden for companies.

Amendment 8

Article 18 (Distributions), paragraph 4

Text proposed by the Commission

The solvency statement shall be disclosed. If the company has a website, this information shall also be made available on it.

Amendment

The solvency statement shall be disclosed in the central, commercial or companies register of the Member State of registration. If the company has a website, this information shall also be available on it.

Justification

It would be much more transparent and useful to disclose this information via the public business registers in the Member States since this is the purpose of these registers. Furthermore, not all companies have an internet site.

More information regarding this paper:

Remco de Bruijn, EU Public Affairs, Netherlands Chamber of Commerce
Tel. +31 885853409 E-mail: remco.de.bruijn@kvk.nl

Jan Leerling, Business Register, Netherlands Chamber of Commerce
Tel. +31 885853440 E-mail: jan.leerling@kvk.nl

---

10 as referred to in Article 3(1) and (3) of Directive 2009/101/EC
Netherlands Chamber of Commerce
The Netherlands Chamber of Commerce is a modern public service provider dedicated to support entrepreneurs on all aspects of running a business. The Chamber of Commerce manages the national business register and offers reliable information on every company, enhancing legal certainty in doing business. Based on the knowledge, data and networks of the Chamber of Commerce, entrepreneurs are provided with independent information and support to start-up, grow, innovate and internationalize.

EU Transparency Register ID number: 64945441527-14