



EUROPEAN  
COMMISSION

Brussels, 9.4.2014  
SWD(2014) 124 final

**COMMISSION STAFF WORKING DOCUMENT**

**IMPACT ASSESSMENT**

*Accompanying the document*

**Proposal for a**

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
on single-member private limited liability companies**

{COM(2014) 212 final}

{SWD(2014) 123 final}

# CONTENTS

---

<b>EXECUTIVE SUMMARY</b> .....	<b>3</b>
<b>1. INTRODUCTION</b> .....	<b>5</b>
<b>2. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES</b> .....	<b>6</b>
2.1. PROCEDURAL ISSUES .....	6
2.2. EXTERNAL EXPERTISE AND CONSULTATION OF INTERESTED PARTIES .....	6
<b>3. POLICY CONTEXT</b> .....	<b>7</b>
3.1. SCOPE .....	7
3.2. NATURE AND SIZE OF THE MARKET CONCERNED .....	8
<b>4. PROBLEM DEFINITION</b> .....	<b>10</b>
4.1. CONTEXT .....	12
4.2. PROBLEM: BURDEN FOR SMEs TO SET-UP A SUBSIDIARY OR A GROUP OF SUBSIDIARIES ABROAD .....	13
4.2.1. <i>Problem and its drivers</i> .....	13
4.2.2. <i>Costs of establishHing subsidiaries abroad</i> .....	15
4.3. CONSEQUENCE: LOW PARTICIPATION OF SMEs IN THE INTERNAL MARKET .....	17
<b>5. BASELINE SCENARIO, THE EU'S RIGHT TO ACT AND JUSTIFICATION</b> .....	<b>19</b>
5.1. BASELINE SCENARIO: EXPECTED DEVELOPMENTS IF NO ACTION IS TAKEN .....	19
5.2. EU'S RIGHT TO ACT, SUBSIDIARITY AND PROPORTIONALITY .....	22
<b>6. OBJECTIVES</b> .....	<b>23</b>
<b>7. POLICY OPTIONS AND THE ANALYSIS OF IMPACT</b> .....	<b>23</b>
7.1. DISCARDED OPTIONS .....	24
7.2. RETAINED OPTIONS .....	25
7.2.1. <i>Registration process</i> .....	27
7.2.2. <i>Minimum capital</i> .....	33
<b>8. THE PREFFERED OPTIONS</b> .....	<b>39</b>
8.1. THE PREFFERED OPTIONS AND THEIR IMPACTS .....	39
8.2. THE CHOICE OF INSTRUMENT .....	41
<b>9. MONITORING AND EVALUATION</b> .....	<b>42</b>
<b>ANNEX</b> .....	<b>43</b>
1. TABLES .....	43
2. CALCULATIONS .....	45
3. THE LEGAL REQUIREMENTS FOR THE ESTABLISHMENT OF SINGLE-MEBMER COMPANIES ACROSS THE EU AND RECENT NATIONAL REFORMS .....	49
4. SUMMARY OF RESPONSES TO THE PUBLIC CONSULTATION ON THE SINGLE-MEMBER COMPANIES.....	59

## EXECUTIVE SUMMARY



<b>Executive Summary Sheet</b>
<b>IA on Single-Member Limited Liability Company</b>
<b>A. Need for action</b>
<b>Why? What is the problem being addressed?</b>
<p>SMEs still find it costly and difficult to be active across borders and only a small number of SMEs invests abroad. This is due to many factors, including the diversity of national company laws. Establishing a subsidiary abroad involves costs of meeting legal and administrative requirements in other countries, which are frequently different to what companies are used to “at home”. These include, for instance, necessary legal advice and translation costs. Those costs are likely to be particularly high for groups of companies since any SME parent company is faced with different requirements for each subsidiary it tries to establish in another MS.</p>
<b>What is this initiative expected to achieve?</b>
<p>The overall objective would be, through changes to national company law, to make it easier for SMEs to create subsidiaries, in particular abroad. This should encourage more entrepreneurial activity and, in turn, have a positive impact on growth, innovation and jobs in the EU.</p>
<b>What is the value added of action at the EU level?</b>
<p>It is very unlikely that MS would provide without EU intervention for national company law forms with identical set-up and operational conditions. Despite the reforms of national company laws, legal differences between MS still remain with regard to, for instance, the amount of minimum capital, articles of association or registration time and fees. This acts as a constraint on SMEs’ investment abroad. Only an EU-wide regime could help to overcome these problems.</p>
<b>B. Solutions</b>
<b>What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?</b>
<p>The IA discards at the beginning a number of options due to the lack of their feasibility and/or support from stakeholders. The retained options concern the creation of national company law forms for single-member private limited liability companies with harmonised conditions, in particular with regard to the registration process and minimum capital.</p> <p>The preferred choice are the policy options that provide for the possibility of on-line registration with the uniform template of articles of association and with minimum capital requirement of €1 accompanied by balance sheet and solvency statement.</p> <p>Compared to the other policy options it provides the best balance of effectiveness in achieving the objectives (reduction of costs for companies), efficiency and coherence with EU policies</p>
<b>Who supports which option?</b>
<p>In the 2012 consultation on the European company law a majority of stakeholders (including public authorities, trade unions, business, investors, academics) were in favour of exploring alternative measures to the European Private Company (SPE) Statute to help SMEs. These included harmonised</p>

legislation to promote EU SMEs, a revision of the European Company Statute or the creation of a simplified single-member company charter. In the 2013 consultation on single-member companies 74% of companies and business federations considered that the harmonisation of rules for single-member private limited liability companies could facilitate cross-border activities of SMEs. 79% of companies and 68% of business federations considered that such an initiative should include rules for on-line registration with one standard registration form throughout the EU.

### **C. Impacts of the preferred option**

#### **What are the benefits of the preferred option (if any, otherwise main ones)?**

The preferred policy option would increase uniformity of requirements across the EU and, therefore, provide more legal certainty with respect to the establishment of single-member private limited liability companies. It would also reduce costs of setting up and operating such subsidiaries abroad. According to the estimates carried out for the purpose of this IA, the cost reduction for the founders of single-member private limited liability companies in one year in the EU could range from €236 to 653 million.

#### **What are the costs of the preferred option (if any, otherwise main ones)?**

The preferred policy option would lower the minimum capital requirement in 12 MS that currently have requirements higher than €1. In some of those countries it could result in a decrease in national revenue from the registration process. This option would also introduce costs (between *de minimis* up to €100,000 or more) for MS with regard to the establishment of a direct on-line registration procedure and making the single template for articles of association available to companies. However, this should not lead to an unreasonable burden as national authorities would need to adapt the already existing national on-line registration systems rather than creating new ones. In addition, costs would be one-off versus the resulting permanent benefits for companies.

#### **How will businesses, SMEs and micro-enterprises be affected?**

This initiative aims at facilitating cross-border business for SMEs by reducing costs they face when setting up and operating subsidiaries abroad and by providing them with more legal certainty. At the same time, bigger companies could also profit as "parents" of groups of subsidiaries across the EU.

#### **Will there be significant impacts on national budgets and administrations?**

The costs of implementing the proposed rules at national level would depend on the existing level of minimum capital and the digitalisation of national company registration processes. For many MS that already have direct on-line registration procedures and minimum capital requirements of €1, the costs should be low. The costs for other MS should not be excessive and are described in the section on costs above.

#### **Will there be other significant impacts?**

All the relevant impacts of the preferred policy option are described above.

### **D. Follow up**

#### **When will the policy be reviewed?**

The Commission will monitor the implementation of the preferred policy option, gather information on the relevant issues and will assess in due time the progress achieved according to the objectives set (including, for instance, how the proposal was implemented in national laws, changes in the costs of set-up and operation of subsidiaries abroad and any remaining practical problems).

## 1. INTRODUCTION

---

European SMEs - small and medium-sized enterprises - 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, their full contribution to the EU's economy.

Improving the business environment for companies and notably for SMEs is one of the key priorities in the EU's ten-year growth strategy, the Europe 2020<sup>1</sup>. In particular, a number of SME-relevant actions were set out in the Communication on "An Integrated Industrial Policy for the Globalisation Era"<sup>2</sup>, one of the Europe 2020's seven key flagship initiatives. The review of the Small Business Act<sup>3</sup> and the Single Market Acts I<sup>4</sup> and II<sup>5</sup> also included actions focused on improving access to finance and making further efforts to reduce the costs of doing business in Europe.

From the perspective of company law, SMEs still find it costly and difficult to be active across borders and only a small number of SMEs invests abroad. The reasons include the diversity of national legislations, including differences between national company laws, and the lack of trust in foreign companies among customers and business partners. The lack of trust is one of the reasons why SMEs establish in other Member States (MS). They often establish subsidiaries as these provide customers with the brand and reputation of the parent company but also offer the security of dealing with a national, and not a foreign, company law form. Establishing abroad involves the costs of meeting legal and administrative requirements in other countries, which are frequently different to what companies are used to "at home" (including the necessary legal advice and translation costs). Those costs are likely to be particularly high for groups of companies since any SME parent company is faced at present with different regulatory requirements in relation to each subsidiary that it tries to establish in different MS.

The Commission aimed to address these obstacles in its 2008 proposal for a European Private Company Statue (SPE). In view of the withdrawal of the SPE proposal, the Commission continued to reflect on the potential follow-up or alternative measures to provide simple, flexible rules across the EU specifically suited to the needs of small and medium companies. The 2012 Action Plan on European company law and corporate governance<sup>6</sup> reaffirmed the Commission's resolve to build on the work carried out in the preparation of the SPE proposal by further initiatives to enhance cross-border opportunities for SMEs.

This Impact Assessment (IA) analyses options for overcoming some of the above-mentioned problems that SMEs, and other companies, face when doing business within the Internal Market. It focuses, in particular, on difficulties in relation to the establishment and operation of subsidiaries abroad.

---

<sup>1</sup> COM(2010) 2020, 3.3.2010.

<sup>2</sup> COM(2010) 614.

<sup>3</sup> COM(2011) 78, 23.2.2011.

<sup>4</sup> COM(2011) 206, 13.4.2011.

<sup>5</sup> COM(2012) 573, 3.10.2012.

<sup>6</sup> 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".

## 2. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

---

### 2.1. PROCEDURAL ISSUES

---

This IA was drawn up by Directorate-General for Internal Market and Services (DG MARKT)<sup>7</sup>. An IA Steering Group (IASG) was set up to bring in views of other services of the Commission. DG Research and Innovation, DG Justice, Secretariat General, DG Taxation and Customs Union, DG Health and Consumers, DG Enterprise and Industry and DG Communications Networks, Content and Technology accepted the invitation. The IASG met 3 times. The first meeting took place on 18 April 2013, the second - on 16 September and the third - on 30 September 2013.

The draft IA report was discussed with the IA Board (IAB) of the Commission on 20 November 2013. The comments received from the IAB are reflected in the updated report by the modification of the sections regarding:

- the problem definition and problem tree
- the size of the market
- the policy options and their impacts by using the criteria of efficiency, effectiveness and coherence.

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. The explanations and the tables on which calculations of impact are based were moved into the Annex.

### 2.2. EXTERNAL EXPERTISE AND CONSULTATION OF INTERESTED PARTIES

---

This IA builds on the research gathered in the preparation of previous EU initiatives such as the 2008 SPE proposal and a number of relevant consultations and discussions which took place since then.

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.<sup>8</sup> The report called for intensified efforts to simplify the legal regime applicable to SMEs. In this context, it mentioned the need to simplify the formalities before a company can be established (e.g. registration, access to electronic procedures). It also proposed to introduce a simplified template for single-member companies across the EU, which could allow both single shareholder start-ups and holding companies with wholly owned subsidiaries to save on transaction costs and unnecessary formalities.

On that basis, the Commission launched a broad public consultation on the future of European company law in February 2012. Among others, it asked for stakeholders' opinions regarding potential measures to provide further support at EU level to European SMEs. Nearly 500 responses were received, from a broad 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 differed as to the means to achieve it. For instance, stakeholders were hesitant about the political feasibility of continuing SPE negotiations. For them the alternative measures were, in order of preference,

---

<sup>7</sup> [Http://ec.europa.eu/governance/impact/planned\\_ia/docs/2014\\_markt\\_003\\_single\\_member\\_company.pdf](http://ec.europa.eu/governance/impact/planned_ia/docs/2014_markt_003_single_member_company.pdf).

<sup>8</sup> The Report of the Reflection Group:

[http://ec.europa.eu/internal\\_market/company/docs/modern/reflectiongroup\\_report\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/modern/reflectiongroup_report_en.pdf).

new legislation which could promote EU SMEs (e.g. via labelling), a revision of the European Company (SE) Statute and a review of 12<sup>th</sup> Company Law Directive to create a simplified single-member company charter.

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 focused public on-line consultation was launched in June 2013<sup>9</sup> on 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 (the 2013 on-line consultation). 242 responses were received from a broad range of stakeholders including companies, public authorities, trade unions, business federations, universities and individuals. 62% of respondents who expressed an opinion (including 75% of companies and 52% of business federations) answered positively to the question whether a harmonisation of requirements concerning single-member private limited liability companies at EU level would encourage and facilitate cross-border activity of SMEs within the EU.

On 13 September 2013, DG MARKT met a number of EU business representatives<sup>10</sup>. 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 to adopt the SPE should continue. Other stakeholders, such as notaries, were generally supportive of the initiative, but raised specific points with regard to the security of on-line registration of companies and the need to guarantee the appropriate level of control. In addition, in view of some stakeholders, the reduction of minimum capital should be accompanied by appropriate measures e.g. solvency test or restrictions on the distribution of dividends.

### 3. POLICY CONTEXT

---

#### 3.1. SCOPE

---

In order to understand the focus of this initiative on single-member limited liability companies as a company law form suitable for the needs of SMEs participating in the Internal Market, it is essential to present the broader context in which SMEs and other companies operate across borders. This is covered in sections 3.2 and 4 of this IA.

Single-member companies have a sole member either already when they are formed or when all their shares come to be held by a single person.<sup>11</sup>

Single-member companies are often “wholly-owned subsidiaries” of other companies, i.e. those companies are their sole shareholders (members). Generally, a company is a “subsidiary” of another company if the latter:

- holds a majority of the voting rights in it, or

---

<sup>9</sup> [http://ec.europa.eu/internal\\_market/consultations/2013/single-member-private-companies](http://ec.europa.eu/internal_market/consultations/2013/single-member-private-companies).

<sup>10</sup> 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.

<sup>11</sup> Article 2 of 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 companies, OJ L 258, 1.10.2009, p. 20–25.

- has the right to appoint or remove a majority of the members of its administrative, management or supervisory bodies, or
- has the right to exercise a dominant influence over the former company.<sup>12</sup>

### 3.2. NATURE AND SIZE OF THE MARKET CONCERNED

---

SMEs are the backbone of EU economy. The Commission's annual report on SMEs in the EU estimated that in 2012 there were around 20,7 million SMEs, constituting more than 98 % of all enterprises<sup>13</sup>. They accounted for 67 % of total EU employment and for 58 % of EU gross value added.

SMEs, and other companies, can choose legal forms through which they develop their economic activities and participate in the Internal Market. The principal choice depends on the scope of protection of private assets against risks related to conducting business. Businesses can operate with limited liability or with unlimited liability (sole traders, civil partnerships etc.). Limited liability companies can have two types:

- private limited liability (e.g. GmbH, SARL, spółka z.o.o.) or
- public limited liability (joint stock, e.g. AG, SA, NV).

The form of a public limited liability company was originally developed with bigger companies in mind. Those companies are often subject to more detailed internal organisational rules and higher minimum capital requirements, and can be listed on the stock exchange or on other platforms where shares are traded publicly.

The private limited liability company form was originally designed for smaller companies and its requirements are usually less demanding. Therefore, the latter tends to be more often used by smaller businesses, although this might vary across MS. In some countries a public limited liability company law form might be practically not accessible to SMEs and in others, a large number of SMEs might use it.<sup>14</sup>

Private and public limited liability companies are national company law forms, different in each MS, that have only been partially harmonised at EU level. In addition, there exists to date only one truly European company law form – Societas Europaeae (SE). It provides a European equivalent to national public limited liability companies and therefore, an alternative to national rules.

Both private and public limited liability company forms, including SE, can have one shareholder and be single-member companies.

The diagram below illustrates different company law forms and provides an approximate overview of how many companies are likely to be SMEs. However, it needs to be stressed that there is no official estimation of how many out of 20.7 million SMEs in the EU are established as limited liability companies (private or public). Therefore, the below diagram makes some assumptions about numbers of SMEs on the basis of statistics available in other contexts and the data gathered from national authorities specifically for the purpose of this Impact Assessment. In 2010 it was estimated that there were 7.3

---

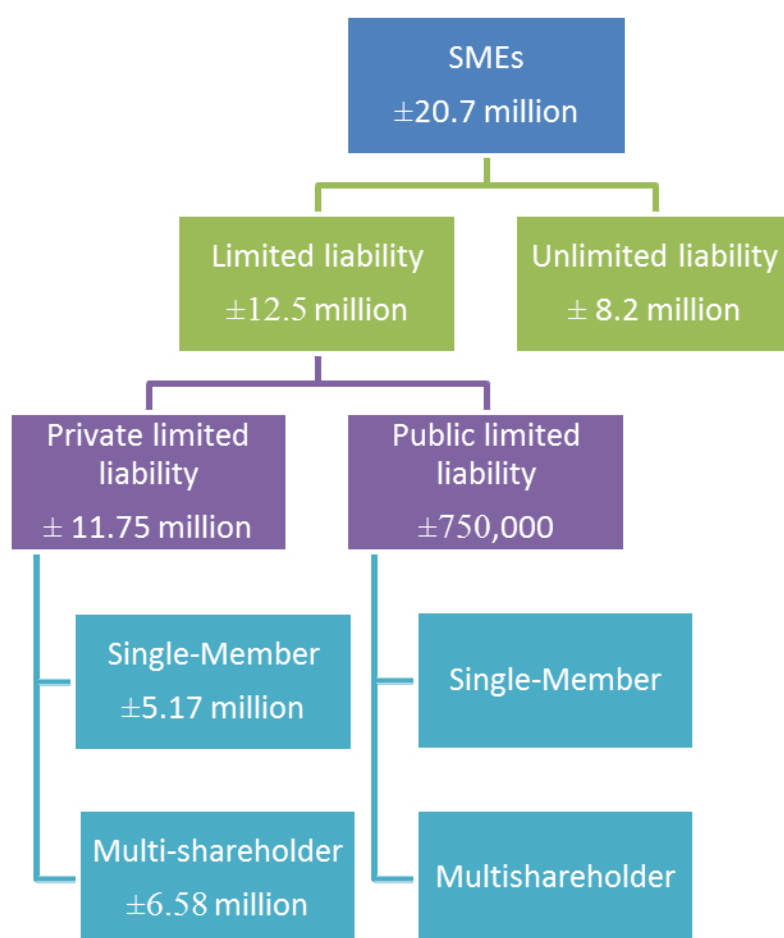
<sup>12</sup> There is no specific definition of a “subsidiary” in the EU acquis. The definition referred to above stems from Directive 83/349/EEC (the Seventh Council Directive) on consolidated accounts (currently Directive 2013/34/EU).

<sup>13</sup> Estimated figure for 2012. Source: The report “EU SMEs in 2012: at the crossroads. Annual report on small and medium-sized enterprises in the EU”, 2011/12, p. 9, [http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/performance-review/files/supporting-documents/2012/annual-report\\_en.pdf](http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/performance-review/files/supporting-documents/2012/annual-report_en.pdf).

<sup>14</sup> The Report of the Reflection Group, p. 57.



million SMEs with limited liability.<sup>15</sup> Currently, it is estimated that there are around 13.9 million private limited liability companies in the EU.<sup>16</sup> In 2010 the proportion of SMEs among limited liability companies was very high (around 90%)<sup>17</sup> and it is assumed that this proportion has not changed in the meantime. Therefore, one could assume that around 12.5 million companies with limited liability are likely to be SMEs. The remaining 8.2 million SMEs are likely to be unlimited liability enterprises (mainly civil partnerships or sole-traders).



The proportion of public limited liability companies among all limited liability companies is low. The 2005 survey of the European Commerce Registers' Forum, prepared by the Swedish Companies Registration Office<sup>18</sup>, estimated that only around 6% of all limited liability companies were public in the EU (25). This percentage is also used in the diagram above to show how many public limited liability SMEs are likely to exist. More recent information (from 2011 and 2012) shows that this proportion still

<sup>15</sup>IA on financial statements; SEC (2011) 1289 final, p. 19, available at: [http://ec.europa.eu/internal\\_market/accounting/docs/sme\\_accounting/review\\_directives/SEC\\_2011\\_1289\\_1\\_en.pdf](http://ec.europa.eu/internal_market/accounting/docs/sme_accounting/review_directives/SEC_2011_1289_1_en.pdf). Since each SME that is obliged to follow accounting rules has to have limited liability, the number of SMEs subject to accounting rules is identical with the number of limited liability SMEs.

<sup>16</sup> Data provided by national authorities in 2013 for all MS. For more detailed information see Annex.

<sup>17</sup> 7,3 million out of 8,1 limited liability companies in the EU (EUROSTAT estimates from 2010).

<sup>18</sup> [http://ec.europa.eu/internal\\_market/company/docs/shareholders/ia\\_transfer\\_122007\\_part2\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/shareholders/ia_transfer_122007_part2_en.pdf).

remains low. For instance, in Germany it is around 1.5% (16.400 public limited liability companies out of 1 million of all limited liability companies). The proportion is even lower in the UK – 0.3%.<sup>19</sup>

With regard to the number of single-member companies, it is difficult to obtain precise figures since in some MS single-member companies are not a separate company law type and, therefore, are not independently listed in business registers. In the UK, for instance, there are around 1.2 million single member companies out of around 2.5 million of all limited liability companies<sup>20</sup>. In Austria, there are 66,500 single-member companies out of 127,400 private limited liability companies<sup>21</sup>. Although the percentage of single-member companies out of all limited liability companies varies significantly among MS – from very low in Spain and in Malta (less than 15%) to more than 70% in the Netherlands - it is estimated on the basis of the data provided by national authorities from 24 MS that around 44% of all private limited liability companies are single-member. Therefore, assuming that there are 13.9 million private limited liability companies in the EU, around 6.1 million of those are likely to be single-member (including both SMEs and bigger companies). Similarly, as regards SMEs, assuming that there are 11.75 million private limited liability SMEs, 5.17 million of those are likely to be single-member.

The percentage of single-member public limited liability companies among all single-member limited liability companies is very low (around 1% at EU level)<sup>22</sup> which corresponds to the generally low proportion of public limited liability companies among all limited liability companies, as mentioned above.

## 4. PROBLEM DEFINITION

---

The problem tree below illustrates the context of the initiative, its main drivers, the problem and its consequences.

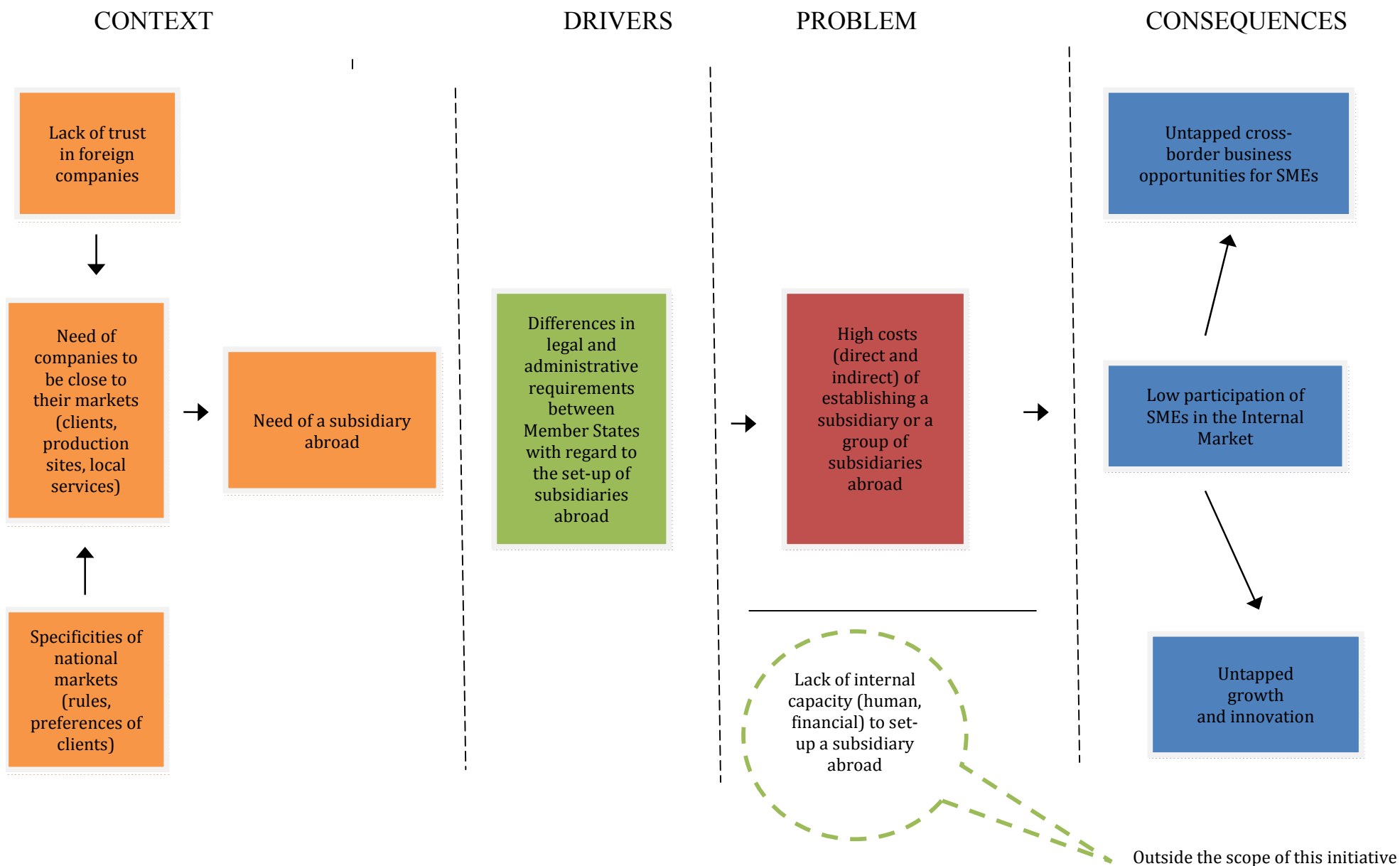
---

<sup>19</sup> [http://www.companieshouse.gov.uk/about/pdf/companiesRegActivities2012\\_2013.pdf](http://www.companieshouse.gov.uk/about/pdf/companiesRegActivities2012_2013.pdf).

<sup>20</sup> This data was provided by national authorities in the framework of the on-line consultation on single-member companies and is also available on [http://www.companieshouse.gov.uk/about/pdf/companiesRegActivities2012\\_2013.pdf](http://www.companieshouse.gov.uk/about/pdf/companiesRegActivities2012_2013.pdf).

<sup>21</sup> [Http://ec.europa.eu/internal\\_market/consultations/2013/single-member-private-companies/](http://ec.europa.eu/internal_market/consultations/2013/single-member-private-companies/).

<sup>22</sup> [Http://ec.europa.eu/internal\\_market/consultations/2013/single-member-private-companies/](http://ec.europa.eu/internal_market/consultations/2013/single-member-private-companies/).



## 4.1. CONTEXT

---

The Internal Market opens up possibilities for businesses to be active across borders and therefore, allows consumers to choose from a wider range of products and services. At the same time, due to imperfect knowledge, information asymmetry or information overload, trust and familiarity with companies that customers know still play an important role.

In this context, a "country of origin effect" can be observed among consumers who often compare foreign firms with the service and reputation of the companies established in their own country.<sup>23</sup> The main reasons why consumers might not feel comfortable with foreign companies include psychological and practical implications of applying foreign consumer protection law, dealing with complaints, language issues and the costs of return of products.<sup>24</sup> This is confirmed by the results of the 2012 Commission Consumer Scoreboard<sup>25</sup> according to which consumers trusted local retailers/providers more than the ones from other MS. For instance, only 11% purchased goods from retailers/sellers located in other EU countries, whereas 41% bought from national operators.<sup>26</sup>

A similar picture emerges from the business perspective and shows the need for companies to be close to the markets in which they want to do business and in particular to be close to consumers. In the 2007 European Business Test Panel survey of companies<sup>27</sup>, 43% of respondents indicated that operating in another MS under their domestic legal form made it more difficult to penetrate markets and gain trust of consumers and business partners. The same survey, as well as the 2011 study on Internationalisation of European SMEs<sup>28</sup>, also show that the prime reason for SMEs investing abroad was geographic: to be close to final customers or key business partners.<sup>29</sup>

Even with the development of on-line sales (which, in principle, should help sellers to operate without establishing a company abroad), a presence abroad still plays an important role for companies. In fact, the current proportion of e-commerce in retail sales of European SMEs - even if gradually rising - is at present still limited (3,4 %<sup>30</sup>). Most retailers in the EU continue to use direct sales as their main retail channel (66 %)<sup>31</sup> and still treat the on-line business as a complementary one.<sup>32</sup> In addition, as shown by the results of the 2012 Consumer Scoreboard, while the majority of the EU population (59.2%) feel

<sup>23</sup> See e. g. N. H. Jimenez, S. San Martin, *The role of country-of-origin, ethnocentrism and animosity in promoting consumer trust. The moderating role of familiarity*, International Business Review 19 (2010) 34–45.

<sup>24</sup> On the general trend see European Cross-border E-commerce, The Challenge of Achieving Profitable Growth, <http://www.accenture.com/SiteCollectionDocuments/PDF/Accenture-ERRT-Brochure.pdf#zoom=50>.

<sup>25</sup> See The Consumer Conditions Scoreboard, SWD(2013) 291 final, available at: [http://ec.europa.eu/consumers/consumer\\_research/editions/docs/9th\\_edition\\_scoreboard\\_en.pdf](http://ec.europa.eu/consumers/consumer_research/editions/docs/9th_edition_scoreboard_en.pdf) (9th edition, July 2013).

<sup>26</sup> *Ibidem*, p. 23.

<sup>27</sup> Observatory of European SMEs, Analytical Report May 2007, available at: [http://ec.europa.eu/public\\_opinion/flash/fl196\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl196_en.pdf), referred to in the SPE impact assessment, SEC(2008) 2098, p. 11 (available at: [http://ec.europa.eu/internal\\_market/company/docs/epc/impact\\_assesment\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/epc/impact_assesment_en.pdf)).

<sup>28</sup> Internalisation of European SMEs – [http://ec.europa.eu/enterprise/policies/sme/market-access/files/internationalisation\\_of\\_european\\_smes\\_final\\_en.pdf](http://ec.europa.eu/enterprise/policies/sme/market-access/files/internationalisation_of_european_smes_final_en.pdf).

<sup>29</sup> Moreover, the relevant markets are often still national due to different consumer preferences, brand perception, demand structure, prices set at national level, regulatory differences or even different “medical views” among stakeholders. See Case No COMP/M.3751 - Novartis/Hexal, Commission Decision of 27 May 2005, M.2283 (10/10/2001) Schneider / Legrand.

<sup>30</sup> The EU and SMEs: A contract for new growth, brochure by the Commission (2012), p. 8, available at: [http://ec.europa.eu/internal\\_market/publications/docs/sme-brochure/sme-brochure-web\\_en.pdf](http://ec.europa.eu/internal_market/publications/docs/sme-brochure/sme-brochure-web_en.pdf).

<sup>31</sup> Flash Eurobarometer 331, Retailers' attitudes towards cross-border trade and consumer protection, June 2012, p. 5, available at [http://ec.europa.eu/public\\_opinion/flash/fl\\_331\\_sum\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_331_sum_en.pdf).

<sup>32</sup> Bieron, J & Ahmed, U., *Regulating E-commerce through International Policy: Understanding the International Trade Law Issues of E-commerce*, Journal of World Trade: law, economics, public policy (2012), pp. 545-570 (546).

confident making domestic purchases via the Internet, a much lower percentage (35.4%) expresses confidence about cross-border purchases. Moreover, as far as actual purchases are concerned, the gap of consumers' trust between national and foreign retailers is even bigger. For example, in Germany and in the UK only 9 and 13% of consumers, respectively, purchased goods from a provider located in another EU country.

There are a number of ways in which companies ensure their presence close to their clients. Many companies act via subsidiaries, branches and joint ventures.<sup>33</sup> Among those, the most popular form appears to be a subsidiary (42% of investment abroad) since it allows companies to control activities and profits gained abroad while creating a new legal form in the MS of investment.<sup>34</sup> It shields a “parent” company from liability which is important in case of entering a new market.

In contrast to branches and joint ventures, acting via subsidiaries offers clients the brand and reputation of the parent company, but at the same time the security of dealing with “their national” company. Subsidiaries, in contrast to branches, are separate companies with their own legal personality which means that they are governed by the laws of the place of registration as regards important issues for consumers such as insolvency or consumer protection laws.

It follows that companies often need a presence in the foreign markets in order to be active abroad and gain trust of consumers. For those reasons they mainly invest abroad through subsidiaries. Therefore, this IA focuses on the problems that companies encounter when they try to set up and run subsidiaries in other EU countries.

## 4.2. PROBLEM: BURDEN FOR SMES TO SET-UP A SUBSIDIARY OR A GROUP OF SUBSIDIARIES ABROAD

---

### 4.2.1. PROBLEM AND ITS DRIVERS

---

The founders of companies face internal and external barriers when they attempt to establish a subsidiary or a group of subsidiaries abroad.

Internal barriers relate to companies themselves, e.g. the lack of will or capability (financial, human resources, language) to participate in cross-border activities.<sup>35</sup> However, these barriers remain outside the scope of this IA.

External barriers are independent of companies and relate to differences in national regulatory regimes, different legal, administrative and linguistic requirements across the EU, and other issues such as accessibility of external funding. The former differences concern company law but also rules relating to, for example, tax, social security, insurance or labour laws which are outside the scope of this IA. Within company laws *sensu largo* audit and accounting rules are also outside the scope of this IA, since they have been subject to separate initiatives.<sup>36</sup> As regards the accessibility to funding, it seems from the results of the 2013 online consultation that it might not always have decisive influence on establishing

---

<sup>33</sup> Internationalisation of European SMEs, p. 22.

<sup>34</sup> Internationalisation of European SMEs (ibid), p. 22.

<sup>35</sup> Internationalisation of European SMEs, (ibd.), p. 58.

<sup>36</sup> For example Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC.

subsidiaries abroad. For instance, compliance costs, trust in foreign company law forms or legal advice are seen by the companies as much more important than difficulties in having access to finance due to cross-border dimension.<sup>37</sup>

As regards company law in particular, most aspects of relevance for private limited liability companies (that constitute around 94% of all limited liability companies in the EU) have not yet been harmonised at EU level. Therefore, there persist differences between MS' company laws and when founders establish companies abroad they face different legal and administrative requirements than "at home". These differences result in costs for companies to set-up and run subsidiaries abroad. Although all companies wishing to expand cross-border are affected, these administrative and legal burdens are proportionally much heavier for SMEs and their founders, who often have smaller financial means and organisational resources than larger companies.

The costs can be direct and indirect. In this IA direct costs are understood as set-up costs primarily being generated by mandatory national legal and administrative requirements when establishing a company in a given country. These costs usually include administrative costs, and also notary fees and minimum capital requirements, where relevant.

Concerning the minimum capital requirement, this normally depends on the sector in which a future company would be active. In some sectors small or almost no capital is necessary to start business whereas other sectors could be very capital intensive. Therefore, a minimum capital requirement, at least, for some entrepreneurs, could constitute a cost, even if the capital could be transformed into assets and used by the company for running business. For some entrepreneurs this would be the cost of borrowing the required sum; for others that do not have such a possibility, minimum capital requirement would simply discourage them from setting-up a business.

The direct costs apply equally to national and foreign founders of companies but vary across MS, and therefore, can be perceived as barriers to invest abroad if they are significantly higher than what the founders of companies pay in their own country.

The indirect costs are understood in this IA as those predominantly connected with the differences between MS' laws with regard to set-up and operational requirements on articles of association, organisation and structure of companies, compulsory annual meetings, reporting requirements, etc. These issues often necessitate legal advice (and translation) and would usually have more impact on foreign than national founders of companies, leading to higher costs for the former. Lengthy registration procedures also result in costs for the company founders, especially if they require dedicated travels from foreign countries to comply with formalities in Member States of registration.

The compliance with foreign legislation and legal advice related to set-up costs were mentioned by almost 62 % of companies and business federations in the 2013 on-line consultation as one of the biggest "company law obstacles"<sup>38</sup> preventing companies from expanding their activities abroad.<sup>39</sup> The trend has not changed since 2007, when the survey conducted for the purpose of the SPE initiative showed that for

---

<sup>37</sup> Only 32 % of companies considered access to finance as a barrier as compliance costs or trust in foreign company law forms.

<sup>38</sup> Obstacles not related to company law and answers where stakeholders did not take any position were not counted.

<sup>39</sup> Results of the 2013 on-line consultation - [http://ec.europa.eu/internal\\_market/consultations/2013/single-member-private-companies/](http://ec.europa.eu/internal_market/consultations/2013/single-member-private-companies/).

more than 60% of respondents the diversity of national legislations and the difficulties in dealing with different company law systems were the biggest obstacles to conducting business in other MS.<sup>40</sup>

The direct costs are, therefore, the costs of regulation which applies to all founders who want to establish a subsidiary in a given MS whereas the indirect costs are the costs of differences in regulation among MS which are more relevant for foreign founders. Ultimately, the expense of establishing a subsidiary abroad would be the sum of direct and indirect costs.

All these costs are generated if a founder wants to establish one subsidiary abroad. In case a parent company would like to create a group of subsidiaries (“daughter-companies”) in different MS, the costs would be bigger (the effect of scale). As a result of divergence in MS’ regulatory requirements, the group cannot optimise its structure across all subsidiaries and each of them has to have different articles of association.<sup>41</sup>

**Example:**

A company with subsidiaries in 6 MS would have 6 different company forms, each possibly with a different organisational/management structure and a different method of creation. In contrast, a domestic group of comparable size could follow only one model/template.

---

#### 4.2.2. COSTS OF ESTABLISHING SUBSIDIARIES ABROAD

---

It is difficult to estimate direct and indirect costs for establishing subsidiaries abroad, since they depend on many factors, including:

- the legal form of the subsidiary (public or private limited liability)
- the complexity of its structure (one or many shareholders) and thus the complexity of its articles of association
- regulatory requirements in a given MS with regard to set-up and in particular, a possibility of on-line registration, need for a notary, a possibility to use a single-template, mandatory verification by the accountant, the level of minimum capital, etc.
- founder’s experience in dealing with the legal system concerned, thus a need and a choice of legal advice (internal or external) and/or help of the registration agent
- knowledge of MS language and thus a need for translation

Therefore, even the direct and indirect costs of establishment of subsidiaries in the same MS can differ significantly depending, for instance, on whether a parent company needed external legal advice, had previous experience with the legal system concerned or knew the language.

This is demonstrated by different experiences reported in the 2013 on-line consultation.<sup>42</sup>

---

<sup>40</sup>SEC(2008) 2098, p. 11.

<sup>41</sup>The Report of the Reflection Group, p.57.

<sup>42</sup> [http://ec.europa.eu/internal\\_market/consultations/2013/single-member-private-companies/](http://ec.europa.eu/internal_market/consultations/2013/single-member-private-companies/).

Two Estonian companies reported different additional costs of setting-up a single-member subsidiary in Finland (between €1 and 4,999 and between €5,000 to 9,999) as compared to setting-up a company at home. A similar case, in terms of the difference in the set-up costs, was also reported in case of two different Estonian companies establishing subsidiaries in Spain. According to another example, one German company setting-up a single-member subsidiary in Denmark incurred additional costs below €5,000, whereas another Germany company in the same case incurred no additional costs at all.

According to some other respondents to the consultation (a Czech parent company setting up a Slovak subsidiary, a Czech parent company setting up a subsidiary in Belgium, an Estonian parent company setting up a UK subsidiary), on the basis of their practical experience, the differences between the costs of establishing a single-member private limited liability company “at home” and “abroad” could be higher and could amount to more than €20,000.

On the whole, the majority of responding companies (53%) were not able to provide any figures as regards additional costs when setting-up a single-member private limited liability company abroad. From those respondents that replied to this question, 47% considered the costs to be in the range between €1 and €4,999, whereas 25% in the range of between €5,000 and €9,999.

Some respondents provided examples of specific additional costs of legal advice associated with the set-up of a single-member private limited liability company abroad, which is one of the sources of indirect costs. These costs were estimated by one Belgian parent company which was setting up a subsidiary in France as being in the range between €5,000 and 9,999, whereas another Belgian parent company did not experience any additional costs of creating a single-member subsidiary in Spain.

The legal costs usually depend on whether companies use the standard template for articles of association. In fact, a standard creation of a company in the UK does not necessitate any legal advice since the template for articles of association is provided (the same is the case of on-line registration in Poland). In contrast, in France, according to the respondents to the 2013 on-line consultation, standard costs of legal advice with regard to setting up a company (and its articles of association) could amount to €1000. On the basis of the information submitted by the Member States (see Annex), the average cost of minimum legal advice<sup>43</sup> with regard to the set-up of private limited liability company can be prudently estimated to be around €387 at EU level.<sup>44</sup>

As regards direct costs, the overall costs of creating limited liability companies, in particular private limited liability companies, have been significantly reduced recently in many MS<sup>45</sup>. However, in some countries, even after most recent reforms, the costs could still be considered as high for the founders of companies.

---

<sup>43</sup> Minimum legal advice means advice given by notaries or other lawyers compulsory participating in the process of registration of companies. The average costs of legal advice could be much higher.

<sup>44</sup> see p. 44

<sup>45</sup> Annex 3. provides the summary in relation to all MS.



**Example:**

In Austria, the set-up costs, of a private limited liability company amounted to around €36,500 including the full amount of minimum capital.<sup>46</sup> After the June 2013 reform of company law, the same costs decreased significantly but would still amount to €11,000. These costs include the minimum capital requirement, notary fees and register fees.<sup>47</sup> They include a simple legal advice by a notary but do not include the costs of any additional legal advice.

Furthermore, according to the information provided by the authorities, the direct set-up costs of limited liability companies can differ depending on whether companies use on-line or other type of registration. The set-up costs vary from €0 in Slovenia (on-line registration) to up to more than €900 in Austria and in Cyprus. In most countries on-line registration is cheaper than a paper one.

In conclusion, it is difficult to provide exact figures on the standard amount of direct and indirect costs since these costs vary significantly and depend on concrete situations of companies, their size, the capital and the knowledge it has of the foreign legal system. However, the above examples provide an indication that there still exists important differences between MS and that there is a potential of decreasing the unnecessary costs that hinder the establishment of subsidiaries in at least some MS.

### 4.3. CONSEQUENCE: LOW PARTICIPATION OF SMES IN THE INTERNAL MARKET

The above-described costs (and effort in terms of time and energy) create burdens for SMEs and hinder their participation in the Internal Market.

According to the available statistics, the SME participation in the Internal Market is low. For instance, according to the report on Internationalisation of European SMEs, only around 2% of SMEs establish companies abroad<sup>48</sup> (in the form of a subsidiary, branch or joint-venture). This results in the investment by around 500,000 companies from 20.7 million SMEs. Among all companies that invest abroad, micro-enterprises<sup>49</sup> constitute 2%, 6% are small enterprises<sup>50</sup> and 16 % are medium-sized<sup>51</sup> enterprises.<sup>52</sup> In addition, most of them limit their investment to only one country (71%)<sup>53</sup>.

It is difficult to define what should be the optimum level of investment, since it depends on many factors unrelated to company law such as, for example, the economic growth or general business climate. However, even without making a reference to the optimal level of investment, it seems that companies are not investing enough on a cross-border basis in the EU. For instance, the level of SME participation in the

<sup>46</sup> These costs were calculated for the founder who is a legal person and does not qualify for any start-up aid.

<sup>47</sup> If instead of a full amount of minimum capital, the actual minimum capital paid in is taken into account the comparison is the following: (before July 2013) – around € 19,000; (after July 2013) – around € 6,000

<sup>48</sup> Final Report on the Opportunities for the Internationalisation of European SMEs (2011), p. 21, available at: [http://ec.europa.eu/enterprise/policies/sme/market-access/files/web\\_internationalisation\\_opportunities\\_for\\_smes\\_final\\_report\\_aug\\_2011\\_en.pdf](http://ec.europa.eu/enterprise/policies/sme/market-access/files/web_internationalisation_opportunities_for_smes_final_report_aug_2011_en.pdf).

<sup>49</sup> Micro-enterprises have below 10 employees and have a turnover or balance sheet total below or equal to € 2 million.

<sup>50</sup> Small enterprises have below 50 employees and have a turnover or balance sheet total below or equal to € 10 million.

<sup>51</sup> Medium-sized enterprises have below 250 employees and a turnover below or equal to €50 million or balance sheet total below or equal to €43 million.

<sup>52</sup> [Http://ec.europa.eu/enterprise/policies/sme/market-access/files/web\\_internationalisation\\_opportunities\\_for\\_smes\\_final\\_report\\_aug\\_2011\\_en.pdf](http://ec.europa.eu/enterprise/policies/sme/market-access/files/web_internationalisation_opportunities_for_smes_final_report_aug_2011_en.pdf), p. 38.

<sup>53</sup> Internationalisation of European SMEs, (ibid.), p. 21.

Internal Market was considered as low in relation to their potential by around 86% of respondents (77% of companies and 90% of business federations) to the 2013 on-line consultation that had an opinion on the subject.<sup>54</sup> In particular, 67% of companies and business federations considered that it was difficult to expand commercial activities within the EU by setting-up a subsidiary or opening a branch.

Moreover, such untapped potential can be expressed not only directly in terms of the missed opportunities for cross-border establishment but also indirectly in wider terms of missed opportunities for company creation in the EU, and furthermore – for European growth and employment. Once companies establish in a Member State, they sell their products and services within the EU and interact across borders via different channels with companies and individuals from other Member States, which has impact on growth and jobs within the whole EU.

#### Example:

There are around 10 times less limited liability companies in Poland than in the UK, even if the UK has only 1.7 times bigger population than Poland. Moreover, the establishment of a private limited liability company in Poland is more than 80 times more expensive than in the UK. This shows that at least in some MS there is a clear potential for company creation and the case for the reduction of costs.

A low participation of SMEs in the Internal Market can also have broader implications. The high costs of internationalisation (such as direct and indirect costs described in the previous section) were considered as one of the major barriers to expansion in the recent study on Internationalisation of European SMEs<sup>55</sup>. The lower the entry barrier to set up companies abroad, the more companies are able to provide their goods and services in other countries and therefore the volume of trade and competition in the Internal Market should increase. This should, in turn, have a positive impact on innovation.

The link between internationalisation of SMEs and innovation is particularly striking. The results of the above-mentioned study<sup>56</sup> confirm that companies being active outside their home countries introduce products/services and process innovations more often than non-internationally active companies. Almost 50% of the internationally active companies introduced new products or services in a given period whereas the average for all companies was 32%. A presence in another market requires competitive products. This effect is called “learning-by-internationalisation”.<sup>57</sup> Therefore, the expansion abroad is directly linked with innovation: the more companies expand abroad, the more innovative they have to become in order to compete with foreign products or services.

On the basis of the above, there appears to be untapped potential for SMEs to expand their business activities beyond national borders and to better take advantage of the opportunities offered by the Internal Market.

---

<sup>54</sup> [http://ec.europa.eu/internal\\_market/consultations/2013/single-member-private-companies/](http://ec.europa.eu/internal_market/consultations/2013/single-member-private-companies/)

<sup>55</sup> See: Final Report on the Opportunities for the Internationalisation of European SMEs (2011), p. 57-63.

<sup>56</sup> Internationalisation of European SMEs, (ibd.), p. 47.

<sup>57</sup> Internationalisation of European SMEs, (ibd.), p. 47.

## 5. BASELINE SCENARIO, THE EU'S RIGHT TO ACT AND JUSTIFICATION

---

### 5.1. BASELINE SCENARIO: EXPECTED DEVELOPMENTS IF NO ACTION IS TAKEN

---

If no new initiative is taken at European level, SMEs, and other companies, will continue to be able to create subsidiaries according to national law and the currently available EU instruments.

#### *EU level*

As regards European legal forms, there exists only one European company law form i.e. the European Company (SE). The SE, being a public limited liability company with a minimum capital of €120,000, is not well-suited for many SMEs.<sup>58</sup> Moreover, its methods of formation require the founder to be or to convert itself into a public limited liability company. This significantly reduces the attractiveness of the SE for SMEs, which often consider SE formation as burdensome.<sup>59</sup>

There is currently no European legal form designed for small companies. The 2008 SPE proposal<sup>60</sup> aimed to offer SMEs an instrument facilitating their cross-border activities, which would be simple, flexible and uniform in all MS. It was a response to a number of calls from businesses to establish a truly European form of a private limited liability company. However, despite strong support from the business community, it has not been possible to find a compromise allowing for the unanimous adoption of the Statute among MS<sup>61</sup>. Some other options, e.g. the possibility of using enhanced cooperation, were also explored but have not been successful either. The Commission finally decided to withdraw the SPE proposal as a part of the REFIT exercise<sup>62</sup> and to replace it by an alternative one, on which it might be easier to reach compromise among Member States by changing the adoption procedure and reducing the number of contentious issues.

The European Co-operative Society Statute (SCE)<sup>63</sup> cannot be used either by capital companies due to specificities of cooperatives and therefore is not suitable for the creation of subsidiaries.

As regards the EU secondary legislation, many company law issues of relevance for companies are already regulated, such as the constitution and maintenance of public limited-liability companies' capital, branches' disclosure, mergers and divisions, minimum rules for single-member private limited-liability

---

<sup>58</sup> According to the available data, there were only 56 SEs in Germany in 2012 that had less than 500 employees ([http://www.boeckler.de/pdf/bb\\_mitbestimmung\\_se\\_2013\\_07\\_01.pdf](http://www.boeckler.de/pdf/bb_mitbestimmung_se_2013_07_01.pdf)) among 1 million private limited liability companies and 16.000 public limited liability companies.

<sup>59</sup> COM(2010) 676, 17.11.2010, "Report on the application of Council Regulation 2157/2001 on the Statute for a European Company (SE)", p. 6.

<sup>60</sup> Proposal for a Council Regulation on the Statute for a European private company, COM(2008) 396.

<sup>61</sup> Technical negotiations had been finalised under the Swedish Presidency. However, political agreement could not be reached at the Competitiveness Council meetings in December 2009 and later in May 2011. The three most contentious issues, on which it was difficult to reach agreement, included the possibility to separate the registered office and the headquarters in two different Member States, the amount of the minimum capital required and the regime for employee participation. Recent contacts with MS delegations during 2012 showed that, despite their general support for the objectives of the initiative, their respective positions were unlikely to evolve in the near future. For instance, at the meeting of the Company Law Expert Group on 1 June 2012, although some MS were willing to continue the work on the SPE, a number of delegations claimed that they reached their limits as regards possible further concessions in the context of unanimity. Several others had doubts as they found the latest version of the Presidency compromise not sufficiently ambitious or argued that alternatives should be explored instead.

<sup>62</sup> 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.

<sup>63</sup> Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE).

companies and shareholders' rights. However, these rules often focus specifically on public limited liability companies, and therefore do not simplify the rules for SMEs, or they do not cover some of the issues which make establishing a subsidiary abroad burdensome (e.g. registration procedure).

At EU level there is already a directive on single-member private limited liability companies adopted in 1989.<sup>64</sup> It was amended several times<sup>65</sup> and finally codified in 2009.<sup>66</sup> However, this directive provides only for limited harmonisation of MS' laws and does not address many key issues such as: formation, registration requirements, creditors' protection and minimum capital requirements. It only requires that companies may have a single-shareholder (member) in all MS and regulates in two articles the powers of the sole-member in relation to a company (general meeting and contacts recorded in writing). Therefore, this Directive, as it currently stands, has no impact on the reduction of direct and indirect costs for companies.

Furthermore, the implementation of the Services Directive<sup>67</sup> could help to establish subsidiaries insofar as the Points of Single Contact, created by this Directive, would provide the necessary information to the founders. These points could also be used as a single gateway to national web-sites which provide for on-line registration of companies. Nevertheless, the existence of the Points of Single Contact would not reduce the regulatory costs incurred by companies when creating subsidiaries abroad. These Points do not provide companies with harmonised articles of association and registration procedure.

Finally, the implementation of Directive 2012/17/EU on the interconnection of central, commercial and companies' registers<sup>68</sup> will not have influence on the creation of subsidiaries. This Directive has a different objective: to improve access to information contained in national business registers for EU citizens. It does not facilitate the registration of companies since it neither provides for any European on-line registration nor creates a single European register of companies.

In conclusion, without any additional action at EU level the problems for SMEs, and other companies, are likely to persist and only partial and fragmented remedies are likely to be proposed at national level.

#### *National reforms of company law*

Recent policy developments and trends at national level show the improvement of the business environment for European companies, in particular SMEs. A number of MS have introduced reforms simplifying the requirements for limited liability companies.<sup>69</sup>

Many of the reforms focused on reducing the minimum capital and on providing for a reduction of incorporation costs. However, first, not all the reforms go in the same direction: for instance, Slovakia

---

<sup>64</sup> Directive 89/667/EEC of 21 December 1989 on single-member private limited-liability companies, [3] OJ L 395, 30.12.1989, p. 40.

<sup>65</sup> Council Directive 89/667/EEC (OJ L 395, 30.12.1989, p. 40), Annex I, point XI.A of the 1994 Act of Accession (OJ C 241, 29.8.1994, p. 194), Annex II, point 4.A of the 2003 Act of Accession (OJ L 236, 23.9.2003, p. 338), Council Directive 2006/99/EC (OJ L 363, 20.12.2006, p. 137) | Only point A.4 of the Annex.

<sup>66</sup> 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 companies, OJ L 258, 1.10.2009, p. 20–25.

<sup>67</sup> 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, p. 36–68.

<sup>68</sup> Directive 2012/17/EU of the European Parliament and of the Council of 13 June 2012 amending Council Directive 89/666/EEC and Directives 2005/56/EC and 2009/101/EC of the European Parliament and of the Council as regards the interconnection of central, commercial and companies registers.

<sup>69</sup> See Annex.

and the Czech Republic plan to decrease the level of minimum capital requirement for certain company types from 2014 onwards, whereas Hungary plans to increase the level of required capital.

Second, even if the reforms in various Member States have, in most cases, a similar objective, the end results differ significantly, as illustrated by national examples in the below box.

**Example:**

In France there is no legal requirement of minimum capital and a company can be established without a notary, whereas in Austria the capital required, after the reform, is still 10,000 € and the involvement of the notary is required.

In Poland, the so-called “company 24” (“spółka 24”)<sup>70</sup> can be registered online in 24 hours without any need for a notary, if standard articles of association are chosen as a template. The minimum capital of 5,000 PLN (around € 1,200)<sup>71</sup> should be paid in cash (no contributions in kind). The procedure is easy, but still minimum capital requirement is higher than in simplified company law forms in France, Germany or Italy.

In Germany or in Austria there is no possibility of a direct online registration by the founder and the involvement of a notary is compulsory. In Italy the notary involvement is required but it is free of charge for certain founders.

In Germany an UG company type can be established with the same minimum capital requirement as in France but there is an obligation to build a legal reserve, which does not exist in France.

In the Netherlands there is no requirement of minimum capital for private limited liability companies such as Flexi BV. As a consequence, various formalities, such as a bank statement for cash payment on shares and an auditor’s statement for contributions in kind are abolished.

Moreover, due to different legal requirements, national digital administrative capacities and vested interests, it is still impossible to cheaply and quickly register companies in all MS. The 2010 Council's "Action Plan for a Small Business Act for Europe" already asked MS to bring down start-up times of companies to 3 working days.<sup>72</sup> Similarly, the conclusions of the 31 May 2011 Competitiveness Council included a call to MS "to reduce the start-up time for new enterprises to 3 days and the cost to € 100 by 2012".<sup>73</sup> Yet, in a number of MS it is still not possible to register a company within that deadline. Instead, in 2012 the average time of starting up a private limited liability company was 5.4 days<sup>74</sup>, ranging from a few hours in case of an electronic registration up to more than 5 days in case of a paper one. The

<sup>70</sup> <https://ems.ms.gov.pl>.

<sup>71</sup> Minimum capital depends on whether it is a private or public limited liability company. There are reforms envisaged to further reduce the minimum capital.

<sup>72</sup> See: Council Conclusions on the review of the "Small Business Act" for Europe, 2011, p. 3, available at: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/intm/122326.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/intm/122326.pdf).

<sup>73</sup> Council Conclusions (ibd.), p. 3.

<sup>74</sup> Start-up procedures: progress in 2012, available at: [http://ec.europa.eu/enterprise/policies/sme/business-environment/start-up-procedures/progress-2012/index\\_en.htm](http://ec.europa.eu/enterprise/policies/sme/business-environment/start-up-procedures/progress-2012/index_en.htm).

registration fees in a number of MS have not yet been reduced to the level of €100 either. Even in situations where on-line registration is used, the total fees vary between €0 in Slovenia to more than €150-360 in countries such as Poland or Portugal. Overall, in 2012 only three countries complied with the targets regarding the time, costs and one stop shop related to registering a business (Denmark, Romania and Slovenia).<sup>75</sup>

These examples illustrate that some countries are very advanced and companies can be created cheaply and quickly with low capital at the start whereas that is still impossible in other Member States. They also show that actions are taken by MS autonomously in their own national context, which means that the requirements concerning the formation, registration and operating of companies still continue to differ. This is also likely to remain the case with potential future national reforms.

On the basis of the reforms undertaken autonomously by Member States so far and any future planned developments, it would still not be possible to have identical requirements for a particular company type across the EU and award a label that would be recognised across the EU.

## 5.2. EU'S RIGHT TO ACT, SUBSIDIARITY AND PROPORTIONALITY

---

The EU competence in the area of company law is based on Article 50 of the Treaty on the Functioning of the European Union (TFEU) regarding freedom of establishment. 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 solutions adopted so far by individual MS 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 MS will continue to result in divergent outcomes, as illustrated in detail in the section on national reforms of company law above.

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 MS 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, would generate costs for foreign companies, which are not incurred by domestic ones.

In the light of the above, it appears that, without any action at EU level, with only non-harmonised national solutions being available, 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 unlikely to be achieved by MS acting individually. In this context, the targeted EU intervention appears to comply with the principle of subsidiarity.

The principle of proportionality will be analysed in sections dealing with policy options.

---

<sup>75</sup> Start-up procedures: progress in 2012 (ibd.).

## 6. OBJECTIVES

---

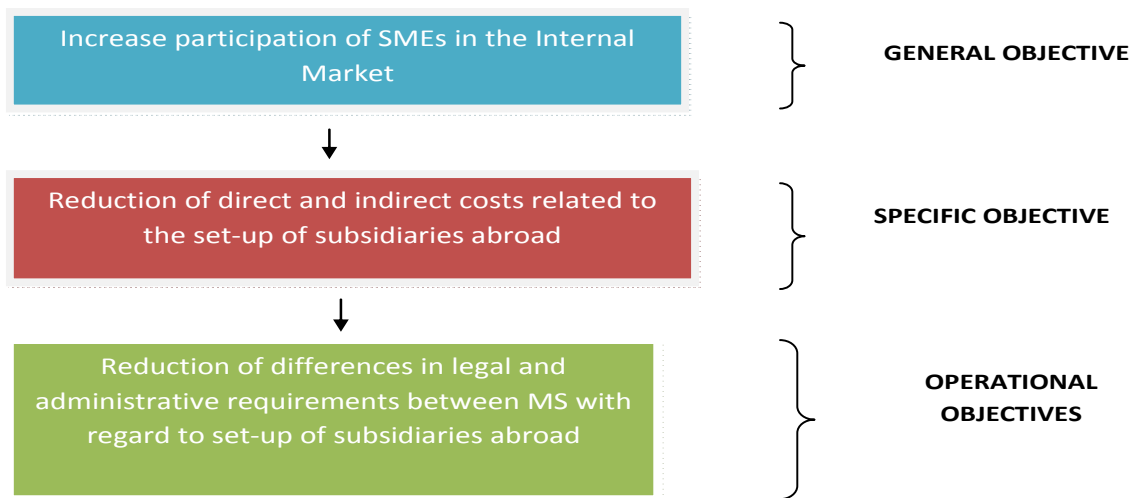
The *general objective* of the future initiative would be – through changes to national company law rules - to facilitate and encourage SMEs to carry out their activities in other MS and therefore, seize the untapped opportunities offered by the Internal Market. Allowing companies to more easily create subsidiaries abroad should encourage more entrepreneurial activity and in turn, might have a positive impact on growth and innovation in the EU.

The future initiative should particularly benefit SMEs, given their economic importance and the difficulties they face when trying to be active across borders. However, it should be attractive not only to individual SMEs, but also to groups consisting of SMEs and larger companies.

The *specific objective* would be to contribute to the reduction of some direct and indirect costs related to the set-up of subsidiaries in other MS.

The *operational objective* would be to harmonise some relevant aspects of national laws in order to reduce the differences in legal and administrative requirements between MS when setting up subsidiaries abroad.

The hierarchy of objectives is illustrated by the following graph.



## 7. POLICY OPTIONS AND THE ANALYSIS OF IMPACT

---

This section contains a description of policy options that have been considered with regard to attaining the objectives set out in the previous section: those that have been discarded after an initial analysis and those retained for a more detailed evaluation. For the latter, the analysis of impacts focuses on the extent to which they would fulfil the targeted objectives, their proportionality, their efficiency and coherence with EU policies.

These options follow the logic of company law in which, at its present stage of development, the discussion on the substance of the options is inseparably linked with the company form chosen (e.g.

public or private limited liability companies, single-member or multi-shareholder). The options focus at the same time on the specific and operational objectives i.e. on the comprehensive reduction of differences in legal and administrative requirements between MS with regard to the set-up of subsidiaries abroad, which should lead to a reduction of direct and indirect costs for the founders.

### 7.1. DISCARDED OPTIONS

---

The following options have been discarded:

1. Establishment of a new European legal form or improvement of the existing ones (e.g. SE)
2. Harmonisation of company law related to the establishment of subsidiaries limited only to SMEs as founders
3. Harmonisation of company law related to the establishment of subsidiaries in the form of both public and private limited liability companies.

The current IA follows a similar logic and considers similar policy options to the ones presented in the SPE IA (e.g. harmonisation of various aspects of company law across the EU). However, there are some differences.

First, a starting point for this IA is broader, since subsidiaries can be established both in the form of public and private limited liability companies whereas the SPE IA focused specifically on the latter.

Second, the current IA does not analyse the possibility of using European legal company forms adopted on the basis of Article 352 TFEU - either improving the existing ones (SE or SCE) or introducing new ones. The SE and SCE Statutes are not well-suited to the needs of SMEs and it has not been possible to find agreement allowing for the unanimous adoption of the SPE proposal among MS (see section 5.1).

Third, an option providing special rules only for SMEs is discarded. Introducing a distinction between SMEs and other founders of companies would neither be practical nor desirable. It would depart from the common practice in company law that different rules apply to different company forms, but not to the size of enterprises which can change from time to time.<sup>76</sup> Moreover, excluding natural persons and bigger companies would unnecessarily limit the scope of the measure without any reasonable justification. Finally, since there is no one common legal definition of SMEs in EU law, the discussion on the substance could be undermined by a difficulty to reach agreement on this point. By providing rules suitable for SMEs in options 2 and 3 below, the Commission would cater for the concern expressed in the 2013 on-line consultation that a potential initiative should include special rules for SMEs. In any event, 78% of companies were in favour of an initiative specifically for SMEs but 52% of business federations and MS, all trade unions and 90% of universities were against it. This is also in line with the developments in MS, since if there are special rules being introduced at national level, they grant favourable treatment to natural persons as the founders, and not to SMEs.

Fourth, the option aiming at the full harmonisation of company law related to the establishment of subsidiaries is also discarded. Such an extensive harmonisation would have to concern any company law form in which subsidiaries operate, e.g. both private and public limited liability companies. Yet, the

---

<sup>76</sup> Exceptional distinction is made in the Accounting Directives.



differences of rules between public and private limited liability companies are significant since public limited liability companies, in contrast to private ones, can and often offer their securities to the public<sup>77</sup>.

For example, as regards the minimum capital requirement, according to Directive 2012/30/EU it shall not be less than € 25,000 for a public limited liability company whereas much lower amounts apply in general to private limited liability companies. Therefore, creating one set of rules for both types would not be realistic or desirable. It was also the view of the majority of stakeholders (business federations, universities, trade unions and public authorities) in the 2013 on-line consultation. They considered that the initiative should not cover public limited liability companies.

In any event, such a harmonisation would not be proportionate. It would go beyond what is necessary to achieve the objectives set, i.e. to primarily benefit individual SMEs or groups consisting of them, since SMEs in the overall majority of cases are private limited liability companies (see section 3.2). Lastly, an extensive harmonisation would require substantial changes in the national frameworks and would, therefore, run into strong opposition from MS.

## 7.2. RETAINED OPTIONS

---

This section first focuses on the scope of harmonisation and then analyses different policy options as regards its content, since the substance is closely related with the chosen company law form

### *Scope*

In view of the above reasons for discarding options in point 7.1., the retained options should concern the company law form that would have the most impact with regard to the establishment of subsidiaries abroad.

One of the decisive factors when establishing a subsidiary is the desire of a parent company to equip a "daughter company" with a separate legal personality while keeping, as a parent, the full control over the subsidiary and its profits. The single-member (wholly-owned) subsidiary would be a natural choice for a "parent" company if it wants to expand its business abroad or in its own country. The "parent" company, being a single shareholder of a subsidiary, would then exercise the fullest possible control over the management and the profits. Due to these characteristics there is some evidence that single-member (wholly owned) subsidiaries perform better than joint ventures with local companies<sup>78</sup>, in which case the cooperation with foreign partners might be difficult due to cultural differences or different business visions or strategies.

Single-member companies can be established both by SMEs and larger companies and can be used for creating a group/holding of SMEs with subsidiaries in many countries. In fact, studies show that the probability of establishing a single-member company does not necessarily increase with the size of a founding company.<sup>79</sup> Instead, it is linked to the structure of the business, i.e. companies have to rely upon suppliers and service providers and often take control of their supply chain by establishing wholly-owned

---

<sup>77</sup> Davies, P., *Gower and Davies: Principles of Modern Company Law*, 8<sup>th</sup> edition, 2008, p. 13.

<sup>78</sup> Chang, S.J., Chung, J., Moon, J.J., *When do wholly owned subsidiaries perform better than joint ventures?*, *Strategic Management Journal* (2013), Volume 34, Issue 3, p. 317–337.

<sup>79</sup> Youssef, K.B. & Hoshino, Y., *The Choice between Joint Ventures and Wholly Owned Subsidiaries: the Case of Japanese Direct Investment in Europe*, *Japanese Journal of Administrative Science* (2003), Volume 17, No. 1, p. 31-46.

(single-member) subsidiaries. For example, a car manufacturing company could have several wholly owned subsidiaries supplying it with different car parts in order to be independent of external contractors.<sup>80</sup>

The above explanation shows that it would be appropriate to focus the harmonisation of company law related to the establishment of subsidiaries on single-member private limited liability companies in order to achieve the objectives of the measure, since, in most cases, subsidiaries tend to be wholly-owned by a single-member being another company. Such an initiative could also have a more general positive impact on increasing entrepreneurship since, in addition to single-member private limited liability companies being created by legal persons, some may also be created by natural persons as start-ups.

### *Content*

Such harmonisation would ask Member States to provide in their national legal orders for a national company law form that would follow the same rules in all Member States and would have a common label - SUP (*Societas Unius Personae*). 57% of stakeholders in the 2013 on-line consultation (53% of companies and 67% of business federations) supported such an EU-wide abbreviation.

In practice, it would depend on MS whether a new national company law form would co-exist with other national company law forms that could be used by the founders of single-member private limited liability companies or whether the “harmonised form” would be the only single-member form available in that MS. In case MS decide to have more than one “single-member company law form”, it would depend on the founders themselves whether they would find the SUP attractive to use.

This approach is in line with the views expressed by Member States in discussions with the Commission. The majority of them would like to keep their national company forms, which would be possible in the proposed model. The concerns of the other MS who were afraid of “too much choice” in company law forms were also taken into account by allowing MS to create only one form that would be available for single-member private limited liability companies.

For this initiative, the following policy options have been considered as regards its content:

- I. Registration process
  1. No policy change – baseline scenario
  2. Model A – registration of an SUP only possible on-line
  3. Model B – registration of an SUP possible both on-line and on paper
  4. Model C – the same as model B but with the compulsory use of the template of Articles of Association when the company is registered on-line
- II. Minimum capital
  1. No policy change – baseline scenario
  2. Model A – Minimum capital requirement equivalent to the EU average
  3. Model B – Minimum capital requirement equivalent to € 1

---

<sup>80</sup><http://www.investinlanders.be/EN/Sector/Renewable-energy/chapter/Setting-up-your-business/page/Types-of-business-entities>".

4. Model C – the same as model B but with the introduction of balance sheet test and solvency statement to protect creditors

The options will be compared by listing their benefits and costs and using the following criteria.

- Effectiveness - the extent to which options achieve the objective of the proposal
- Efficiency - the extent to which objectives can be achieved for a given level of resources/at least cost
- Coherence – the extent to which options are coherent with overarching objectives of EU policy, and the extent to which they are likely to limit trade-offs across the economic, social and environmental domain.

---

### 7.2.1. REGISTRATION PROCESS

---

#### **Option I. 1. No policy change**

##### Description

In 16 MS there is a possibility of direct on-line registration via digital accounts without the necessity of the prior involvement of a notary/attorney. This is the case in Bulgaria, Denmark, Estonia, Finland, France, Ireland, Latvia, Lithuania, Malta, Poland, Portugal, Romania,<sup>81</sup> Slovakia, Slovenia, Sweden and the UK.<sup>82</sup>

In most of these countries there seems to be no formal, company law related restriction with regard to the nationality or residence of the founder. However, in many cases the use of specific national e-signatures or e-identification is necessary. In general, an on-line registration procedure is quick and can be completed in 18 minutes (in Estonia) or 1 hour (in the UK) in comparison to paper registration, which can take up to 5 days (in Estonia).

In the remaining 12 MS (Austria, Belgium, Croatia, Cyprus, Czech Republic, Germany, Greece, Hungary, Italy, Luxembourg, the Netherlands and Spain) there is no possibility of direct on-line registration.<sup>83</sup> The applicants have to appear in person before a notary or a legal advisor who verifies, e.g. founder's identity, the chosen name and either prepares the articles of association (Cyprus) or puts them in a notarial deed (the remaining MS).

##### Assessment

Maintaining *the status quo* would deprive the initiative of a significant part of its usefulness and attractiveness. It would not allow for simple registration procedure based on the same criteria in all MS. It would not decrease the differences in legal and administrative requirements with regard to registration

---

<sup>81</sup> In Romania the presence of a notary is required if a contribution in kind is an immovable property.

<sup>82</sup> Modus operandi of these systems vary significantly among MS. For example, in Romania the presence of a notary is required if a contribution in kind is an immovable property. In Slovakia, in case of lack of Slovak e-signature the involvement of a notary is required, in Finland the on-line registration system is only available for natural persons.

<sup>83</sup> Here also the differences among MS are significant. For instance, in Spain single-member can register personally a company on-line, but the prior involvement of a notary in the form a notarial deed is still necessary.

and would not generate any decrease in costs for the founders of companies, therefore not meeting the objectives set out above.

### **Option I. 2. Model A** – registration of an SUP only possible on-line

#### Description

In this option the SUP could only be registered on-line by any founder resident or having a seat in the EU. The paper registration would not be possible. The registration system (including the verification of identity, checking the company name and signing the articles of association) would need to make it possible for EU founders (legal and natural persons) to establish a company in another MS directly from their computer without a need for travel to the MS of registration for the purpose of registering the company. The identification of the founder could be done electronically by using e-signature or any other means as it is the case now in those MS that have already direct on-line registration available to foreign founders; in addition, the authorities of the place of registration of a company could, for example, apply the technical solutions referred to in e-IDAS<sup>84</sup> proposal or provided under the Internal Market Information system (IMI) in order to exchange information about the identity of the founders.<sup>85</sup>

This policy option would require changes in the registration procedure in those MS that require a physical presence of the founder before the company can be registered but MS would be free to choose the forms and means of introducing these changes as long as the aim of direct on-line registration without physical presence was achieved. The registration would remain at national level, since there is no common European register of companies.

Furthermore, it would be proposed to harmonise the registration requirements (e.g. which information can be required from the founder) so that the registration process would be simplified and maximally uniform, allowing foreign founders to register a company in another EU country without full proficiency in the foreign language. The registration web-sites could be, for instance, accessed by the already existing Points of Single Contact under the Services Directive. It would also be required that MS provide on their registration web-sites the links to registration web-sites of other MS. This should enable the registration of single-member private limited liability companies in a number of MS in a few clicks.

#### Assessment

This option would allow to decrease the legal and administrative difference as regards the registration requirements between MS and therefore, to diminish the costs for the founders of companies. It would significantly simplify the registration process and make it more uniform, having one registration form identical in all MS.

Being able to directly register online would benefit domestic company founders (in MS which did not provide for online registration so far) by making the procedure simpler, quicker and less costly. In addition, direct on-line registration could also save travel and costs for foreign founders who would not need to travel specifically to prove their identity before foreign authorities; these cost savings would vary from MS to MS but could amount to hundreds of euros for a company founder.

---

<sup>84</sup> COM(2012) 238, Proposal for a Regulation of the European Parliament and the Council on electronic identification and trust services for electronic transactions in the internal market, p 4. eIDAS provides for a regulatory environment for the mutual recognition at EU level of electronic identification schemes and of electronic trust services (including electronic signature).

<sup>85</sup> [http://ec.europa.eu/internal\\_market/imi-net/index\\_en.html](http://ec.europa.eu/internal_market/imi-net/index_en.html).

Member States already now can request the translations of documents from other MS, so in this respect nothing may change for the foreign founders of companies. However, MS would need to ensure that the registration process would allow founders to submit the documents electronically directly to the registration body instead of sending them by post or being required to sign them in person before the registration body.

It would also be in line with the view of the stakeholders expressed during the 2013 on-line consultation, since

64% of respondents (80% of companies, 67% of business federations,) considered that a potential initiative on single-member companies should include simple rules for on-line company registration with one common standard registration form throughout the EU.<sup>86</sup>

The changes required in those MS that do not currently have direct on-line registration would depend on how MS would like to structure their registration process, on the existing level of digitalisation of registration process, human resources available and MS choices with regard to the level and intensity of control they would like to have over companies' founders. These costs could either be covered by the authorities themselves or by third parties involved in the registration process, and they could be spread over a number of years.

For example, in Poland the cost of introducing on-line registration for all private limited liability companies with no need for the involvement of a notary was estimated to be around €100,000. In other countries that introduced a direct on-line procedure, the costs varied from €42,000 in Ireland, around €120,000 in Latvia, around €1.1 million in Slovenia and around €1.9 million for the whole system of registration in Lithuania. The costs in Poland encompassed building the whole on-line registration system which may not be the case for 12 MS (Austria, Belgium, Croatia, Cyprus, Czech Republic, Germany, Greece, Hungary, Italy, Luxembourg, the Netherlands, and Spain<sup>87</sup>), since all of them have already in place an "indirect electronic registration" i.e. electronic registration by an intermediary (notary or legal advisor). Moreover, these costs occur only once, while the benefits of an easy registration for companies would continue in the years to come.

In addition, this initiative would not impose on MS any requirements on how registration web-site should look like or who could run it – registration courts, notaries, attorneys, private companies, etc. Lastly, MS would, sooner or later, anyway need to adapt their registration procedures for companies in order to implement the European eGovernment Action Plan 2011-2015 and achieve its objectives (e.g. to make it possible to develop cross-border business regardless of the place of residence of the company founders, including through the use of Points of Single Contact under the Services Directive).

There is evidence that in MS that introduced direct on-line registration (in addition to paper one) companies have experienced savings in terms of time and direct set-up costs. In the UK, for instance, on-line registration is cheaper than paper one (£15 instead of £40) and is 3 working days faster. If a "fast-track" paper registration is chosen (the same day), then the costs increase nearly 7 times in comparison to on-line registration (from £15 to £100). In Ireland<sup>88</sup> and in Slovakia<sup>89</sup> on-line registration is 50% cheaper than a paper one.

---

<sup>86</sup> [http://ec.europa.eu/internal\\_market/consultations/2013/single-member-private-companies/](http://ec.europa.eu/internal_market/consultations/2013/single-member-private-companies/).

<sup>87</sup> On Spain see remarks in the footnote above.

<sup>88</sup> Information provided to the Commission by the Irish Department of Jobs, Enterprise and Innovation.

The risk of the misuse of direct on-line registration procedure for fraudulent aims potentially exists, but it must be offset against the benefits of the creation of companies and positive economic and social impacts connected with the increase of entrepreneurship in the EU. Each new company is a potential source of new jobs and growth. Moreover, such risk already exists, and was taken into account, by those 16 MS that already have a direct on-line registration procedure. There is not data available that the fraudulent activity has increased due to the direct on-line registration of companies in those MS.

This option, however, has a serious drawback, since it limits the creation of SUPs. The founder of a company would be obliged to create it on-line. On-line procedure may not be suitable for all kinds of registrations, in particularly more complex ones with the contributions other than in cash etc. Moreover, there is no reason to limit the choice of the founders. Those MS that introduced direct on-line registration procedure still left the possibility of "standard registration".

### **Option I. 3. Model B – registration of SUP possible both on-line and on paper**

#### Description

This option would oblige MS to ensure that there would be a possibility of registering SUPs directly on-line but would not make it the only available registration procedure. The registration on paper/via an intermediary, but also on-line via an intermediary, would also be possible. The company founder would have the option to register a company directly on-line or to do it on paper, and he could ask a notary or legal advisor or any company creation agent for help in either case.

#### Assessment

This option would have the same advantages for companies, both domestic and foreign, as Model A but would not have its disadvantages of limiting the choice of registration procedures. It would enable those founders (and in particular foreign ones) that would be confident enough to use direct on-line registration procedure and save on the registration costs but it would allow others (often domestic founders who have become used to the existing procedures) to use standard registration procedures if they so wished.

In terms of the impact on Member States, it would require them to introduce the same changes as Model A, however, where the paper registration procedures were used, they would remain in place with some necessary adaptations. The nature of changes would be more incremental and more focused on the choice given to company founders that should reassure MS and would not substantially change the situation of the notaries or legal advisors who might be involved in both procedures. MS could, for instance, decide to leave notaries as registration points in both procedures (paper and on-line), as long as anyone from the EU who wanted to complete all the formalities by electronic means and at a distance, would have that possibility.

### **Option I. 4. Model C – the same as model B, but with the compulsory use of the template of Articles of Association when the company is registered on-line**

#### Description

This option would offer the same choice for company founders as Model B. In addition, it would provide for a harmonised template of articles of association which would be identical all over the EU. It would be translated in all EU languages and would contain the necessary elements to run single-member private limited liability companies. The substance of the template would be determined by this initiative, but its

---

<sup>89</sup> Information provided to the Commission by the Permanent Representation of the Slovak Republic to the European Union.

precise content and format would be established by the Commission in delegated legislation, in close cooperation with MS, to guarantee that it would not get outdated too quickly and that it could be amended in reasonable time without the need of engaging the full ordinary legislative procedure.

The use of such template would be compulsory when an SUP would be directly registered on-line. In other registration procedures, where in many MS, as indicated above, the participation of a lawyer is in one form or another compulsory, the use of the template would not be obligatory but highly recommended.

Currently many MS provide templates for articles of association for standard set-ups of private limited liability companies. The use of templates in some countries is closely connected with the on-line registration process, e.g. in Poland<sup>90</sup>. In other countries, including those that do not currently provide for direct on-line registration, they are provided by business organisations such as the Chambers of Commerce<sup>91</sup> or can be downloaded from the relevant web-sites<sup>92</sup> but are not considered an essential element of the registration process.

### Assessment

This option would have all the advantages of model B and it would provide additional savings for company founders, especially in case they used the on-line registration procedure. It would provide founders in many MS with easier set-up procedures and gains in terms of costs and time as compared to the current situation. As the same template of articles of association could be used for the registration of SUPs in all MS, it would in particular decrease the costs (mainly of legal advice and translation costs) for foreign founders and specifically for groups of companies with subsidiaries to be established in many countries. Such a template would also provide more legal certainty.

The frequency of the use of the template of articles of association would depend, first, on whether SUPs would be the only available form for single-member private limited liability companies in a given MS. Second, it would depend on the popularity of the on-line registration procedure and also its perceived usefulness, as compared to other registration procedures. As indicated to the Commission by some notaries, they would see the uniform template as a big advantage which would enable them to explain to their clients the requirements they need to follow to form a company.

Naturally, a possible impact of this option on companies would vary across the EU. The introduction of the single EU-wide template would facilitate company set-ups across the EU but it would have the biggest impact on the founders of companies established or wanting to establish subsidiaries in MS that do not currently provide for direct on-line registration and where there are no publicly available templates of articles of association. It would also vary between domestic and foreign company founders, to the extent that the latter might be more interested in using online registration and the compulsory template as

---

<sup>90</sup> <https://ems.ms.gov.pl>.

<sup>91</sup> For instance, in Austria a template for a single member private limited liability company set up by a natural person is provided by the Economic Chamber of Commerce: "Erklärung über die Errichtung einer Gesellschaft mit beschränkter Haftung", [http://portal.wko.at/wk/format\\_detail.wk?angid=1&stid=739157&dstid=686&cbtyp=1&titel=GmbH-Reform%2cbeschlossen](http://portal.wko.at/wk/format_detail.wk?angid=1&stid=739157&dstid=686&cbtyp=1&titel=GmbH-Reform%2cbeschlossen).

<sup>92</sup> For instance in Germany the templates for single-member and up to a three member private limited liability company are included in the Act "Gesetz zur Modernisierung des GmbH Rechts" on the following website: Musterprotokoll für die Gründung einer Einpersonengesellschaft, and Musterprotokoll für die Gründung einer Mehrpersonengesellschaft, [http://www.bmj.de/SharedDocs/Downloads/DE/pdfs/Gesetz\\_zur\\_Modernisierung\\_des\\_GmbH\\_Rechts.pdf?\\_\\_blob=publicationFile](http://www.bmj.de/SharedDocs/Downloads/DE/pdfs/Gesetz_zur_Modernisierung_des_GmbH_Rechts.pdf?__blob=publicationFile).

these would make establishing subsidiaries abroad much easier, and therefore, would be likely to benefit from the measures proposed to a larger extent.

The costs of making the template available by MS would just constitute a small addition to the costs of introducing the direct on-line registration. MS would have to make changes to their existing registration procedures allowing for direct on-line registration with the template of articles of association.

### Comparison of options

	Effectiveness	Efficiency	Coherence
I. 1. No policy change	0	0	0
I. 2. Model A - registration of an SUP only possible on-line	+ Effective, decrease in costs for the founders of companies	+ The objective can be achieved at a certain level of engagement of MS resources, but in some MS that already have on-line registration the costs should be <i>de minimis</i>	- Not in line with EU policies, which do not usually require solely the use of on-line procedures, limitation of effects by excluding other forms of registration suitable at least for some companies
I. 3. Model B - registration of an SUP possible both on-line and on paper	+ The same effectiveness as Model A	+ The same as model A	+ In line with the realisation of EU Digital Agenda, providing an on-line registration possibility
I. 4. Model C - the same as model B but with the compulsory use of the template of articles of association when the company is registered on-line	++ Most effective, biggest cost reduction, a possibility of registration in a number of MS with the same template	+ The same as model A	+ In line with the realisation of EU Digital Agenda, providing an on-line registration possibility, with the single template

### Impacts on stakeholders

	Companies	Member States	Notaries/Legal advisors
--	-----------	---------------	-------------------------



I. 1. No policy change	0	0	0
I. 2. Model A - registration of an SUP only possible on-line	<p>+</p> <p>Providing on-line registration would have positive impact, but excluding other forms of registration could have a negative one. The overall impact would probably be still positive</p>	<p>-</p> <p>No or <i>de minimis</i> costs for those MS that already provide for on-line registration.</p> <p>There would be costs for 12 MS that currently do not have direct on-line registration</p>	<p>-/+</p> <p>Only one form of registration excluding notaries or other lawyers would have negative impact on them, unless MS decided to that notaries would be the "points of single contact" or registration body for on-line registrations</p>
I. 3. Model B - registration of an SUP possible both on-line and on paper	<p>++</p> <p>Positive impact on companies in terms of cost reduction but also choice of registration process</p> <p>The same effectiveness as Model A</p>	<p>-</p> <p>The same as model A</p>	<p>-/+</p> <p>Impact difficult to predict, depends on how MS would organise on-line registration procedures. Possible increase of income due to more company registrations, but also possible loss of income due to increased number of on-line registrations</p>
I. 4. Model C - the same as model B, but with the compulsory use of the template of articles of association when the company is registered on-line	<p>+++</p> <p>Biggest positive impact with the a possibility of using the template and yet not being forced to use it in all circumstances</p>	<p>-</p> <p>The same as model A</p>	<p>-/+</p> <p>The same as in model B</p>

---

### 7.2.2. MINIMUM CAPITAL

---

## **Option II. 1. No policy change**

### Description

Under this option, each company founder would have to comply with a different system of minimum capital in each MS in which it would like to set-up a company.

In the last years many MS introduced special sub-types of private limited liability companies with minimum capital of €1 or even no minimum capital required at all. Since many existing SMEs were concerned about the reputation of the legal forms in which they were incorporated, the legislators introduced special sub-types to cater for this concern.<sup>93</sup> This leads to a situation in which there is still in the same country, on the one hand, a mandatory capital requirement for the main types of private limited liability companies (e.g. GmbH in Germany) and, on the other hand, the minimum capital has been abolished by the introduction of a sub-type (e.g. UG in Germany). Single-member private limited liability companies can, therefore, be required to have thousands of euros of minimum capital if they choose a standard type or just €1 if they choose a sub-type.

There are currently 16 MS in which it is possible to establish a single-member company with minimum capital/share value of €1 or less.<sup>94</sup> In addition, it is likely that the number will be increased to 17 MS, since Slovakia plans to lower its minimum capital requirements in 2014. Among the MS that already provide for €1 or less, there is some variety of approaches, e.g. there are MS which only provide for such a possibility with regard to founders that are natural persons (e.g. Estonia, Latvia) and also MS (e.g. Belgium, Germany) that allow to form companies with €1 but require that the capital be paid or built gradually over the life of a company.

In the remaining MS the minimum capital varies from around €45 in Romania to around €12,400 in Luxembourg. For details see Annex.

### Assessment

Maintaining *the status quo* would deprive the initiative of a significant part of its usefulness and attractiveness. This option would not result in meeting the objectives of decreasing the differences in legal and administrative requirements with regard to minimum capital requirements and would not generate any decrease in costs for the founders of companies.

## **Option II. 2. Model A – Minimum capital requirement equivalent to the EU average**

### Description

In this option the level of minimum capital required for the set-up of an SUP would be harmonised and would amount to the EU average of €2200.<sup>95</sup>

### Assessment

For the majority of MS that already have a €1 or no minimum capital requirement, the obligation to introduce in their legal system a requirement of €2200 would be a burden without any clear advantage for

---

<sup>93</sup> C. Teichmann, *Modernizing the GmbH: Germany's Move in Regulatory Competition*, 7 European Company Law 2010, p. 22.

<sup>94</sup> See Annex. This calculation already includes the reforms that will enter into force in 2014 in CZ, HU and DK.

<sup>95</sup> For calculations see Annex – the simple average is currently €2197.

companies. For those MS that have a significantly higher minimum capital requirement, lowering it to €2200 might be difficult to accept in any event since for some of them it would rather be a question of principle than a question of a specific amount.

The data shows that, under this policy option, there would be a reduction in costs for the company founders in 9 MS with capital higher than €2200 and this requirement would be attractive to entrepreneurs there. At the same time, the minimum capital requirement would increase in 19 MS (with Slovakia in 20 MS) and it would result in a substantial cost increase for the founders in these countries. This increase would not, most likely, be offset by the advantages that on-line registration and the single EU template of articles of association could bring. Therefore, it seems unlikely that a regime with this level of minimum capital would be chosen by entrepreneurs in those MS.

### **Option II. 3. Model B – Minimum capital requirement equivalent to € 1**

#### Description

In this option, the level of minimum capital would be decided freely by a single-shareholder but cannot be less than €1 (or equivalent in the national currencies for those MS that do not have euro). This option would be equivalent to the one preferred in the 2008 IA for the SPE proposal.

#### Assessment

This option would offer savings for company founders in MS where the level of minimum capital is higher than €1. There is available evidence that relatively small differences in minimum capital requirements can make a large difference in the rate of new company formation.<sup>96</sup> The existing research also shows that MS reforms which cut the statutory minimum capital requirements, stimulated start-up activities rather than “attracting companies away from other legal forms”.<sup>97</sup> For example in France, Germany and Poland there was a significant surge in incorporations after the reforms which lowered the minimum capital.<sup>98</sup> The lowering of the minimum capital requirement should have the effect on both foreign and domestic founders, but on the basis of available data it is difficult to predict which of them would benefit more.

This option would be in line with the ideas of stakeholders expressed in the recently published 2013 “Manifesto for Entrepreneurship and Innovation to power growth in the EU”<sup>99</sup>, which called for a possibility to create on-line companies with low minimum capital and unified requirements across the EU in order to make it easier for cross-border investments to flow from investors in one country to companies in another.

As explained in section 4.2.1., the founder of a company must have some capital to run a business or needs to borrow it regardless of the level of minimum capital required by national legislation. However, the minimum capital requirement can constitute a barrier for many founders if they have to pay in more capital than they would normally put into business if there had been no requirement. Sometimes, due to

<sup>96</sup> M. Bech, C. Mayer, H. F. Wagner, *Where do firms incorporate ? Deregulation and the cost of entry*, 14 Journal of Corporate Finance (2008), p.255

<sup>97</sup> Braun et al, *Does Charter Competition Foster Entrepreneurship? A Difference-in-Difference Approach to European Company Law Reforms*, JCMS 2013 Volume 51 Number 3, p. 401.

<sup>98</sup> Ibidem, p. 413. Also the recent figures from Germany are particularly telling. Within 5 years of existence of the UG company form with a €1 minimum capital requirement (from 1.11.2008-1.1.2013), the number of incorporations rose from 0 to 78,680. See U. Kornblum, *Bundesweite Rechtstatsachen zum Unternehmens- und Gesellschaftsrecht (Stand 1.1.2012)*, GmbHR 2012, p.720.

<sup>99</sup> <http://startupmanifesto.eu/>.

difficulties in financing, especially cross-border financing, a founder might not be able to easily borrow the capital needed to meet the requirement. Moreover, MS rules differ significantly as regards the moment in which the capital should be paid in and in which form.

This option would be likely to be acceptable to the majority of MS that already have a €1 minimum capital requirement (or lower), since the initiative would propose the same solution that these countries effectively have in place at national level. MS that have not yet decreased minimum capital requirement might support it, if they planned to do so anyway in the future (e.g. Slovakia).

Some or all of 11 MS where the minimum capital is still higher than €1 might be against, as was the case in the negotiations on the SPE proposal. Some of MS that already have €1 for natural persons may not be in favour of allowing the same conditions for legal persons as the founders of companies. In addition, some of them may fear the reduction in national revenue since in some MS the amount of registration fees/tax is dependent on the amount of minimum capital. However, this impact would be essentially limited to two MS (Austria and Poland) in which the state revenue is dependent on minimum capital and which do not yet provide a possibility of establishing a limited liability company with €1.

One of the other main reasons why some MS could be against this option would be the lack of compensatory measures for the protection of creditors. MS that still have high level of minimum capital are usually of the view that minimum capital constitutes the adequate protection of creditors and "the price to be paid" for limited liability. However, it should be stressed that the lack of minimum capital requirement should not have any effect on the amount of actual capital needed to run the business. The capital necessary for normal operations would be determined by a founder in the business plan. Second, there would not be any impact on creditors and other stakeholders in MS where there is already no statutory minimum capital requirement.

Overall, this option would bring advantages for companies in terms of the reduction of costs, but would have a disadvantage of not taking into account the legitimate concerns of certain MS and other stakeholders such as notaries with regard to the appropriate standard of creditors' protection.

#### **Option II. 4. Model C – the same as model B, but with the introduction of balance sheet test and solvency statement to protect creditors**

##### Description

This option would provide for the same requirement of minimum capital as Model B, but would introduce additional instruments for the protection of creditors such as balance sheet test and solvency statement.

In this option, the initiative would require the management of the company to apply the balance sheet test before any distribution of profits to the single member, i.e. to compare assets and liabilities, prohibiting the distribution to the single-member resulting in liabilities exceeding the assets.

Moreover, it would require the management to sign a solvency statement, in other words a liquidity statement in which the management would guarantee that it had made a full inquiry into the affairs and prospects of the SUP and formed the opinion that the SUP would 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.

Such a statement should be provided to the single-member who should not order a distribution violating the balance sheet test and/or solvency statement. The single member who received undue distributions would have to return them to the SUP. The decisions on the distributions could not be delegated by the single-member to other parties.

##### Assessment

This option would offer the same advantages for companies in relation to minimum capital as Model B. However, it may generate additional costs with regard to the compliance with cumulative balance sheet and insolvency test as companies would have to measure the future liquidity which they may not do on regular basis. The cost of meeting the requirements of the cumulative test would be partially mitigated by the lack of special format imposed on companies. For instance, there would be no formal requirement of consulting the auditor or an accountant before signing the solvency statement. In certain circumstances the companies may want to do that, but for the purpose of distributions it would be enough, if the statement was signed by the management. Moreover, medium-sized and large companies may not bear additional costs, since future solvency may be part of "a fair review of the principal risk and uncertainties" a company is obliged to do under EU Accounting Directive.

At the same time, this option would offer more security to creditors and for that reason it is likely to be more acceptable to MS than Model B. Creditors are generally more interested in whether they would get paid their claims rather than being an unsecured creditor in insolvency proceedings in which the remaining assets would need to be valued and distributed among creditors. Also, the regular measurement of liquidity could be beneficial for the company and single-member as it would allow the company to be run in a more sustainable way.

The responsibility of management and the duty of care of the single-member, which should promote shareholders' engagement in company affairs, would aim to guarantee the high standard of creditors' protection and, therefore, to offset the decrease in minimum capital requirement in those MS where it is currently higher than €1.

However, it should be remembered that the existence of even high minimum capital at the time of set-up does not necessarily ensure that the same level will be available to creditors at a later date. For instance, even in the MS with high minimum capital requirement, the capital does not have to be paid in full at the time of set-up. Moreover, in principle, it does not have to be kept in the closed bank account. It can be transferred into tangible and intangible assets and the real value of those assets in case of insolvency proceedings might be different to the book value, or these assets might be destroyed and never recuperated.

Moreover, some creditors, such as banks, often insist also on other means of additional protection be it a personal guarantee, a mortgage or any other form of security. This happens in dealings with businesses in all MS, including in those where the minimum capital requirement is high. Therefore, high minimum capital requirement does not seem have an impact on contractual terms faced by shareholders in dealings with creditors who ask for guarantees no matter how high the minimum capital requirement is.

In MS which already have €1 minimum capital, there usually already exist additional means to protect the creditors either by the cumulative balance sheet and solvency test and/or the obligation to introduce capital reserves built each year from companies' profits, and therefore the measures proposed would be in line with what is already included in the national legislation and would not impose too much additional cost for companies.

### Comparison of options

	Effectiveness	Efficiency	Coherence
<b>II. 1. No policy change</b>	0	0	0

<b>II. 2. Model A – Minimum capital requirement equivalent to the EU average</b>	<p>-</p> <p>Not effective, increase of costs for founders in 19 MS, capital not adapted to business needs</p>	<p>-</p> <p>Creditors are only partially protected by higher minimum capital requirement, since capital turned into assets does not guarantee the liquidity, which is important for creditors</p>	<p>-</p> <p>Not in line with EU policies of encouraging entrepreneurship and not in line with Manifesto for Entrepreneurship and Innovation to power growth in the EU</p>
<b>II. 3. Option I. 3. Model B – Minimum capital requirement equivalent to €1</b>	<p>++</p> <p>Very effective, decrease of costs of founders in 11 MS, flexibility as to the level of capital needed for business, no other burdensome obligations imposed</p>	<p>-</p> <p>The objectives could be fully achieved, but at the expense of adequate creditors' protection</p>	<p>+/-</p> <p>In line with EU policies encouraging entrepreneurship and with Manifesto, but not in line with policies of high standard of consumer and creditors' protection</p>
<b>II. 4. Model C – the same as model B, but with the introduction of balance sheet test and solvency statement to protect creditors</b>	<p>+</p> <p>Less effective than model B for cutting the costs for companies, since additional burden of meeting the balance sheet and solvency test</p>	<p>+</p> <p>The objectives could be fully achieved, but guaranteeing at the same time the adequate creditors' protection</p>	<p>+</p> <p>In line with EU policies encouraging entrepreneurship and with Manifesto and with policies of high standard of consumer and creditors' protection</p>

### Impacts on stakeholders

	Companies	Member States	Notaries/Legal advisors	Creditors
<b>II. 1. No policy change</b>	0	0	0	
<b>II. 2. Model A – Minimum capital requirement equivalent to the</b>	<p>-</p> <p>Not effective, increase of costs for founders in 19 MS,</p>	<p>-</p> <p>Negative impact on those MS in which capital is below EU</p>	<p>+/-</p> <p>Depends on whether their fees are dependent on the</p>	<p>+/-</p> <p>Positive impact on creditors if it is</p>

<b>EU average</b>	capital not adapted to business needs	average (19 MS) – need to increase. Also negative impact on those MS (9) in which capital is above average – need to decrease.	amount of minimum capital	considered that minimum capital requirement is a creditors' protection instrument.
<b>II. 3. Option I. 3. Model B – Minimum capital requirement equivalent to €1</b>	++ Very effective, decrease of costs of founders in 11 MS, flexibility as to the level of capital needed for business, no other burdensome obligations imposed	+/- Neutral impact in those MS having already minimum capital requirement equivalent to € 1, negative impact on MS having higher requirement	+/- The same as model A	- Negative impact, since there is no creditor's protection instrument available
<b>II. 4. Model C – the same as model B, but with the introduction of balance sheet test and solvency statement to protect creditors</b>	+ Less effective than model B for cutting the costs for companies, since additional burden of meeting the balance sheet and solvency test	+/- Neutral impact in those MS having already minimum capital requirement equivalent to €1 and having creditors' protection measures, negative impact on MS having higher requirement and no other creditors' protection measures	+/- The same as in model A, but would generate more support than option B due to creditors' protection mechanisms	+ Positive impact on creditors – real creditors' protection in terms of liquidity.

## 8. THE PREFEDED OPTIONS

---

The policy options are chosen on the basis of the comparison of their benefits and costs and their effects on different stakeholders.

## 8.1. THE PREFERRED OPTIONS AND THEIR IMPACTS

---

With regard to **the question of registration**, the baseline scenario would not achieve the objective as it would not reduce the costs for the founders of single-member private limited liability companies. Any possible reforms of national company laws would not provide for uniformity and coherence among all MS, and in particular, it is unlikely that these reforms would result in direct on-line registration with the uniform template of articles of association in all MS.

The highest level of effectiveness in meeting the objectives would be ensured by option I. 4. (Model C). It would bring about the biggest cost reduction as compared to the other options, with savings from both the direct online registration procedure and the single EU-wide template for those companies opting to register online. This option would have similar impact as the other options in terms of efficiency and coherence. It would ensure the availability of the on-line procedures with the unified template without forcing MS and companies to accept it as the only registration procedure for SUPs. This option would have the biggest positive impact on the founders of companies, whereas it would not have a more negative impact on other stakeholders than the remaining options. **Therefore, option I. 4., asking MS to ensure that there would be a possibility of on-line registration of SUPs with the use of the uniform template of articles of association is preferred.**

In order to provide an indication of the magnitude of potential avoided cost for the founders of single-member private limited liability companies, high and low scenarios were calculated (see Annex). The avoided costs for the founders of SUPs in the EU could vary from € 21 million in the low scenario to up to € 58 million in the high scenario in one year.

The biggest impact on MS and other stakeholders would come from the introduction of an on-line procedure. However, this impact would differ from MS to MS and it would depend on how MS decided to implement the result envisaged by the initiative, since the initiative would not impose methods and means to achieve the desired result. MS would still be fully responsible for the quality of necessary checks and the initiative would not lower any existing standards in this regards. This should take away the concerns of certain groups of stakeholders - such as the notaries - that the standard of control in MS would decrease. The effective control could still be performed without the physical presence of the founder of the company before the notary as it is the case in many MS. In most cases MS would need to adapt the already existing national on-line registration systems rather than creating new ones and the only cost related to the single template for articles of association would involve making it available online. Furthermore, these costs would be incurred by MS only once, whereas the benefits for the founders of companies would continue in the future.

With regard to **the question of minimum capital requirement**, the baseline scenario would not be effective in achieving the objectives as it is unlikely that MS would introduce the reforms that would provide for the uniform minimum capital requirements among all MS. Moreover, it is probable that national measures may take different directions as illustrated, for example, by the increase in 2014 of the minimum capital requirement in Hungary and at the same time its decrease in the Czech Republic and Slovakia.

The highest level of effectiveness in meeting the objectives would be ensured by option II. 3 (Model B3) with only €1 of minimum capital and without any additional measures to protect creditors as it would lower costs of minimum capital requirement for companies in a number of MS without imposing any additional costs. However, this option would score worse in terms of efficiency and coherence than option II.4 (Model C), which would, in addition, introduce a balance sheet and a solvency statement to protect creditors. Option II. 4. would be beneficial, even if to a lesser extent, for companies and at the same time,



would have more positive impact on creditors, the impact on MS in terms of introducing new rules in their legal orders being comparable in both cases. **Therefore, option II. 4 is preferred.** It could save company founders in the EU €215-595 million in one year<sup>100</sup> (subtracting any costs for the preparation of solvency statements in case of distributions), guaranteeing, at the same time, the adequate protection for creditors.

This option would have an impact on those MS that do not have €1 minimum capital requirement and/or do not provide for solvency statements in their laws. However, the question of €1 minimum capital requirement would be discussed in the different institutional context than in case of the withdrawn SPE proposal and would not be linked to other sensitive issues such as employee participation or the transfer of seat. This, and the introduction of more robust creditors' protection than in the SPE proposal, should facilitate reaching an agreement between MS.

As regards its impact on companies, these, in exchange for low minimum capital requirement, would have to attach more importance to liquidity questions prior to distributions (e.g. dividends/profits to the single-member). However, the impact on companies would depend on whether MS decided to make SUPs the only national company law form available for single-member private limited liability companies or whether SUPs would be an additional company law form, co-existing with other national forms. If all single-member private limited liability companies were subject to the harmonised rules, the impact on companies would be the biggest.

The preferred options together: **SUP with on-line registration, the uniform template of articles of association, the minimum capital requirement of €1 and a balance sheet test and an insolvency statement** would have positive impact on fundamental rights such as Article 15 and 16 of the Charter of Fundamental Rights of the European Union. They would enlarge the scope of freedom to conduct business and choose occupation by providing yet another possibility (more choice) for company founders to engage in business activities, making it simpler and more straightforward.

The preferred options would also have positive economic and social impacts in terms of facilitating entrepreneurial activity, which should result in more choice of goods and services for consumers, in more jobs created by increased business activities (directly in companies and indirectly in trade with these newly created companies) and in creditors' protection more adapted to business reality. As the preferred options would not touch upon the question of the transfer of registered offices or employee participation, and these would remain covered by national laws, it would not be necessary to introduce measures to minimise the potential circumvention of applicable social and other rights, since anti-abuse measures, if necessary, are laid down by national law.

The preferred options could bring together the savings for company founders in the EU ranging from **€236 to 653 million in one year.** How much of these costs could be saved by foreign founders versus domestic founders is difficult to predict, since there is no available data on this subject. However, the savings and rise of entrepreneurship would benefit the EU as a whole and would allow SMEs to realise the untapped potential in the Internal Market. Although SMEs would still have to comply with other laws in MS when doing business, the simplification of regulatory environment should create a better business environment than currently available.

## 8.2. THE CHOICE OF INSTRUMENT

---

<sup>100</sup> See calculations in the Annex.

To ensure legal certainty, a company law form should be embedded in law and be enforceable in MS legal systems. Self-regulation is, therefore, excluded.

A recommendation would not succeed in creating a harmonised national company law form with uniform set of rules in all MS and would not be able to change already existing requirements which are laid down in national laws (not in soft laws). Also at European level the incorporation and registration of companies is regulated by legislation (directives) and not by recommendations or communications.

Thus, in order to harmonise the conditions related to the establishment of subsidiaries, the EU, if it acts at all, must act via legislation. Moreover, the legal basis of Article 50 TFEU does not leave a choice of instrument to the European legislator. The only available instrument is a directive.

## 9. MONITORING AND EVALUATION

The Commission will monitor the implementation of the chosen policy option and will assess the progress achieved according to the chosen objectives. In this activity, the Commission will cooperate closely with national authorities e.g. the national company law experts in the Company Law Expert Group (CLEG), European companies (including through their European and national associations), company law experts and any other relevant stakeholders in this area. The provision of information for monitoring and evaluation should not impose any unnecessary administrative burden on the stakeholders concerned.

### *Monitoring*

Initially, the monitoring would focus on the implementation of the chosen policy option to ensure that it was clearly and consistently implemented by MS. In that context, the Commission may provide assistance and guidance (e.g. by organising implementation workshops or providing advice on bilateral basis). CLEG could also provide a good forum for exchange of best practices.

In addition, the monitoring activity could focus on:

- numbers of SUPs created following the entry into force of the proposal;
- trends in cross-border activities of SMEs, in particular SUPs;
- costs involved in the setting up and running of single-member subsidiaries, including SUPs, abroad (and any other obstacles encountered);
- availability of infrastructure for on-line registration across the EU.

### *Evaluation*

An evaluation of the chosen policy option should be carried out in order to assess its impact and verify if the objectives have been achieved. It would be carried out by the Commission on the basis of the information gathered during the monitoring exercise and additional input collected from the relevant stakeholders, as necessary.

In particular, this evaluation could focus on whether, following the implementation of the chosen policy option:

- start-ups and groups of companies use the SUP forms;
- there has been any change in costs of setting up and operating single-member subsidiaries, including SUPs, abroad, and whether that had any impact on cross-border activity of SMEs;

- there remained any other practical problems for the setting up/operation of a subsidiary abroad;
- the chosen policy option was consistently implemented in MS legislation, with specific focus on key elements, such as on-line registration; and whether any additional relevant developments have taken place at national level.

## ANNEX

## 1. TABLES

## 1.1. Minimum Capital, Number of Private Limited Liability Companies and New Births 2011 and 2012

	minimum capital*	total number single-member		total number private		"new births" private	
		private ltd liability com. 2013	percentage single-member private ltd liability com. 2013	ltd liability com. 2013	limited liability companies		
					2011	2012	
BE	1			413.761	25.258	20.067	
BG	1	151.861	66	231.282	39.003	44.096	
CZ	0,04	187.071	56	332.005	24.581	25.064	
DK	0,13			188.209	12.923	14.013	
DE	1			1.098.342	87.267	84.411	
EE	0	94310	70	134.913	13.117	13.477	
IE	1	51.320	33	157.356	13.621	13.104	
EL	0	26.453	48	55.436	1.711	2.169	
ES	3000	157.053	14	1.125.041	81.868	82.435	
FR	1	430.081	25	1.720.090	141.561	130.001	
IT	1	205.499	15	1.379.619	80.028	75.645	
CY	0,01	138466	51	273.236	19.530	18.002	
LV	1	107.000	75	142.630	16.844	15.756	
LT	2900	60.493	57	106.228	7.758	10.900	
LUX	12394	29.000	65	44.568	4.534	4.928	
HU	10000	167.000	40	417.509	52.499	33.480	
MT	1165	5200	13	40.000	3.320	3.930	
NL	0,01	665.000	79	843.000	44.000	49.000	
AT	10000	66.500	52	127.400	7.500	7.800	
PL	1200	74.000	33	226.271	19.073	24.629	
PT	1	119.735	32	375.918	31.679	27.893	
RO	45	528.890	56	950.675	65.829	61.542	
SI	7500	40274	62	64.777	5.743	6.170	
SK	5000	126.896	60	210.587	18.661	19.845	
FI	2500	119.000	50	238.100	12.500	12.500	
SE	5800	289.000	65	445.000	43.959	39.263	
UK (GBP)	0,1	1.400.000	56	2.500.000	425.900	451.300	
HR	1			123.611	7.145	8.071	
<b>EU-Level</b>	<b>2197</b>	<b>5.240.102</b>	<b>44</b>	<b>13.965.564</b>	<b>1.307.412</b>	<b>1.299.491</b>	

## Explanation:

\*\*"minimum capital" means lowest possible legally required minimum capital at the moment of set-up of a private limited liability company. Figures are in Euro unless other indicated (currency changes can alter figures).

Figures given for the year 2013 are not the final figures but figures provided by MS for the purpose of this impact assessment in the second half of 2013. The figures for Germany are as of 1 January 2013.

## Comments:

CZ: minimum capital as of 1 January 2014.

DK: minimum capital as of 2014.

HU: minimum capital as of March 2014.

LV: € 1 minimum capital only applies to cases when established by natural (not legal) persons.

SK: planned reform 2014 will set minimum capital to € 1.

UK: figures state the Companies House business years 2011/12 and 2012/13.

## 1.2. Notary Involvement, Availability of Direct On-Line Set-Up, Set-Up Costs, Legal Costs and Template Availability

	Notary Involvement	Availability of direct online set-up for founder	Set-up costs		Legal Costs	Availability of templates
			"direct on-line" registration	"standard" registration		
BE	+			785	360	
BG	-	+		250		+
CZ	+			530	120	+
DK	-	+	90	288		+
DE	+			305	155	+
EE	-	+	185	141		+
IE	-	+	50	100		
EL	+	-		369	183	
ES	+			250	60	+
FR	-	+	84			+
IT	+			1210	1210	+
CY	+			1400	1000	
LV	-	+		155		+
LT	-	+	74	142		+
LUX	+			750		
HU	+			336	168	
MT	-	+	215	245		+
NL	+			500	325	
AT	+			944	600	+
PL	-	+	140	180		+
PT	-	+	220	448		+
RO	-	+	121	121		+
SI	-	+	0	370		+
SK	-	+	166	332		
FI	-	+	330	380		+
SE	-	+	221			+
UK (GBP)	-	+	15	40		+
HR	+	-		109	74	+
<b>Explanation:</b>						
Costs stated in Euro unless otherwise indicated (currency changes can alter figures)						
<u>Notary involvement:</u> compulsory presence of a notary (in Cyprus and Hungary lawyer) is required in the set-up process of a private limited company.						
<u>Set-up costs "direct on-line" registration:</u> lowest possible set-up costs for a legal person being the founder of a private limited liability company.						
<u>Set-up costs "standard" registration:</u> lowest possible set-up costs for a legal person being the founder of a private limited liability company including fees for notary/lawyer and business register costs.						
<u>Legal costs:</u> indispensable legal (advice) costs which are part of the registration process with high variation.						
<u>Availability of templates:</u> model articles of association for the set-up of a private limited liability company being provided by different sources.						
<b>Comments:</b>						
AT: a template is provided by the Vienna Chamber of Commerce for natural persons setting-up a private limited liability company.						
BG: The notary is only involved to verify the signature of the person in power to represent the company.						
The notary is also involved when the company is set up by consideration in kind.						
The on-line registration is available in the site of the Commercial register with the means of an e-signature.						
CY: obligatory involvement of a practicing lawyer						
FI: Currently only natural persons can set-up on-line.						
RO: For a limited liability company the notary is involved in the setting-up process only if the goods subscribed as contribution to the capital is an immovable property.						
SP: The on-line registration can be called a hybrid type, since an individual can register a company on-line, but first a notarial deed is needed and this requires a physical presence before the notary concerned.						

## 2. CALCULATIONS

---

### 1) **Option I. 4. Model C** – on-line registration with the use of the template of Articles of Association

It is assumed, for the purpose of below calculations, that the average amount of costs, equal to minimum legal advice costs, which could be avoided by the founders of companies is around € 387 per each company (referred as "average savings per company").<sup>101</sup> The average amount of costs which could be avoided in the MS concerned, supposing that a founder of a company would carry out all the formalities on-line (through e-identification) and would not, in principle, need any legal advice for the articles of association.

Single-member private limited liability companies established in the MS that do not have direct on-line registration constitute around 44% of all EU single-member private limited liability companies.<sup>102</sup> Assuming that the same percentage also applies to the "new births" of single-member private limited liability companies, around 252.000 single-member private limited liability companies would be established in MS concerned in one year.

It is calculated in the following way:  $0.44$  [percentage of single-member private limited liability companies among all private limited liability companies<sup>103</sup>] \*  $1,299.491$  ["new births" of limited liability companies in 2012<sup>104</sup>] =  $572,000$  ["new births" of single-member private limited liability companies];  $0.44$  [percentage of those MS not having direct on-line registration<sup>105</sup>] \*  $572,000$  ["new births" of single-member private limited liability companies] =  $252,000$  single-member private limited liability companies.

It is difficult to predict: a) how many of these 252,000 companies would be established according to the proposed harmonised rules and b) whether the number of "new births" would increase as a result of the initiative and, if so, by how much.

First, it is assumed for the purpose of these calculations that, as a result of the proposed rules, the number of "new births" in MS concerned increase to balance out the decrease of 0,6% that took place at EU level for limited liability companies in 2012 according to the figures provided by MS. Therefore, it is prudently assumed that this option, which only introduces changes to registration, but does not reduce minimum capital requirement, would have a positive impact resulting in preventing the reduction in the number of newly established companies in MS concerned. In reality, the number of companies should actually rise, since more foreign founders should be willing to establish companies abroad using the single EU-wide template.

Second, as regards the number of companies that would actually take advantage of the direct registration with the obligatory template, it would depend on the implementation choice made by MS (whether SUP would be the only form or co-exist with other national company law forms).

In that context, in order to provide an indication of the magnitude of potential avoided cost for the founders of single-member private limited liability companies, two scenarios are calculated.

---

<sup>101</sup> See Table 1.2

<sup>102</sup> See Table 1.1

<sup>103</sup> See Table 1.1

<sup>104</sup> Ibidem

<sup>105</sup> See Table 1.1

In the high scenario, it is assumed that 60% of single-member private limited liability companies would opt for and be registered online with the harmonised template of Articles of Association. This assumption is made on the basis of the evidence from MS which introduced “lighter company law sub-forms”. For instance, in Germany, the percentage of *Unternehmergeellschaften* (UG) registrations in comparison to GmbH is estimated to be around 60%.

This would mean around €60 million avoided costs by the founders of single-member private limited liability companies in the MS concerned in one year. It is calculated in the following way: 0.60 [percentage of single-member private limited liability companies established according to harmonised rules] \* 252,000 [“new births” of single-member private limited liability companies in those MS that do not have direct on-line registration procedures<sup>106</sup>] = 151,000 \* €387 [average savings per company<sup>107</sup>] = € 58 million avoided costs in one year

In the low scenario, it is assumed that 22% of single-member private limited liability companies would opt for and be registered according to the proposed harmonised rules. This assumption is made on the basis of the evidence in MS which introduced “lighter company law sub-forms”. For instance, in Poland, where minimum capital requirement remained the same, but the direct on-line registration procedure have been recently introduced, around 22% of private limited liability companies were established on-line in a “lighter form”.

In such a case, there would be around € 22, million avoided cost for the founders of single-member private limited liability companies in the MS concerned in one year. The calculations follow the same pattern as above: 0.22 [percentage of single-member private limited liability companies established according to harmonised rules] \* 252,000 [“new births” of single-member private limited liability companies in those MS that do not have direct on-line registration procedures<sup>108</sup>] = 55,000 \* €387 [average savings per company] = € 21 million avoided costs in one year.

Conclusion: € 58 million in high scenario, € 21 million in low scenario.

## 2) Option II. 3. Model B – Minimum capital requirement equivalent to € 1

Single-member private limited liability companies in MS with minimum capital requirement of above € 1 constitute around 32% of all EU single-member private limited liability companies.<sup>109</sup> Assuming, that the same percentage also applies to “new births”, there would be around 183,000 private single-member limited liability companies that would be established in MS concerned in one year.

It is calculated in the following way: 0.44 [percentage of single-member private limited liability companies among all private limited liability companies<sup>110</sup>] \* 1,299.491 [“new births” of limited liability companies in 2012] = 572,000 [“new births” of single-member private limited liability companies]; 0.32

<sup>106</sup> See Table 1.2

<sup>107</sup> See Table 1.2

<sup>108</sup> See Table 1.1

<sup>109</sup> See Table 1.1 The calculation considers MS that do not have € 1 minimum capital requirement as having those having the requirement of above € 1 not matter whether such a requirement is not only provided for certain groups of founders (such as natural persons).

<sup>110</sup> See Table 1.1

[percentage of those MS having minimum capital requirement above €1<sup>111</sup>]\* 572,000 [“new births” of single-member private limited liability companies] = 183,000 single-member private limited liability companies.

In this option it is also prudently assumed that there would be an increase of the number of companies of at least 6%, as a result of the proposed rules, since national reforms lowering the minimum capital requirement resulted in an increase in the number the number of companies. This is based on the following assumption: when Austria decreased the minimum capital in 2013 the increase of number of new companies was estimated at 12% in one year.<sup>112</sup> Since this assumed increase concerned only one country<sup>113</sup>, the increase at EU level is estimated to be half of it (6%). However, taking into account the current decrease of 0,6%, the “net” increase should be 5,4% in one year. This assumption would result in the increase of the “new births” of single-member private limited liability companies from 183,000 to 193,000.

As it was the case in the previous option, it is difficult to predict how many of these 193,000 companies would be established according to the proposed harmonised rules.

In the high scenario, it is assumed that 60% of single-member private limited liability companies would opt for and be registered according to the proposed harmonised rules.

This would result in around € 595 million costs avoided for the founders of single-member private limited liability companies in one year in MS concerned. It is calculated in the following way: 0.60 [percentage of single-member private limited liability companies established according to harmonised rules] \* 193,000 [“new births” of single-member private limited liability companies in those MS have minimum capital requirement above € 1] = 116,000\* € 5126 [average savings per company<sup>114</sup>] = € 595 million avoided costs in one year.

In the low scenario, it is assumed that 22% of single-member private limited liability companies would opt for and be registered according to the proposed harmonised rules. In such a case, there would be around € 215 million avoided cost for the founders of single-member private limited liability companies in the MS concerned in one year. The calculations follow the same pattern as above: 0.22 [percentage of single-member private limited liability companies established according to harmonised rules] \* 193,000 [“new births” of single-member private limited liability companies in those MS have minimum capital requirement above € 1] = 42,000\* €5126 [average savings per company<sup>115</sup>] = € 215 million avoided costs in one year.

Conclusion: € 595 million in high scenario, € 215 million in low scenario.

---

<sup>111</sup> Ibidem

<sup>112</sup> See the calculations which accompanied the reform of Austrian company law <http://www.justiz.gv.at/web2013/file/2c9484853d643b33013d92140125696b.de.0/erl.pdf>

<sup>113</sup> The data from other countries varies. The reforms of company law in Hungary resulted in an increase of 85% of daily incorporations. Average daily incorporations increased by 26% one year after the reform of company law in Germany and in France which reduced minimum capital from thousands of euros to 1. See Braun et al, *Does Charter Competition Foster Entrepreneurship? A Difference-in-Difference Approach to European Company Law Reforms*, JCMS 2013 Volume 51 Number 3, p. 408.

<sup>114</sup> See Table 1.2 (this is a simple EU average of minimum capital requirement in those countries that have the requirement of above € 1; currency changes can alter the figure).

<sup>115</sup> Ibidem



### 3) Avoided costs of combined options I.4. + II. 3. applied together

High scenario:

€ 595 + 58 = **€653 million**

Low scenario:

€ 215 + 21 = **€236 million**

---

### 3. THE LEGAL REQUIREMENTS FOR THE ESTABLISHMENT OF SINGLE-MEMBER COMPANIES ACROSS THE EU AND RECENT NATIONAL REFORMS

---

#### 1. BE

Belgian company law provides the legal form of a "société privée à responsabilité limitée unipersonnelle", SPRLU (single-member limited liability company) or of a "société personnelle à responsabilité limitée 'starter'", SPRL-S ("starter" limited liability company) for the foundation of an SMC. The registration of the company can be carried out through electronic submission by the notary (e-depot application). The e-depot application allows the notary to fulfill all the formalities electronically (submission to the register, requesting publication in the Belgian official Gazette and the company number). Through this system the company receives in a few minutes its company number. The whole process of setting-up a company can be completed within 3 working days (bank, notary, activation of the company number). The set-up costs amount to about 785 euros for an SPRLU with minimum capital. The initial capital required for the foundation of a SPRLU is 18.550,00 €, but only 12.400,00 € are to be provided on foundation. The capital required for the foundation of a SPRL-S amounts to at least 1,00 €. However, the founder is severally responsible after 3 years for the difference between the capital of the SPRL-S and 18,550 €. The number of private limited liability companies in October 2013 was around 413,761. The number of "new births" of private limited liability companies in 2012 was around 20,000.

#### 2. BG

In Bulgaria an SMC can be founded either in the legal form of an "еднолично дружество с ограничена отговорност", ЕООД (single-member private liability company), or of an "еднолично акционерно дружество", ЕАД (single-member stock exchange company). The foundation can be carried out online and doesn't require the assistance of a public notary. There is no obstacle for on-line registration of a non-resident foreign EU citizen though it is not explicitly provided for. In the form for on-line registration the ID number of the foreign citizen has to be put and the same rules as for nationals apply. This means a foreign EU citizen must comply with the requirements for registration of a single member company as prescribed in the Commercial Act and in the Act for the Commercial Register. The name chosen for the company shall be submitted to the Commercial Register, which verifies if there is a violation of third parties' IP rights. The initial capital required for the foundation of an ЕООД amounts to not less than 2,00 BGL (about 1,00 €), for the foundation of an ЕАД – to at least 50.000,00 BGL (about 25.000,00 €). The number of private limited liability companies in October 2013 was around 231.282, thereof around 150.000 single-member companies. The number of "new births" of private limited liability companies in 2012 was around 44.000, thereof 34.000 single-member.

#### 3. CZ

An SMC can be founded in the legal form of a "společnost s ručením omezeným", s.r.o. (limited liability company) or as a "akciová společnost", a.s. (stock exchange company). The articles / memorandum of association of the company shall be drawn up in the form of a notarial deed. The application to the territorially competent regional court to register the company may be submitted electronically provided that a "recognised electronic signature" (advanced electronic signature based on a qualified certificate issued by an accredited certification service provider) is used. From 1 January 2014 also the notary who drew up the notarial deed about the articles / memorandum of association will be able to register the company himself. The set-up and related costs for a s.r.o. do not usually exceed 14.000 CZK (about €530) – around 120 - 220 € for notarial deed and related costs, 240 € as judicial fee for registration of the company, 50 € for trade licence, 20 € extracts from other registers (criminal records, land register). The current regulations require the provision of 200.000,00 CZK (about 7.000,00 €) initial capital on

foundation. However, the new Act on Commercial Corporations taking effect on 1st January 2014 stipulates a reduction of the initial capital requirement to 1,00 CZK (less than 1,00 €). The set-up costs for an a.s. (costs of a notarial deed and judicial fee) are around 19.000 CZK (about 720 €), initial capital amounts to 20.000.000 CZK (around 800.000 €) for a company founded with a public offering of shares / 2.000.000 CZK (around 80.000 €) for a company founded without a public offering of shares. The new Act on Commercial Corporations introduces only one amount of initial capital – 2.000.000 CZK (80.000 €). The number of private limited liability companies in October 2013 was around 332.000, thereof around 182.000 single-member companies. The number of "new births" of single-member private limited liability companies in 2012 was around 13.500.

#### 4. DK

In Denmark an SMC can be founded as an "Anpartsselskab", ApS (private limited liability company), or as an "Aktieselskab", A/S (public limited liability company). There is a possibility for online registration as regards the formation of the company, including a verification procedure for the name chosen for the company. The online registration is done using a digital signature, which is used to verify the identity of the applicant in real time. The digital signature is issued by one central entity (not the Business Register) in DK, and used for various applications. The capital requirements amount to between 80.000,00 DKK (about 10.730,00 €, will be reduced in 2014 to 50.000 DKK) for the foundation of an ApS. In order to establish an A/S, one has to provide 500.000,00 DKK (about 67.040,00 €) as a contribution of initial capital. It will be possible to establish an IVS (entrepreneurial private limited company) – with the minimum registered capital of 1 DKK – equivalent 0,13 Euro in 2014. This will however await the executive order (and the necessary adaptations to the online registration system). It is expected to start at the beginning of 2014. It is possible for foreign natural persons to act as founders, members and participate in management in an online registration of the creation of the company. This requires a proof of identity, an upload of a copy of the passport of the person. As for a legal foreign person acting as founder, it is currently not possible to perform an online registration of the creation of the company. However, currently a new solution for online registration is developed, which is expected to be implemented in the second half of 2014, including also considerations regarding this situation. The number of private limited liability companies in October 2013 was around 188.209. The number of "new births" of private limited liability companies in 2012 was around 14.000.

#### 5. DE

In Germany an SMC can take the legal form of either a "Gesellschaft mit beschränkter Haftung", GmbH (private limited liability company), an "Unternehmergesellschaft", UG (a sub-form of private limited liability company) or an "Aktiengesellschaft (stock exchange company). The registration of the company cannot be carried out online as a public notary has to verify the identity of the applicant, notarize the articles of association (in the case of an SMC usually in standardized form) and electronically submit the application to the local court for final checking and execution of entry into the Company Register. This entry is subsequently publicised online. The set-up costs for the establishment of a UG (single-member, initial capital 1,00 €) amount to 305,00 €. The initial capital of a GmbH has to be at least 25.000,00 €, but only 12.500,00 € are to be provided on foundation. The minimum initial capital for the establishment of an UG is 1,00 €. However, the company has to indicate its status as a UG by using the legal term "Unternehmergesellschaft (haftungsbeschränkt)" or its abbreviation in its name and also has to ensure the accumulation of a restricted reserve in order to reach the minimum capitalization of a GmbH. The initial capital required for the foundation of an AG amounts to 50.000,00 €. The foundation of an AG (single-member) incurs costs of 847,00 €. The number of private limited liability companies in as of January

2013 was around 1,098.000. The number of "new births" of private limited liability companies in 2012 was around 84.000.

#### 6. EE

An "Estonian SMC" can be founded as a " Osühing", OÜ (private limited liability company) or as an "Aktiaselts", AS (public limited liability company). For holders of (mobile) Estonian, Finnish, Portuguese, Belgian and (mobile) Lithuanian ID-cards there is a possibility to set up a company online by using an electronic registration portal. Otherwise the incorporation process shall be assisted by a public notary who uses a special information system ("e-notary") to submit the required documents. The registration process takes 5 working days. Besides, there is an expedited procedure which is performed within 1 working day (in practise 2 hours). The set-up costs amount to at least 140,60 € (state registration fee) or 185,34 € (fee for the use of the electronic procedure). If a public notary is involved, there are notary fees to be paid. The initial capital required for the foundation of an OÜ is 2.500,00 €. If the capital of OÜ is planned to be less than 25 000 euros, it is possible for a natural person to found an OÜ without the initial capital payment. The number of private limited liability companies in November 2013 was around 134.000. The number of "new births" of private limited liability companies in 2012 was around 13.000, thereof 11.500 single-member.

#### 7. IE

In Ireland an SMC can take the legal form of a private limited liability company. The company can be registered online within 5 working days, provided that certain pre-approved templates for a memorandum and articles of association (so called Fé Phráinn Scheme) are being used. The Fé Phráinn Scheme can also be used for non-online applications and in this case the process can take up to 10 working days. Online and paper based Fé Phráinn company incorporation is only suitable for presenters who file documents regularly and not for once-off applicants. The latter should rather use the ordinary incorporation process provided for the registration of a company, which can take up to 15 working days. There is no obligatory name-verification but applicants are advised to check the uniqueness of the company name themselves in order to avoid a violation of third parties' IP rights. The registration costs amount to 100,00 € for the ordinary incorporation process and to 50,00 € for the online and paper based Fé Phráinn registration process. The initial capital to be provided is normally not less than 1,00 €. The number of private limited liability companies in October 2013 was around 157.356, thereof around 51.320 single-member companies. The number of "new births" of private limited liability companies in 2012 was around 13.000, thereof 5.300 single-member.

#### 8. EL

In Greece an SMC can be founded as an "etairia periorismenis efthinis", EPE (single-member limited liability company), as an IKE (recently introduced form of a private limited liability company, often described as "private capital company") or as an "anonimi etairia", AE (public limited liability company). The possibility to register a company online and the use of e-signatures have not been provided yet. For the foundation of an EPE or an AE a public notary should be involved who proceeds the necessary formalities to establish a company through an online platform. The name chosen for any form of company is to be approved by the Chamber of Commerce. The set-up costs for a private limited company start from 185,50 €, for a public limited company from 444 €. The capital requirements vary according to the legal form of the SMC: for an EPE the minimum capital is 0,01 € and IKE there is no minimum capital requirement, for an AE at 24.000,00 €. Furthermore, contrary to the other company types, called "non-capital contributions" (works, labour etc.) and "contributions of guarantee" (the shareholder declares to be a warrant for the company's debts) are also possible. The number of private limited liability companies in

October 2013 was around 55.000, thereof around 26.000 single-member companies. The number of "new births" of private limited liability companies in 2012 was around 2.000.

#### 9. ES

Spanish Company Law provides following legal forms for the formation of an SMC: "Sociedad Anónima Unipersonal", SAU (public limited liability company), "Sociedad Limitada Unipersonal", SLU (private limited liability company) and "Sociedad Limitada Nueva Empresa Unipersonal", SLNEU (another type of a private limited liability company which can be registered within 1 day="express company" and can only be established by natural persons). A possibility for online registration of all company types is granted as well as the use of e-signatures. The foundation of the company can only be completed under the assistance of a public notary. The identity of the applicants as well as the name chosen for the company are to be verified by the Registration Court and by a public notary. The initial capital to be provided for the foundation of a SAU amounts to at least 60.000,00 €; for the foundation of a SLU at least 3.000,00 € should be contributed. Besides, the initial capital of a SLNEU shall amount to at least 3.012 euros and shall not exceed 120.000,00 €. The number of private limited liability companies in October 2013 was around 1,125.000, thereof around 157.000 single-member companies. The number of "new births" of private limited liability companies in 2012 was around 82.000, thereof around 14.900 single-member.

#### 10. FR

In France an SMC can be established in the legal form of an "entreprise unipersonnelle à responsabilité limitée", EURL (private limited liability company, a subtype of SARL) or of a "société par actions simplifiée unipersonnelle", SASU (simplified public limited liability company). The possibility for online registration is granted provided that the applicant uses a so called electronic certificate. The identity of the founder and the name chosen for the company should be verified by the registrar. The use of e-signature is provided. The set-up costs for an EURL amount to about 300 €, for a SASU to about 350,00 – 450,00 €. The initial capital to be provided for the establishment of both a EURL or a SASU amounts to at least 1,00 €. The number of private limited liability companies in October 2013 was around 1,720.000, thereof around 430.000 single-member companies. The number of "new births" of private limited liability companies in 2012 was around 130.000, thereof 49.700 single-member.

#### 11. IT

In Italy an SMC can be established as a "società a responsabilità limitata unipersonale", s.r.l.u. (single-member private limited liability company), as a "società a responsabilità limitata semplificata unipersonale", s.r.l.s.u. (a subtype of a private limited liability company) or as a "società per azioni unipersonale", s.p.a.u. (single-member joint stock company). There is a possibility for online registration. However, only a public notary can file the incorporation documents and is also responsible for the required ID-verification. The set-up of a s.r.l.s.u. costs about 722,00 € as the applicant should use a standardized memorandum and articles of associations and the public notary is required to proceed the incorporation of the company free of charge. The foundation of a s.r.l.u. costs about 2.100,00-2.400 €. Around 3.000,00 € are to be planned for the set-up of a s.p.a.u. The initial capital to be provided for the establishment of a s.r.l.s.u. and of a s.r.l.u. amounts to at least 1,00 €, for the s.r.l.s.u. it should not exceed the amount of 10.000,00 €. The initial capital for the foundation of a s.p.a.u. amounts to at least 120.000,00 € and has to be entirely paid upon signing the memorandum of association. The number of private limited liability companies in October 2013 was around 1,380.000, thereof around 205.499 single-member companies. The number of "new births" of single-member private limited liability companies in 2012 was around 14.400.

## 12. CY

Cyprus' Company Law provides the legal form of a private limited liability company for the foundation of an SMC. The registration process should be assisted by a lawyer licensed by the Cyprus Bar Association or by a service provider cooperating with a lawyer. There is a possibility for online registration. The name chosen for the company should be verified at the Company Register. The set-up costs amount to around 400,00 €; the drafting of a memorandum and articles of association by a lawyer arise costs of about 1.000,00 €. There are no real capital requirements, the company's capital should be at least 0,01 €. The number of registered companies in Cyprus in October 2013 was around 273.000, the number of single-member private limited liability companies around 138.000.

## 13. LV

In Latvia an SMC can be founded in the legal form of a "sabiedriba ar ierobe otu atbildibu", SIA (private limited liability company). There is a possibility for online registration, which is less costly than the ordinary registration process. Also, the use of a so called secure electronic signature is provided. In this case the assistance of public notary is not required. The initial capital should amount to at least 1,00 LVL (about 1,43 €). Currently, the technical solution of the online registration e-service (via [www.latvija.lv](http://www.latvija.lv)) provides an opportunity to sign the application and documents enclosed to only with a secure electronic signature issued in Latvia (eSignature in Smart Card or eID Card). A foreign citizen can obtain an electronic signature issued in Latvia if he/she has a personal identity number allotted by the Republic of Latvia. Personal identity number is allotted to a foreign citizen who has received a residence permit of the Republic of Latvia. The set-up costs for the on-line registration of a single-member private limited liability company with reduced core capital is € 33.

There is also an option to submit documents signed with an electronic signature issued abroad. This option can be used by using the official e-mail of the Register of Enterprises: [info@ur.gov.lv](mailto:info@ur.gov.lv). An application and documents enclosed to shall be filled in in Latvian and each of them shall be signed with a secure electronic signature. The number of private limited liability companies in October 2013 was around 143.000, thereof around 107.000 single-member companies. The number of "new births" of single-member private limited liability companies in 2012 was around 13.600.

## 14. LT

Lithuanian Company Law provides the legal forms of an "Uždaroji akcinė bendrovė", UAB (private limited liability company), of a "Mažoji bendrija", MB ("small partnership") and of an "Individuali įmonė", IĮ ("individual enterprise", sole proprietorship) for the foundation of an SMC. A MB or an IĮ can only be founded by a natural person. There is a possibility for online registration, by using an e-signature, described as a "qualified electronic certificate". In this case the assistance of a public notary is not a requirement for completing the registration process. The set-up costs amount to around 270,00 LTL (around 78,00 €). The initial capital to be provided should amount to at least 10.000,00 LTL (about 2.900,00 €) for the foundation of an UAB. There are no capital requirements for the foundation of a MB or an IĮ. The number of private limited liability companies in October 2013 was around 106.228, thereof around 60.000 single-member companies. The number of "new births" of single-member private limited liability companies in 2012 was around 8.400.

## 15. LU

A SMC governed by Luxembourg law can be constituted either in the legal form of a "société unipersonnelle à responsabilité limitée", SURL (single-member private limited liability company, subtype

of Sàrl) or of a “société anonyme unipersonnelle”, SAU (public limited liability company). It is possible to carry out an online registration through the use of an e-signature. However, the incorporation of the company always requires the assistance of a public notary who verifies that all the conditions for the formation of the SAU or SURL have been fulfilled as well as the legal identity of the founders. The initial capital to be provided in order to establish a SURL amounts to at least 12.394,68 and at least 30.986,69 € for the constitution of a SAU. From the information collected by the Commission the set-up costs amount from 750 - 800 €. The number of private limited liability companies in October 2013 was around 45.000, thereof around 29.000 single-member companies. The number of "new births" of single-member private limited liability companies in 2012 was around 3.400.

#### 16. HU

In Hungary an SMC can be founded as a "korlátolt felelősségű társaság", kft. (private limited liability company) or as "zártkörűen működő részvénytársaság", zrt. (stock exchange company, whose shares are not traded publicly). There is a possibility for online registration, but not for the use of an e-signature. Founders must sign the company's constitutive document, which, together with other documents must be countersigned by a Hungarian attorney. Applications for registering or amending details must be submitted electronically via a legal representative. The court of registration electronically records documents relating to the company and provides an electronic certificate of registration as well as confirmation of any changes made. In the electronic procedure of company registration it is necessary for the legal representative (notary/attorney) to use electronic signature and time stamp. The identity of the applicant and the chosen company name are to be verified during the registration process. The registration fee is 168 € in case of simplified registration proceeding, and 336 € in non-simplified registration proceeding. The initial capital required to establish a kft. is 1.700,00 €, for the zrt. it is 16.000,00 €. All new set-up Kfts as from March 15, 2014 will have to start with 10.000 € (though a Kft could be formed with less than 10.000 € - as of October 2013 the amount has not been fixed yet - but with a duty to fill up the capital from profits. As long as the capital of 10.000 € has not been filled up, no distribution (dividends) may be payable to members). Existing Kfts would have to bring the minimum capital up to 10.000 € before March 15, 2016. The number of private limited liability companies in October 2013 was around 418.000, thereof around 167.000 single-member companies. The number of "new births" of single-member private limited liability companies in 2012 was around 18.400.

#### 17. MT

In Malta an SMC should take the legal form of a single-member private limited liability company. The possibility of online registration is provided. During the registration process the Company Register verifies the availability of the company name chosen by the applicant. The set-up costs start with 215,00 € for on-line registration (245,00 for paper) depending on the amount of initial capital. The minimum initial capital to be provided is 1.165,00 €. The number of private limited liability companies in October 2013 was around 40.000, thereof around 5.200 single-member private limited liability companies.

#### 18. NL

The legal framework of the Netherlands provides two legal forms for the foundation of an SMC: the "Besloten vennootschap", B. V. (private limited liability company) and the "Naamloze vennootschap", N. V. (public limited liability company). The incorporation of the company should be assisted by a public notary, who also verifies the identity of the applicants and the name chosen for the company. The registration can also be carried out online but the possibility to use an e-signature is not provided. The set-up costs vary according to the notary fees required but amount to not less than 500,00 €. The establishment of a B. V. does not require the provision of minimum capital, it may be incorporated with

one single share with the nominal value of 0,01 € (so called "Flex B.V."). The initial capital required for the foundation of a N. V. amounts to at least 45.000,00 €. The number of private limited liability companies in October 2013 was around 843.000, thereof around 665.000 single-member companies.

#### 19. AT

Austrian Corporate Law provides the legal forms of the "Gesellschaft mit beschränkter Haftung", GmbH (private limited liability company) and of the "Aktiengesellschaft", AG (stock exchange company) for the establishment of an SMC. The registration of the company cannot be carried out entirely online as a public notary has to assist the registration process and verify the identity of the applicant. The name chosen for the company is to be verified by the Enterprise Register. The set-up costs amount to at least 300,00 € for a GmbH, provided that the applicant uses standardized articles of association. Otherwise they go up to 1.000,00 €. The foundation of an AG costs approximately 2.500,00 – 3.000,00 €. According to the most recent amendments of the Private Limited Liability Companies Act, which have entered into force on 1<sup>st</sup> July 2013, the initial capital required for the foundation of a GmbH has been reduced from 35.000,00 € to 10.000,00 €. Besides, only 5.000,00 € are to be paid upon foundation. For the incorporation of an AG the initial capital shall amount to at least 70.000,00 €. The number of private limited liability companies in October 2013 was around 127.400, thereof around 66.500 single-member companies. The number of "new births" of single-member private limited liability companies in 2012 was around 3.900.

#### 20. PL

In Poland an SMC can be incorporated either as a "Spółka z ograniczoną odpowiedzialnością", sp. z o.o. (private limited liability company) or as a "Spółka akcyjna", S.A. (public company limited by shares). Since 1st January 2012 the establishment (the drawing up and registration of the articles of association) of a sp. z o.o. can be carried out online with the possibility of on-line registration of non-resident foreign EU citizens. The use of an e signature is possible. If the registry court does not call upon shareholders to remedy any defects arising out of failure to meet any provisions of law, the company will be registered within 24 hours since the notification was received by the court. The assistance of a public notary is still required for the foundation of a S.A. or if a sp. z o.o. is registered in the "ordinary way" (not online). By the end of August 2013 there were 8788 companies set up online. The set-up costs for a sp. z o.o. and S.A. (i.e. court fees and maximum notary fees) amount to a maximum of 11.000 PLN / approx. 2.589 € (the maximum notary fees, i.e. 10.000 PLN / 2.353 €, shall apply when the share capital exceeds 3.300.000 PLN/approx. 777.471 €). The respective minimum cost numbers for a registration in the ordinary way are: S.A. – approx. 415 € (court fees and notary fees) and Sp. z o.o. - approx. 180 € (court fees and notary fees). For an online registration of a Sp. z o.o. (S24): approx. 140 € (court fees).

The initial capital required for the foundation of a sp. z o.o. amounts to at least 5.000,00 PLN (around 1.200,00 €); for a S. A. it is 100.000,00 PLN (around 24.000,00 €). The number of private limited liability companies in October 2013 was around 226.000, thereof around 74.000 single-member companies. The number of "new births" of single-member private limited liability companies in 2012 was around 11.800.

#### 21. PT

Portuguese Company Law provides following legal forms for the foundation of an SMC: (1) the "Sociedade por Quotas Unipessoal", SQU (private limited liability company), (2) the "Sociedade Anónima", S. A. (joint stock company) provided that the single member is another "Sociedade Anónima" or "Sociedade por Quotas", (3) the "Estabelecimento Individual de Responsabilidade Limitada" (neither a company nor a legal person but a special assets fund, "Sondervermögen"/"patrimoine autonome"). There is a possibility to register a SQU online (so called "Empresa Online"). The use of e-signature is granted. Currently Portuguese, Spanish and Estonian citizens are able to create a single-member private limited



liability company on-line using their respective digital certificate from their national identity card, but no other foreign EU citizens. In case that the single member is a legal person or another company, the identity of its founder is to be verified by the registration authorities. For the electronic registration process the costs vary between 220 € (pre-approved bylaw model) or 360 € (custom bylaw - drawn up by the interested parties). The set-up costs for the paper registration process amounts to 447,50 €. The initial capital required for the foundation of a SQU amounts to at least 1,00 €. The number of private limited liability companies in October 2013 was around 376.000, thereof around 120.000 single-member companies. The number of "new births" of single-member private limited liability companies in 2012 was around 14.400.

## 22. RO

In Romania an SMC can be founded as a "societate cu raspundere limitata", SRL (private limited liability company). The incorporation process should be assisted by a public notary only when among the goods subscribed as contribution to the registered capital there is an immoveable property. The estimated costs for the set-up of a single-member company are Lei 540 (around € 122). Registration can be done online, through an authorized person or in a paper form. The minimal initial capital should amount to at least 200,00 RON (around 55,00 €). The number of private limited liability companies in October 2013 was about 950.000, thereof about 529.000 private limited liability single-member companies.

## 23. SI

In Slovenia one can found an SMC either in the legal form of a "družba z omejeno odgovornostjo", d.o.o. (private limited liability company) or in the legal form of a "delniška družba", d.d. (public limited liability company). The minimal initial capital required for the foundation of a d.o.o. amounts to 7.500,00 € and 25.000 € for a d.d. The possibility to register the company online is available through e-VEM portal and does not require the assistance of a notary. One stop shop portal – OSS portal), a state portal where companies or entrepreneurs (solo proprietors) may carry out electronic services that are necessary for the entry of companies or entrepreneurs in the Court/Business Register. The registration of single-member d.o.o. can be done on-line by the company (its single member) itself, whereas in other cases the company (its members) must visit one of VEM offices (OSS contact points) or public notary. Regardless of the entry point (e-VEM, VEM offices, public notary) registration is carried out via the e-VEM portal which connects all institutions involved in the registration procedure and other relevant procedures.

For registering a single-member d.o.o. on-line, the applicant needs to obtain a qualified digital certificate provided by a certification authority in Slovenia. The applicant has to use a prescribed electronic form and open an electronic book of decisions. On-line registration is possible also for non-resident foreign EU citizen. For registering on-line, the applicant needs to obtain a personal identification number (Slovenian citizens already have it) which is a prerequisite for obtaining a qualified digital certificate provided by a certification authority in Slovenia. He/she also needs a tax number and capital wholly paid up in cash.

The result of completed procedures through e-VEM portal is digitally signed electronic application with all required attachments in electronic form. All obligatory supporting documents (attachments) are automatically generated by e-VEM system. This electronic application is safely and reliably sent to the relevant institutions through the e-VEM system, and the applicant can get delivered a decision into safe mail box. The number of private limited liability companies in November 2013 was around 65.000. The number of single-member private limited liability companies in 2013 was around 40.000, in 2012 "new births" single-member account to 4.800 companies.

## 24. SK

Slovak Commercial Code provides the "spoločnosť s ručením obmedzeným", s.r.o. (private limited liability company) as a legal form for the foundation of an SMC. The company can be registered online.

The incorporation process should be assisted by a public notary, but only regarding the validation of identity (no need for notarisation of articles of association, etc.). The on-line registration requires an advanced electronic signature based on a qualified certificate. The registration fee for online registration is 165,75 € which is only 50% of the standard registration fee. The initial capital required for the foundation of a s.r.o. should amount to at least 5.000 €, nevertheless, it is sufficient to pay-up 2.500 € upon the registration if there is more than 1 founder. Pursuant to a government resolution there is a plan to reform the s.r.o. legal framework by the end of 2014. This reform shall include inter alia also lowering the minimum capital to 1 €. The number of private limited liability companies in October 2013 was around 211.000, thereof around 127.000 single-member companies. The number of "new births" of single-member private limited liability companies in 2012 was around 13.200.

#### 25. FI

In Finland an SMC can take the legal form of a private limited liability company (osakeyhtiö, oy). The company can be registered online, provided that pre-approved templates for a memorandum and articles of association are being used and the founders have Finnish Identity Numbers and electronic identification using Finnish Webbanking identification. The set-up costs amount to 330 € in case of online registration (otherwise 380,00 €). The minimal initial capital to be provided for the foundation of an oy is 2.500,00 € (in comparison for a "julkinen osakeyhtiö" oyi - public limited liability company it is 80.000,00 €). The number of private limited liability companies in October 2013 was around 238.000, thereof around 119.000 single-member companies. The number of "new births" of single-member private limited liability companies in 2012 was around 6.000.

#### 26. SE

In Sweden an SMC can take the legal form either of an "aktiebolag", AB (private limited liability company) or of a "publikt aktiebolag", ABP (public limited liability company). The applicant has the possibility to register the company online if they have a Swedish Identity Number and a special electronic identification which can be obtained from most Swedish banks. There are more than ten different issuers of electronic identifications. The set-up costs correspond to 1.900,00 SEK (about 221,00 €). The minimal initial capital required for the establishment of an AB amounts to 50.000,00 SEK (about 5.800,00 €) and to 500.000,00 SEK (about 57.900,00 €) for the establishment of an ABP. The number of private limited liability companies in October 2013 was around 445.000, thereof around 289.000 single-member private limited liability companies. The number of "new births" of private limited liability companies in 2012 was around 39.300.

#### 27. UK

In the UK an SMC can be incorporated as a "single-member private limited liability company" or as a "single-member public limited company". There is a possibility to establish a private company limited by shares using model articles online. A non-resident foreign EU citizen can incorporate a UK company online. On-line registration of a non-resident foreign EU citizen is possible. The name chosen for the company is to be verified by the registration authorities upon registration. The set-up costs for online registration are 15,00 £, for paper 40,00 £, average electronic incorporation takes 7 hours. There is no minimum initial capital required to incorporate a private or public company limited by shares - but it has to be greater than zero. For the public limited company it is 50.000 £. The number of private limited liability companies in October 2013 was around 2,500.000, thereof around 1,400.000 single-member companies. The number of "new births" of private limited liability companies in 2012 was around 451.300.

## 28. HR

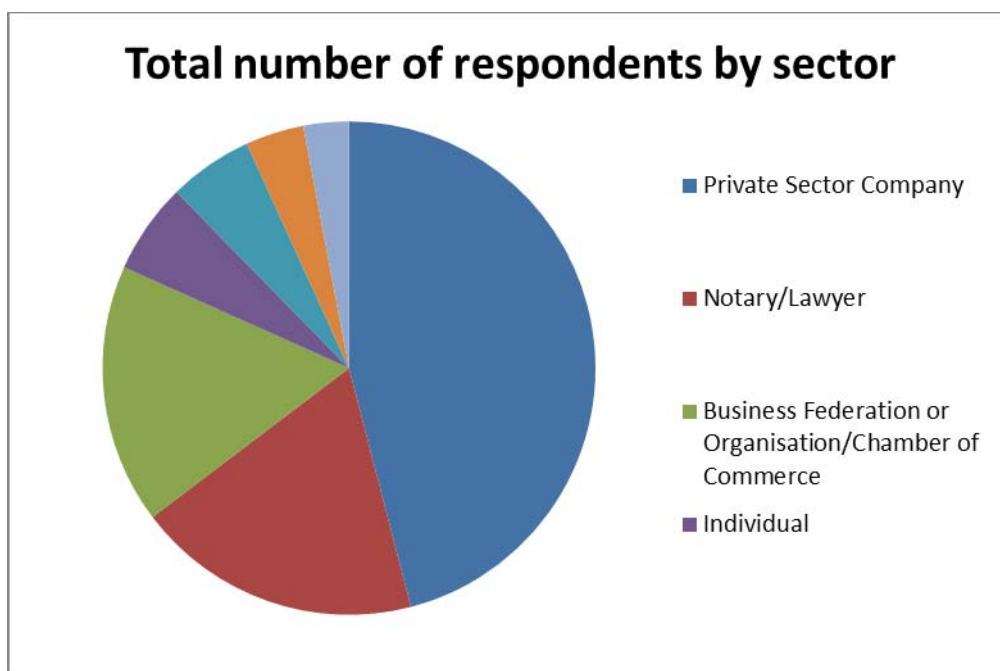
A Croatian SMC can take the legal form of a "društvo s ograničenom odgovornošću", d.o.o. (private limited liability company) or simple d.o.o. (s.Ltd). A possibility for online registration is granted. The incorporation process should be assisted by a public notary who shall use the "advanced electronic signature" to sign the required documents in case that the applicant opts for the online registration of the company. Though, the notary is still obliged to deliver all documents in paper (original) form to the court registry within 3 days. The set-up costs amount to around 7.000,00 HRK (about 925,00 €), for a simple d.o.o. 109 € in total. The initial capital to be provided amounts to at least 20.000,00 HRK (around 2.600,00 €) for the foundation of a d.o.o. and to at least 200.000,00 HRK (about 26.500 €) for the foundation of a "dioničko društvo", d.d. (public limited liability company). For s.Ltd. the minimum capital amounts to 1,3 € (10,00 HRK), with a maximum up to 2 599 € (19,999,00 HRK). The Company Law Act prescribes minimum obligatory information to be given in the "Statement/Contract of establishment" (documents by which establishment of s.Ltd. is possible) regarding the name (of the natural or legal person establishing the s.Ltd), company name, seat, business area, amount of minimum capital, rights and duties of the founder(s) against s.Ltd., etc. The number of private limited liability companies in October 2013 was around 124.000. The number of "new births" of single-member private limited liability companies in 2012 was around 5.300.

## 4. SUMMARY OF RESPONSES TO THE PUBLIC CONSULTATION ON THE SINGLE-MEMBER COMPANIES

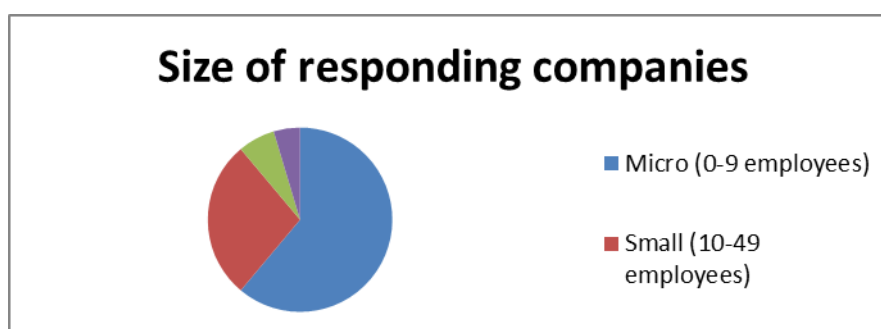
---

### A. General Overview

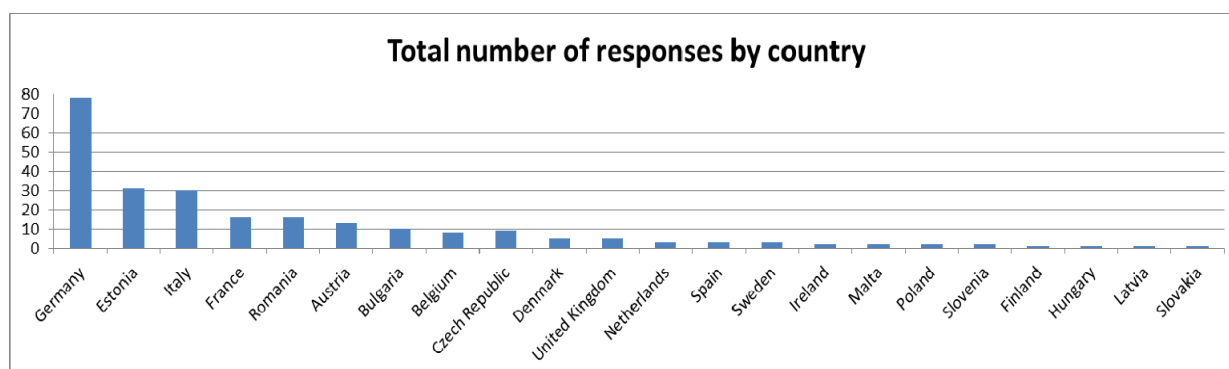
On 6 June 2013, DG Internal Market and Services of the European Commission launched a public consultation on single member limited liability companies ('SMCs') which ended on 15 September 2013. In total, 242 responses have been received, the majority of which was provided by private sector companies. Also, other stakeholders such as e.g. business federations, trade unions, research institutions and public authorities have taken the opportunity to share their views with the Commission.



Of the private sector companies that participated, more than 75 % are established as private limited liability companies. Out of those private limited liability companies, again nearly 75 % of the respondents were single member private limited liability companies. Also, the overwhelming majority of the companies that responded described themselves as micro- to small size.



Responses have been received from a large number of EU Member States. The highest number of responses by far came from Germany, but the consultation has also sparked strong interest among respondents e.g. in Estonia, Italy, France and Romania.



## B. Detailed Analysis of Responses

### Section II: Need for harmonization

In this section of the questionnaire respondents were asked to provide their insights on the need for regulatory harmonization due to the difficulties encountered by companies when expanding their commercial activities abroad.

#### QUESTION 1

*Do you agree with the finding that the overall participation of SME's in cross-border trade/activities in the EU is low in relation to their potential?*

The overwhelming majority of respondents (86 %) who had an opinion on this agreed with the finding. Especially business federations (80 %), notaries/lawyers (77 %) and private sector companies (76 %) answered in the affirmative. However, the majority of trade unions (57 %, which is equivalent to four respondents in total) did not agree.

#### QUESTION 2

*Is it difficult for SMEs to expand their commercial activities/trade by setting-up a branch or subsidiary abroad (within the EU)?*

Nearly 13% of respondents did not have a view on this. Among those who had an opinion, 60% answered in the affirmative and 40% in the negative. The negative vote was backed not only by the trade unions (71 %) but also by an overwhelming majority of notaries/lawyers (91 %) and a notable amount of business federations (33 %). However, most of the private sector companies (66 %) agreed that such difficulties exist.

#### QUESTION 3

*Is it difficult for SMEs to move their registered office, headquarters or principle place of business abroad (within the EU)?*

Nearly 20 % of respondents did not express an opinion on this. Of those who did, again 60 % answered in the affirmative and 40 % in the negative. The respondents were split along similar lines as with Question 2, with notaries/lawyers (86 %) and trade unions (71 %) mostly disagreeing, and private sector companies mostly agreeing (55 %).

#### QUESTION 4

*Why is it difficult to move or expand a commercial activity/trade, by setting-up a branch or subsidiary, abroad (within the EU)?*

This was a multiple choice question. Among those who gave an answer, compliance costs were identified as the biggest difficulty (55 % of respondents). The respondents further identified legal advice costs (48 %), difficulty of financing (47 %) and a general lack of knowledge and/or trust in foreign company law forms (46 %) as key drivers of difficulties. Also, nearly 30% of respondents indicated that there are “other” reasons for this.

Looking at the different groups of respondents, the private sector companies mostly identified compliance costs (60 %), legal advice costs (48 %) and lack of knowledge and trust in foreign company law forms (48 %) as main drivers of their difficulties. However, the notaries/lawyers mostly pointed to difficulty of financing (68 %) and “other” reasons (45 %). The business

federations' respondents put most emphasis on compliance costs (58 %), difficulty of financing (50 %) and legal advice costs (48 %). The majority of public authorities (62 %) did not have an opinion on this.

#### QUESTION 5

*Within compliance costs, which do you consider as being the biggest obstacle to moving or expanding the commercial activity/trade, by setting-up a branch or subsidiary, abroad (within the EU) ?*

This also was a multiple choice question. The biggest obstacle that was identified was the annual running and operational costs of a branch or subsidiary abroad (73 %). Also, more than half of the respondents identified “other” costs such as costs stemming from labour law, health and safety issues as big obstacles (52 %). Apart from that, other large parts of the compliance costs were attributed to translation (33 %), registration fees (27 %) and initial capital (18 %).

Looking at the different groups of respondents, the biggest obstacles for the private sector companies are by far the annual running/operational costs (76 %). Secondary are “other” costs such as costs stemming from labour law, health and safety issues (43 %). For business federations however, both types of costs are of similar importance (operational cost: 68 %, other cost: 63 %). Public authorities on the other hand attribute much higher weight to “other” costs (92 %), but operational costs are also identified as being of second biggest importance (62 %).

#### QUESTION 6

*Would the legislative harmonisation of requirements concerning single-member private limited liability companies at the EU level encourage/facilitate an increase in cross-border activity of SMEs within the EU?*

*What would otherwise increase such activity?*

Of the respondents who expressed their opinion on this question nearly 63 % agreed with the notion that legislative harmonisation at the EU level would encourage and/or facilitate an increase in cross-border activity of SMEs, only 37 % disagreed. The negative vote was comprised of the majority of trade unions (71 %) but also notaries/lawyers (80 %). The majority of Yes-votes stemmed not only from the private sector companies (74 %) but also from the universities and researchers (78 %) as well as the responding individuals (79 %). Public authorities were split on the matter, with 4 out of 13 responses in favour, 5 against and 4 abstaining.

The second part of the question allowed for multiple answers. The use of a single point of contact was supported by 43 % of respondents, including the majority of private sector companies (55 %). An information campaign was deemed helpful by 30 %, including the majority of business federations (50 %). However, 25 % of respondents requested “other” types of activities to increase SMEs cross-border activity, including the majority of public authorities (46 %).

### Section III: Quantifiable data

This section set out to collect quantifiable data on the number of SMCs in the Member States and the costs they face at home (Question 1-8) and abroad (Question 9-12). Questions 1-8 were addressed to Member States' authorities directly. However, since a large group of Member States did not respond to this consultation, DG Markt has collected information from them directly. This information can now be found in the Annex to the Impact Assessment on SMCs.

It should also be noted, that Questions 9-12 unfortunately did not yield the representative results the Commission had hoped for since most of the respondents did not express their views on those issues.

#### QUESTION 9

*What are, in your experience/knowledge, the total additional costs incurred in relation to the setting up of a single-member private limited liability company abroad (within the EU) in comparison to setting-up the company in your own country?*

Most of the respondents (54 %), including the majority of public authorities (85 %), notaries/lawyers (80 %), business federations (55 %) and private sector companies (44 %), did not have a view on this. Among those who did, 47 % deemed the total additional cost to be between 1-4.999 Euro. Another 25 % placed the cost in a range between 5.000-9.999 Euro. Still, more than 13 % of respondents said there would be no additional cost incurred at all.

#### QUESTION 10

*What are, in your experience/knowledge, the total additional costs incurred in relation to the setting up of a single-member public limited liability company abroad (within the EU) in comparison to setting-up the company in your own country?*

Nearly 63 % of respondents did not express an opinion on this, including the majority of public authorities (85 %), notaries/lawyers (82 %), private sector companies (60 %) and business federations (55 %). Among those who did, the majority identified 1-4.999 Euros as the additional cost for setting up a single member public limited liability company abroad instead of at home. However, there are also a significant number of other respondents that put the costs either at 5.000-9999 Euro (19 %), or 10.000-20.000 Euro (16 %) or more than 20.000 Euro (12 %). Also, 19 % of respondents, including a notable amount of universities (33 %) and trade unions (29 %), are convinced there will be no additional cost at all. The results may thus be best described as mixed.

#### **QUESTION 11**

*What are, in your experience/knowledge, the additional legal advice costs associated with the setting-up of a single-member private limited liability company abroad (within the EU) in comparison to setting-up the company in your own country?*

Again, the overall majority of respondents did not provide an answer for this question (55 %), including the majority of public authorities (92 %), notaries/lawyers (70 %), business federations (65 %) and trade unions (57 %). Among those who did, a large majority of 47 % placed the additional legal advice costs at 1-4.999 Euros. However, another large group of respondents placed them at 5.000-9.999 Euro (26 %). Only 13,6 % said there would be no additional cost, including 7 out of 108 private sector company respondents.

#### **QUESTION 12**

*What are, in your experience/knowledge, the additional legal advice costs associated with the setting-up of a single-member public limited liability company abroad (within the EU) in comparison to setting-up the company in your own country?*

62 % of respondents did not provide an answer to this question, including the majority of public authorities (85 %), notaries/lawyers (75 %), business federations (65 %), private sector companies (61 %) and trade unions (57 %). Among those who did, 38, 5 % deemed the additional legal advice costs to be again around 1-4.999 Euro, 25 % placed them at 5.000-9.999 Euro and 11 % at 10.000-20.000 Euro. Still, 18, 6% of respondents said there would be no additional cost at all.

### **Section IV: Substance – A potential initiative on single-member limited liability companies**

This last section covered the substance of a potential initiative on single-member limited liability companies.

#### **QUESTION 1**

*Should the potential initiative include simple rules for company registration on-line with one common standard registration form throughout the EU?*

An online registration with a common standard registration form was approved by a large majority of all respondents (61,2 %). Only, 33, 5 % of respondents disagreed and 5, 3 % did not give an opinion. The 'No'-vote consisted again of the majority of trade union respondents (86 %) and notaries/lawyers (82 %). However, the majority of private sector companies (79 %) and business federations (68 %) as well as universities (78 %) answered in the affirmative. Public authorities are split on the issue with five out of thirteen respondents in favour, five against and three abstaining.

#### **QUESTION 2**

*Should the potential initiative include rules on on-line creation of branches abroad (within the EU) via the central platform of interconnection of national business registers?*

Among the respondents who had an opinion on this, 66 % agreed that online creation of branches abroad should be handled via the central platform of interconnection of national business registers; 34 % spoke out against. As before strong opposition came from the notaries/lawyers (80 %) as well as the trade unions (71 %, which equals five respondents). The majority of private sector companies (78 %), business federations (63 %) and universities (78 %) spoke out in favour. Public authorities were again split on the issue, but this time leaning slightly to the Yes-Vote (with six respondents in favour).

**QUESTION 3**

*Should the potential initiative harmonise the amount of minimum legal capital required for the setting-up of a single-member private limited liability company?*

*What should be the harmonized amount of the minimum legal capital?*

On the first question, 52,1 % agreed that the potential initiative should cover the amount of minimum legal capital required for the setting up of an SMC. However 39,7 % of respondents disagreed; 8, 2 % did not give an opinion. Whilst private sector companies (68 %) and individuals (64 %) were largely in favour of such a provision, the business federations as well as public authorities responded cautiously with their votes being nearly split on the issue but leaning more towards the negative (business federations: 50 %, public authorities: 54 %).

The second part of the question was answered by half of the respondents only. Among the answers given, no clear consensus on the harmonized amount of the minimum legal capital was found with 27 % voting for 5.000 Euro and more, 24 % voting for 1-999 Euros and 21 % in favour of 1.000-4.999 Euros. A strong minority of 17 % also favoured a 1 Euro requirement.

**QUESTION 4**

*Should the potential initiative include rules on distributions/dividends if a company would be unable to continue paying its due debts after the distribution/paying the dividends?*

Among the respondents who gave a clear answer to this question, roughly 64 % voted in the affirmative and 36 % in the negative. Strong support for such rules was voiced not only by the majority of trade unions (86 %) but also by universities (67 %) and private sector companies (60 %). Also, public authorities tended to be in favour (Yes: 46 %, No: 31 %, I don't know: 23 %). The notaries/lawyers were more reluctant on the issue with 61 % of votes cast against such a measure.

**QUESTION 5**

*In case of minimum capital being more than 1 euro, should the potential initiative include rules on the opposition of creditors to a significant reduction of capital?*

The results for this question are more closely tied than before with 44 % of respondents agreeing and 40 % disagreeing (and 16 % abstaining). Among the sceptical respondents is a notable amount of private sector companies (33 %) and business federations (33 %) as well as the majority of the notaries/lawyers (64 %). Trade unions (86 %) and university respondents (56 %) however are in favour of such a rule.

**QUESTION 6**

*Should the potential initiative include rules on the transfer of registered office?*

Among the respondents who had an opinion on this, 57 % voted in favour and 43 % against a rule on the transfer of registered office. The majority of private sector companies (59 %) and business federations (58 %) agrees with such an approach, as does the majority of public authorities (54 %, which equals seven respondents). However, trade unions (71 %) and notaries/lawyers (66 %) are mostly against it.

**QUESTION 7**

*If the number of members in a single-member private limited liability company increases to more than one, should the potential initiative provide for recourse to national laws to convert the single-member private company into another national company law form?*

Responses are again very much split on the question with 44 % agreeing, 33 % disagreeing and 23% of respondents not giving any answer at all. Among those who are in favour are the majority of trade union (57 %) and university respondents (56 %). Business Federations are evenly split on the subject (15 out of 40 respondents in favour, 15 against, 10 abstaining) and most of the private sector companies are either against it or undecided (35 % against, 19 % abstaining).

**QUESTION 8**

*Should the potential initiative provide for limits as to how many single-member private limited liability companies one natural or legal person can create?*



The result for Question 8 is remarkably clear however, with 71.4 % of respondents speaking out against such a limit and only 28.6 % agreeing with the proposition. The majority of notaries/lawyers (86 %), business federations (73 %), public authorities (69 %), private sector companies (64 %) and universities (56 %) voted against such limits. The only group of respondents that was heavily in favour of such a provision was the trade unions (86 %).

#### QUESTION 9

*Should the potential initiative include special rules for SMEs which would make the setting-up of single-member private limited liability companies easier and cheaper for them than for bigger companies?*

Among those who answered, the majority was in favour of such special rules (54 %), especially most of the private sector companies (77 %). However, 46 % of respondents also disagreed. This 'No'-Vote was not only comprised of trade union respondents (86 %) and notaries/lawyers (86 %) but also of a majority of public authorities (62 %).

#### QUESTION 10

*Should the potential initiative provide for a new common abbreviation (like SEUP – Societas Europea UniPersonam ) for all single-member private limited liability companies in the EU in order to increase the trust in “foreign” company law forms?*

The vote on a new common abbreviation was also close with 42 % in favour, 31 % against, 7 % abstaining and 20 % opting for another abbreviation. Amongst the ones in favour were the majority of university respondents (67 %), business federations (53 %) and private sector companies (52 %). A notable amount of public authorities (38 %) as well as the trade unions (86 %) spoke out against. Half of the notaries/lawyers would prefer to have another abbreviation.

The respondents were also invited to give suggestions for other possible abbreviations. Some of these were close to the original as e.g. SEP, SPEU (Societas Privata Europaea UniPersonam) or simply UP (Unipersonam). Others were more creative like e.g. SRLU, EUC (European Company) or SMB. And some tried to link the European with the national name like e.g. Euro-GmbH or SMC-GmbH.

#### QUESTION 11

*Should the potential initiative cover, not only single-member private limited liability companies, but also single-member public limited liability companies?*

Nearly one third of respondents did not have an opinion on that, including a notable amount of private sector companies (33 %). Amongst those who answered there was a strong majority against public SMCs to be included in the proposal (62 %). Most of the business federations (60 %) were reluctant about this. The same is true for the majority of notaries/lawyers (75 %), trade unions (71 %), the public authorities (69 %) and university respondents (56 %).