DRAFT REPORT

On 25 February 2015, ACCA (the Association of Chartered Certified Accountants), BUSINESSEUROPE and UEAPME organised a conference called “Societas Unius Personae (SUP): what’s in it for SMEs?”

After a welcome speech by Jérôme Chauvin, Deputy Director General, BUSINESSEUROPE, a keynote speech by Marlene Mizzi, MEP, the presentation of the SUP proposal by Jeroen Hooijer, head of unit Company Law, DG JUST, European Commission, and a video message from Luis de Grandes Pascual, MEP, the roundtable, moderated by Jason Piper, Business Law Manager, ACCA, was composed of Joëlle Simon, Vice-chair, Company law WG, BUSINESSEUROPE, Kristi Värk, Counsellor for Judicial Affairs at the Permanent Representation of Estonia to the EU, Pierre-Henri Conac, Professor at the University of Luxembourg, Luc Hendrickx, Director Enterprise Policy and External Relations, UEAPME, Ivan Stefanec, MEP, and Gatis Groza, JHA Counsellor (Company Law, Intellectual Property), Permanent Representation of Latvia to the EU. Bartlomiej Kurcz, from the unit Company Law unit at European Commission, provided his comments and explanations during the Questions & Answers session.

The debate revealed that:

- The objectives of the SUP proposal - make it easier and less costly to set-up companies across the EU and facilitate cross-border trade - are welcome, but a certain number of safeguards need to be put in place.
- The main issues at stake revolve around the legal basis of the proposal; the scope of the proposal (several voices indicated that the scope should be limited to SMEs, or even to micro and small entities); the online registration including a uniform template for articles of association (all speakers were in favour of the principle, but called for safeguards regarding the verification of the single shareholder's identity and integrity); the minimum share capital of 1 Euro (some thought it should be higher and that member states should be allowed to to oblige companies to build reserves).
- Regarding the questions of the separation of seats, distribution of benefits, and labor rights, it was largely felt that these subjects should be left to subsidiarity.
Main highlights

Jérôme Chauvin, Deputy Director General, BUSINESSEUROPE
- The SUP proposal is now almost one year old, being one of the last proposals coming from the Barroso Commission. Until a year ago, we were still discussing another proposal with the same objective - the European Private Company Statute (EPC).
- The EPC was a more ambitious project which BUSINESSEUROPE greatly supported from the outset but which did not sustained the test of unanimity in the Council. But we have to move along - the further completion of the internal market and the need to pursue a growth and jobs agenda does not affords us to wait and see.
- This is a crucial time in the legislative process where Council and Parliament are intensifying their discussions on the substance. Despite the concerns on the SUP proposal, there is a certain willingness to look at the proposal’s potential and at possible solutions to address those concerns.

Marlene Mizzi, MEP, opinion rapporteur for IMCO
- The Commission proposal on SUP states that the general objective is to facilitate and encourage SMEs to carry out their activities in other Member States and to stimulate the level of entrepreneurship in Europe. The main objective of the Commission is welcome, but the proposal has weaknesses which will have to be addressed in order to go forward.
- The Commission has failed to provide any exact figures or estimation of costs. There is a lack of empirical evidence establishing a correlation between the existence of a SUP and increase in cross-border activities of SMEs.
- It is not convincing that the Commission’s proposal is the right instrument to arrive at the intended scope. The means, as proposed, do not justify the end. Micro and small enterprises won’t decide to operate cross-border and start registering companies in other Member States just because of the existence of the SUP Directive. And if, and when, they decide to operate cross-border, this is usually a result of a long process involving having a business plan. SMEs will not establish a company abroad and invest a substantial capital just because registration is made easy.
- The added value of this proposal could potentially come by creating opportunities and removing bureaucratic and expensive hurdles for those SMEs that have already made their calculations and decided to operate across border by providing them with an easy online tool for a registration, saving both time and costs.
- The Commission also presents the proposal as a tool intended for SMEs. The system is available also to group of companies and large organisations who might wish to make use of establishing a SUP for their own ends. The main concerns are that large companies might abuse SUP in order to avoid more elaborate EU company law forms.
- The proposed Directive also generates concerns with regard to fiscal evasion, and sustainable corporate governance in general. Some of the provisions in this Directive would be an open invitation to companies to minimise their responsibilities under national law and seek easier regimes elsewhere. The Commission proposal lacks assessment of the potential social impacts and of the risks of abuse and circumvention of applicable national legislation.
- We need to find an acceptable mechanism, while eliminating, as much as possible, all the risks for any stakeholders involved and stimulating appetite for growth, often dampened by excessive bureaucratic and expensive compliance requirements.
- The objective is also to enhance chances and choices for entrepreneurs of micro and small enterprises in Europe, by simplifying the legal regime and creating a sufficient, low-cost, user-friendly online tool to set up single-member private limited liability companies abroad, without encroaching upon the existing rules in the Member States.
- The draft opinion of MEP Mizzi (in the Committee on the Internal Market and Consumer Protection) does not support the Commission’s idea of creating a new 29th legal regime at European level called Societas Unius Personae (SUP), which will also lead to a competition
between the national and the 'harmonised' rules in case the two co-exist. The concept of "SUP" should be replaced by "single member private limited liability company".

- The draft report limits the scope of the Directive to micro and small companies. Large companies have the means and resources to handle all the necessary requirements and therefore do not need SUP company format.
- Online registration should be accessible from any Member State without obliging the founding member to be physically present. Safeguards regarding the verification of the single shareholder's identity are essential.
- Another point of contention is the required capital suggested by the Commission – EUR 1. As the proposal stands, it is felt that the minimum capital requirement of EUR 1, and at the same time prohibiting Member States from placing the SUP under obligation to build legal reserves, suggests that the business risk will be borne by the public or the creditors. The amount of capital suggested in the report is Eur 1000 and considers also the possibility for member states to oblige companies to build reserves. However, the draft opinion would allow the member state to lower the capital required if they are satisfied that controls are robust enough to ensure good governance.
- A healthy debate on this issue must be encouraged. Opinions will differ, as stakeholders have different interests. MEP Mizzi is all for simplification and cost reduction of current systems in order to encourage more business activities. But we must be careful not to encourage quantity at the cost of quality and find that companies who have been lured into cross border activities because it had been made so easy, do not find themselves insolvent a few months later, leaving creditors and employees high and dry. It seems that we might want to arrive at the same destination, but we might want to use different routes. What I want to ensure is that there will be no casualties resulting from the routes chosen.

**Jeroen Hooijer**, head of unit Company Law, DG JUST, European Commission

- We need to listen to businesses and to understand their problems and needs. The SUP proposal has received a lot of interest and political support, but we must make sure that it works. We need to be forward-looking, responsible and create something safe, but also creative.
- Figures show that only 2% of SMEs have established abroad. Multiple questionnaires and surveys have shown that a number of issues that need to be addressed in order to facilitate this situation. One of the main problems that SMEs face is the legal hurdles. The rate of creation of new enterprises and creativity is lower in the EU than in all its major economic competitors in the world.
- We are entering a digital age, and this is a new area that the Commission is willing to engage. It is about a truly European Capital Markets Union and the proposal is placed in that context.
- The 2013 Manifesto for Entrepreneurship and Innovation to power growth in the EU made a call for a possibility to create on-line companies with low minimum capital and unified requirements across the EU to make it easier for cross-border investments to flow from investors in one country to companies in another.
- The SUP idea is that Member States would be asked 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.
- It offers rules for increasing cross-border business: common name, uniform template of articles of association, online registration, low minimum capital, common rules for the protection of creditors, common rules on the management.
- The proposed Directive is rather simple and straightforward. We had to keep it simple and not too elaborated in order for SMEs to be able to use it.
- Member States can integrate the Single-Member Company in their national legal systems as a one legal form, or as a form co-existing with other national forms.
Calculations show that, in the light of national reforms already conducted, if 60% of founders would opt for establishing an SUP (high scenario), we could see savings of around EUR 653 million per year and creation of at least 115,800 new jobs.

If 22% of founders would opt for establishing an SUP (low scenario), around EUR 236 million per year could be saved and at least 42,460 new jobs created.

As regards to online registration and procedures of control of identity, it is up to each Member State to establish its own system of identity control. The only condition is that it has to be available at a distance. We need to benefit from new technics and there are good examples in the Member States.

When it comes to the separation of registered and head office, the proposal allows the founder to choose freely the location of the registered office and the head office; where the "head office" is located does not necessarily imply the actual business activity in that place. So even with head office and registered office in one place, "letter box companies" (having no economic activity) are not avoided.

The proposal doesn’t foresee any rules on transfer of registered office – there is no need to regulate what happens with vested rights of employees. Employee participation rules are also outside the scope of the proposal, it is left to national laws.

Luis de Grandes Pascual, MEP

- The European Commission has come with this proposal in order to make it easier for the micro enterprises, the SMEs and even for the big companies, to interact better in a globalized world, eliminate bureaucracies, be more efficient and at the same time be able to create jobs and facilitate growth in the EU.

- We have to take into account the Juncker - Timmermans project: "less regulation, yet better regulation". This report comes as a consequence of the rejection of the so-called European Private Company, which did not reach the unanimity at the Council. It was then a Regulation, now it will be a Directive, which will make things easier.

- This is a project with an EU added value. However, we will combine whatever necessary to harmonize this EU added value and leave to subsidiarity what is not necessary. And this goes hand in hand with the Juncker Commission’s idea, which means that we should respect subsidiarity when the Member States are better prepared to do so.

- There are remaining problems after two debates in JURI Committee and after the debate on the IMCO opinion. I believe it is possible to combine the differences and doubts that we have now.

- As regards the legal basis issue, the legal services of the JURI Committee will be asked, in case there will be any doubts, to give an opinion.

- Regarding the scope, we should not exclude anyone. It is true that this proposal is focused on the SMEs but we cannot exclude a priori other companies.

- The articles of association and their uniform template is an essential element of the proposal, yet it has to cover a wider number of elements, and in any case we should leave it to an implementing act.

- On-line registration is one of the main and innovative elements of the proposal. It means modernization. Nevertheless it must be possible for Member States to maintain rules concerning the verification of the registration process, involving notaries or others in order to prevent any abusive practice such as money laundering and tax evasion that could be avoided preventively.

- The minimum capital is not a problem. The idea of 1€ is symbolic. Nevertheless, we will have to leave Member States with the possibility of asking for legal reserves if necessary.

- The separation of seats, distribution of benefits, and labour rights are, among others, subjects that have to be left to subsidiarity.

- We have to start the dialogue, we must talk with all parties concerned without any prejudice, and hopefully we will be able to reach a reasonable consensus.
Roundtable debate

Jason Piper, Business Law manager, ACCA, moderating the roundtable

- The overarching goals of the SUP, which are encouraging entrepreneurship and exploiting untapped opportunities through a simplified, cost-effective and transparent mechanism aimed at creating employment and stimulating economic growth, are unanimously commended. Similarly, there is a majority of views in favour of bringing businesses into the digital era. However, there are also divergent views, as well as some concerns, regarding the concrete implementation of certain elements of the proposal.
- It is clear that the protection of creditors and other stakeholders is an important aspect of how a limited liability company model fits into society across the union. There are useful lessons to be learnt from constructive engagement across all parties to create a framework which draws upon the best features of the current landscape without imposing inappropriate rules or regulations on fledgling businesses or the administrations which support them.

Joëlle Simon, Vice-chair, Company law WG, BUSINESSEUROPE

- Who is afraid of SUP? The SUP proposal has triggered some doubts and fears linking it with risks of fraud and circumvention of labor and tax rules. A similar situation has already been seen during the debates on the European Private Company Statute. However, these fears are not substantiated.
- Our message today is; “do not be afraid”. Business people just want to be able to run their business effectively and in the simplest way as possible, and if appropriate to go abroad and enjoy the opportunities offered by the single market.
- Unlike European citizens, businesses in the EU cannot fully enjoy their fundamental freedom of movement. Of course, all SMEs do not plan to do cross border business, but we cannot let people say that “genuine” SMEs are not supposed to do business abroad.
- The current situation is that small and micro companies are the ones who are the most affected by existing barriers due to their limitations in terms of financial and legal resources. There is still a strong need in Europe to have an instrument that helps small business.
- The proposal is less ambitious, but maybe more realistic in the current political environment. It is not the perfect proposal, not the panacea for SMEs to do cross border business, but SMEs should not be denied this right. SUP could also be useful at national level to simplify their day-to-day business life.
- SMEs are the main targets of the proposal, but if large companies interested in using the SUP, they shouldn’t be excluded from the scope.
- Let’s be pragmatic. Do not be shy. The SUP should not be reduced to on-line registration. The proposal should preserve the keys elements of this company: low capital requirement, possibility to use a uniform template of articles of association.
- It is important that both legal certainty and safeguards are in place to make it work.
- We have to move from an attitude of “it does not work” to an attitude of “how can we make it work?” This is the last chance we have to move forward in this field. Just take it. European company law has moved slowly during the last years. It is our task to make sure that we have harmonization in place that can deliver value to companies in Europe. Otherwise we risk putting company law in the drawer for the next 20 years.

Kristi Värk, Counsellor for Judicial Affairs at the Permanent Representation of Estonia to the EU

- The overarching goal for Estonia as regards the developments in the area of European company law is to enhance the cross-border mobility of companies. In view of that Estonia supports the competition between different company law systems of Member States. In order
to promote this goal, we have taken a rather cautious approach towards further harmonisation of company law in EU level. New mandatory EU company law rules should be created only in areas, where it is absolutely necessary.

- As regards to SUP, Estonia decided to support the Commission’s initiative, because it seeks to promote the activities of SMEs, most importantly, by the creation of the possibility to complete the whole registration process online and low minimum capital requirement.

- A possibility to register a private limited company in Estonia online exists since 2007. The Company Registration Portal (http://www.rik.ee/en/company-registration-portal) allows submitting applications for registering a new company, amending registry data, liquidating a company and deleting a company from the registry, to prepare and submit annual reports via the portal as well as provides accounting system for SMEs.

- The portal entails security measures that provide the users with maximum level of security. As every other public information system the portal is connected to a secure data exchange layer X-road (see further https://www.ria.ee/x-road/) and every single click made in the portal is logged, meaning a digital ‘fingerprint’ is saved from every activity carried out with the ID card. Also ID-card and mobile-ID based authentication, logging in and digital signing give the validity to the deeds. All this is backed up by relevant legislation.

- The portal has contributed to reduction of red tape and costs and shortening of the time spent on procedures; reduced the level of mistakes; ensured better data quality and a higher quality of service for citizens and entrepreneurs; provided real-time overview of sent applications, complete electronic archive and a high usage rate among other benefits.

- The shortest time to successfully complete the full procedure to register a company has been 18 minutes; usually it takes 2 hours to 1 working day maximum. During last 2 years more than 88% of Private Limited Companies were established online in Estonia.

- Holders of Portuguese, Belgian, Finnish ID-card or Lithuanian mobile-ID can also submit registration applications as well as perform other actions in the portal. The portal will be accessible also to the holders of Estonian e-residency cards (see further: https://e-estonia.com/e-residents/about/).

- In 2011 Estonia abolished the minimum capital requirement for Private Limited Companies. If the company is established without the share capital, the shareholder is personally liable to the extent that corresponds to the amount the shareholder was obliged to contribute. In 2013 more than 70% of all registered PLCs (9927 out of 14220) were established without the share capital (in comparison it was 60% in 2012 and also in 2011).

Pierre-Henri Conac, Professor at the University of Luxembourg

- Only 2% of all SMEs invest abroad by creating companies, due to financial and administrative burdens and costs in doing business in the Internal Market. This situation is unacceptable and the establishment process has to be made easier.

- Academic research shows that it is very complex for SMEs to create branches abroad due to lack of harmonisation; the same is true for creating subsidiaries.

- The SUP proposal would also improve company law in many Member States. It is a tool to increase the competitiveness of the European Union.

- The SUP has a strong support from business, large and small, from all over Europe.

- Europe needs to embrace the Digital age and not be too conservative.

- Some businesses association, such as the German BDI, wanted event more and stated that the Commission is not ambitious enough and should have brought back the SPE. However, it is important to highlight that the Commission has come up with a realistic proposal.

- There has been some criticism and there are a lot of issues that need to be discussed. However, experience with similar reforms in many Member States show that the SUP is not dangerous.

- The SUP proposal is not revolutionary but evolutionary as it reflects majority practice in the EU (electronic registration exists in 16 Member States; 1 Euro capital in most). Everything in the proposal has been tested in some Member States at least and proved to be successful.
• Minimum capital of 1 Euro exists in the majority of Member States without any problems, and most Member States are moving in this direction (the latest example is Luxembourg).
• As regards to online registration, identity fraud is a real issue but the directive addresses the problem and leaves Member States with the choice of identification tools. Cross border online registration already successfully exists in many Member States.
• Nothing in the directive prevents notaries to operate online registration systems.
• As regards the separation of seats, the directive, as amended in the Council, leaves the decision for Member States so legal traditions are respected on this very important issue.
• The proposal is neutral regarding tax (permanent establishment) and labour law.
• The SUP proposal should not be limited to SMEs. It would be illogical if larger companies couldn’t benefit from it, since if it is good for the small companies why wouldn’t it be good also for the larger ones?
• As regards MEP Mizzi proposal, minimum capital of 1,000 euros does not provide much better protection than 1 Euro if capital is considered to be a creditor protection. However, Member States should be free to impose legal reserves if they have a preference for that.
• The SUP is an excellent, secure and targeted proposal which will help create jobs in Europe. The Member States which have been the most dynamic economically, especially in central and Eastern European, since the crisis are those who have embraced those changes. They have been very successful and this is the way we need to go forward.

Luc Hendrickx, Director Enterprise Policy and External Relations, UEAPME
• There is a need for information on the topic. As representatives of Small and Medium-sized Enterprises, we want to create jobs and more entrepreneurship. Any proposal of the Commission that is aiming to do that is welcome. We have to see if the proposal is fulfilling the objectives.
• Listening to debates at the national level, it seems that the proposal might not be mature enough and may be too much influenced by “Anglo-Saxon” culture. You have to be careful and respect different jurisdictions in Europe.
• The objective of the proposal is to make it easier and less costly for SMEs. There are some problems with the concept of the creation of a new enterprise. Creation requires preparation and advice, which is often forgotten. This needs to be stressed in order to establish sustainable enterprises and to avoid bankruptcies.
• Electronic registration can be a very useful tool in facilitating the work of companies and reducing the costs. Nevertheless, we need to have safeguards in place.
• With regard to notaries, it is important to respect some national legal traditions. The role of the notary in different countries is to guarantee trust between the economic actors.
• As regards the minimum capital and the 1 Euro capital issue, the market will react, as we see already in some countries and will ask for other guarantees, and for a small entrepreneur it will be personal guarantees, which will be a problem. The aim should be to encourage the creation of healthy companies. Even if it already exists in some countries, 1 Euro capital company does not have a good image. It risks to be mistrusted by other economic players.
• The uniform template is not a problem as such, however, no entrepreneur is going to draft or analyse the statutes itself. Assistance will be needed from business organisations, notaries or lawyers. Solely giving a template is unacceptable, our role is to give companies information, not a template. In addition, it should be possible to amend the template and use statutes tailored to the specific situation of the SME. In the proposal, amendments are only possible after the registration, which is certainly not a good example of simplification.
• There are arguments to limit this proposal to SMEs. We are promoters of the *think small first principle* in the European legislation. If you won’t be limited to SMEs, problems will arise.
Bartlomiej Kurcz, company law unit, European Commission

- The SUP proposal has an element of exchange of information, not only at national level, but also cross-border, on those companies that were disqualified to do business. We do not have this option in Europe at the moment, and it is exactly what the SUP proposal is aiming to foster.
- The Commission believes in choices, and it is how the SUP proposal is done. No one should be forced to receive a legal advice or pay for it. We want to find what works in every member state and take the best elements of it.
- There are so many companies in Europe that are created online and are fully functioning, and this does not imply that they are more fraudulent because of how they were created. There is no data to support that. The method of creation has nothing to do whether you do honest business or not.
- The concerns on tax evasion are very surprising, because the proposal doesn't touch any authority of the member states that claims taxes.
- Entrepreneurs should have a choice and SUP is a choice that fits their needs.

Key note speech

Ivan Stefanec, MEP

- The objectives of the SUP directive reflect the priorities of the Junker’s plan. It will offer great opportunities in terms of simplification of procedures, transparency, reduction of costs and facilitation of the cross-border activities of SMEs on the Internal Market. In addition, the SUP initiative could contribute to the creation of growth and job opportunities in the EU and respond to the challenges of the Digital Age.
- The unemployment of young people is a very serious issue in Europe. The best way to support young people is to break barriers and promote tools like SUP.
- We need to continue supporting businesses because they are the ones who create jobs. We know that, at the moment, growth is not big enough in Europe. Businesses must be seen as another opportunity to change this situation. We need to help businesses, not create barriers for them.
- SUP is about cost reduction and better use of digital single market. The procedure of establishing a company in Europe is problematic – it takes 12.9 days and 5.4 procedures on average. Europe is doing much worse in comparison with other areas of the world. The SUP proposal is addressing this issue.
- The proposal also improves transparency because it provides a uniform template and an opportunity to share information in a much better way.
- We have already positive experience from different EU Member States with the online registration of the companies or the one Euro capital requirement. This facilitation of setting-up companies resulted in the job creation. Based on this experience, we should welcome a proposal that would enable a cheaper and fast online establishment of company. We need to simplify the rules to improve the working environment for all our businesses.

Concluding remarks

Gatis Groza, JHA Counsellor (Company Law, Intellectual Property), Permanent Representation of Latvia to the EU

- The proposal on single-member private limited companies was presented by the Commission on May 2014 under the Hellenic presidency, which held the initial discussions on this file. Then the work was continued by the Italian presidency which worked very hard to accommodate all concerns and comments raised by the Member States. As a result, now it is our turn to build on the progress achieved by the previous Presidencies in order to finalize the discussions in the Council.
- During the discussions in the Council, it has become clear that the main and most significant
aspects of this proposal are the online registration including, the uniform template for articles of association, and the minimum share capital of 1 Euro.

- When it comes to online registration, it is important to highlight that Digital Europe is one of three priorities of the Work Programme of the Latvian Presidency. Therefore, we fully support the Commission's proposal in this regard, because we realise that rapidly growing information technologies are providing unprecedented opportunities that have to be seized not only by the private individuals and companies, but also by the public administration.

- The second priority of the Work Programme of the Latvian Presidency is the Competitive Europe. This is important when it comes to the 1 Euro capital. We believe that Europe needs to enhance its entrepreneurial capacity by promoting investment in new and competitive products and services. Latvia has introduced 1 Euro companies in 2010. This introduction has proved to be very successful with 37 000 new companies registered so far.

- And the reason for the massive start-up movement in Latvia was not only the recent financial crises. The global economy is changing very fast. There are traditional sectors that are successful today and will be successful in future, but there are also new sectors that are developing rapidly. And not only new sectors, but also new ways to run a business. To name one example, a lot has been heard about the Lean Start-up approach recently. In some cases it's very important to bring the product to market as soon as possible in order to reduce the risks and need for large initial funding.

- Therefore this is not something extraordinary that countries have online registration and 1 Euro capital companies today. It is not about putting these online systems or new forms of companies in place to get higher in doing business ranking in order to brand the country as one which is attractive for foreign investment. Today it is about providing the opportunities for entrepreneurs where it is very much needed.

- This proposal will not replace the existing forms of companies or existing ways how to register companies. This proposal will provide choice!

- There are, and will be, companies that need a lot more than 1 Euro capital, there are and will be companies who have elaborate structure and therefore need an advice and help from professionals when the company is registered. But meanwhile there are start-ups and SMEs which are bootstrapping today, but might grow into multi-million companies tomorrow. For them it's essential that we facilitate their growth by providing the choice and cutting the red tape.

- Therefore, the Latvian Presidency supports the objectives of the Commission proposal. We will continue to work hard in order to accommodate all the remaining concerns and comments that Member States might still have. Our aim is to have the general approach approved by the COMPET Council in the end of May. After all the efforts that all three Presidencies, Member States and Commission have put in this file, we see that this aim is realistic.