



Council of the
European Union

Brussels, 14 November 2014
(OR. en)

14648/14

DRS 133
CODEC 2073

NOTE

From: General Secretariat of the Council
To: Delegations

Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL on single-member private limited liability companies

Delegations will find attached a Presidency compromise text in view of the Working Party on Company Law on 21 and 28 November 2014.

It is based on the discussions of the Working Party of 1 and 21 October 2014.

Delegations are informed that changes compared to the Commission's proposal are indicated in **bold/underlined** and deletions are marked with ~~strikethrough~~ and that the latest changes are indicated with grey shading.

It is understood that there is a general reservation from all delegations.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on single-member private limited liability companies

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

After consulting the European Data Protection Supervisor,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Directive 2009/102/EC of the European Parliament and of the Council of 16 September 2009 in the area of company law on single-member private limited-liability companies¹, has made it possible for individual entrepreneurs to operate under limited liability throughout the Union.

¹ OJ L 258, 1.10.2009, p. 20

- (2) Part I of this Directive takes over the provisions of Directive 2009/102/EC as regards all single-member limited liability companies. It requires that in case ~~all~~ **a share or all** shares come to be held by a single shareholder, its identity should be disclosed to the public by the entry in the **central, commercial or companies** register **(the register)**. This **Part of the** Directive also provides that decisions taken by the single shareholder exercising the power of the general meeting as well as the contracts between the shareholder and the company should be ~~recorded in writing~~ drawn up in writing and may be stored electronically in an appropriate format. Their written record should be kept for at least five years. ~~a written form, that may be stored electronically,~~ unless they relate to contracts concluded under market conditions in the ordinary course of business]. **Part I of the Directive applies should apply to all single-member limited liability companies, unless special provisions apply to them by virtue of Part II.**
- (3) Establishing single-member limited liability companies as subsidiaries in other Member States entails costs due to the diverse legal and administrative requirements which must be met in the Member States concerned. Such divergent requirements continue to exist among Member States.
- (4) The Commission Communication entitled "Integrated Industrial Policy for the Globalisation Era - Putting Competitiveness and Sustainability at Centre Stage"² encourages the creation, growth and internationalisation of small and medium-sized enterprises (SMEs). This is important for the Union economy as SMEs account for two-thirds of employment in the Union and offer significant potential for growth and for the creation of jobs.
- (5) The improvement of the business environment, especially for SMEs, by reducing transaction costs in Europe, promoting clusters and promoting the internationalisation of SMEs, were the key elements of the initiative "Industrial policy for the globalisation era" outlined in the Commission Communication on the Europe 2020 strategy³.

² COM(2010) 614 final, 28.10.2010.

³ COM(2010) 2020 final, 3.3.2010.

- (6) In line with the Europe 2020 strategy, the Review of the Small Business Act for Europe⁴ advocated further progress in making smart regulation a reality, enhancing market access and promoting entrepreneurship, job creation and inclusive growth.
- (7) In order to facilitate the cross-border activities of SMEs and the establishment of single-member companies as subsidiaries in other Member States, the costs and administrative burdens involved in setting-up these companies should be reduced.
- (8) The availability of a harmonised legal framework governing the formation of single-member companies, including the establishment of a uniform template for the articles of association should contribute to the progressive abolition of restrictions on freedom of establishment as regards the conditions for setting up subsidiaries in the territories of Member States and lead to a reduction in costs.
- (9) Single-member private limited liability companies formed and operating in compliance with **Part 2 of** this Directive should add to their names a common, easily identifiable abbreviation – SUP (*Societas Unius Personae*) **and the indication of the Member State of registration which would reflect the nature of the SUP being a national company law form. This would mean that the name of a company, which has the legal form of an SUP, should be followed, by the indication of the Member State of registration and then the abbreviation ‘SUP’**
- (10) To respect Member States’ existing traditions of company law, flexibility should be afforded to them as regards the manner and extent to which they wish to apply harmonised rules governing the formation and operation of ***Societas Unius Personae*** (SUP)s. Member States may apply Part 2 of this Directive to all single-member private limited liability companies so that all such companies would operate and be known as SUPs. Alternatively, they should provide for the establishment of an SUP as a separate company law form which would exist in parallel with other forms of single-member private limited liability company provided for in national law.

⁴ COM(2011) 78 final, 23.2.2011.

- (10a) **To ensure consistency, the rules applicable to private limited liability companies in the Member State of registration of the SUP should apply to SUPs, including Directive 2009/101/EC and Directive 2013/34/EU. This Directive should be without prejudice to any national provisions governing matters outside its scope, such as matters related to labour law, tax, accounting or insolvency.**
- (11) To ensure that the harmonised rules are applied as widely as possible, both natural and legal persons should be entitled to form SUPs and **SUPs themselves would be able to establish companies in the forms of SUPs or other limited liability companies.** For the same reason private limited liability companies that were not formed as SUPs should be able to benefit from the SUP framework. They should be able to be transformed **converted** into SUPs in accordance with applicable national law. **Outside the SUP framework Member States remain entitled to restrict the chain of companies by not allowing single-member companies to be the single-member in other companies.**
- (12) To enable business to enjoy the full benefits of the internal market, ~~Member States should not require the registered office of an SUP and its central administration to be in the same Member State.~~ **the registered office and the head office of the SUP should be in the European Union. However, Member States should be allowed to require the registered and head office being in the Member State of registration provided that such a rule equally applies to private limited liability companies registered on their territory. This is without prejudice to the enforcement of rules on taxation and mutual assistance provided in Directive 2010/24 and employee participation rules established at national level.**

(13) In order to make it easier and less costly to establish subsidiaries in other Member States, ~~the founders of SUPs should not be obliged to be physically present before any Member State's registration body~~ **the on-line registration of SUPs should be allowed, i.e. it should be possible to establish SUPs electronically and at a distance. In such a case, during the registration process only cash consideration for the share should allowed. If Member States allow for other forms of registration than on-line (e.g. on paper, via notaries, lawyers or company agents), it should be possible to pay the consideration of the share at least in cash or in kind.** ~~The register should be accessible from any Member State and a company founder should be able to make use of existing points of single contact created under Directive 2006/123/EC of the European Parliament and of the Council⁵ as a gateway to national on-line registration points.~~

(13a) To encourage cross-border set-ups of SUPs, Member State should include in their registration web-sites the links to registration web-sites of other Member States. This may be done via a link to a central EU web-site or portal which could provide the links to all registration points in Member States. The registration of an SUP could also be completed by other than electronic means (e.g. on paper, via notaries, lawyers or company agents), if so permitted by national law.

⁵ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36).

- (14) In order to ensure a high level of transparency, all documents registered at the register of companies should be made publicly available via the system of interconnection of registers referred to in Article 4a(2) of Directive 2009/101/EC of the European Parliament and of the Council⁶. **An SUP founder should be able to make use of existing points of single contact created under Directive 2006/123/EC of the European Parliament and of the Council as a gateway to national on-line registration points. The personal data made publicly available through the interconnection of registers may only be used for the purposes of transparency and accountability.**
- (15) To ensure a high level of uniformity and on-line accessibility, the documents used to register SUPs should follow a uniform format available in all official languages of the Union. Each Member State may require registration to be completed in an official language of the Member State concerned, but are also encouraged to allow for registration in other official languages of the Union.
- (15a) **In order to avoid unnecessary burden on founders, Member States should only be able to require a certain amount of information or documentation for registration of an SUP. In any event Member States should not request more information or documentation than is laid down in the Directive. However, Member States that would not find it useful to have at their disposal at the moment of registration all the information or documentation listed in the Directive should be free not to request all of it.**

⁶ Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent (OJ L 258, 1.10.2009, p. 11).

- (16) In line with the recommendations set out in the European Commission's 2011 Review of the Small Business Act⁷ to reduce the start-up time for new enterprises, SUPs should receive the certificate of registration in the relevant register of a Member State within three working days **but no later than by eight working days**. This facility should only be available to the newly created companies **created on-line ex-nihilo** and not to existing entities that wish to convert to SUPs as the registration of such entities by their very nature, may take more time.
- (17) Each Member State should designate a competent electronic registration point. ~~To support the designated bodies in exchanging information~~ **If designated points are in need to exchange information** about the identity of the founder, **its representative or a beneficial owner**, Member States ~~may~~ **should** use the means provided for under Regulation (EU) No 1024/2012 of the European Parliament and of the Council⁸.
- (18) Provisions concerning the establishment of single-member private limited companies should not affect the right of Member States to maintain existing rules concerning the verification of the registration process, **such as the involvement of notaries or lawyers**, provided that **the founder of an SUP has a possibility of completing** the whole registration procedure ~~may be completed~~ electronically and at a distance. **Member States should also be allowed to maintain existing rules on the identification and the verification of the identification of the founder of the company by the relevant authorities provided that such rules do not create obstacles to the registration on-line. In addition, Member States should be able to determine the identification and risk-based verification of a beneficial owner during the registration process. The beneficial owner should be defined in line with AML Directive (Directive 2005/60). The Member States' rules should determine the identification and the risk-based verification of a beneficial owner during the registration process, by electronic or other means, in line with Directive AML (Directive 2005/60 or COM 2013) 45 final.**

⁷ COM(2011) 78 final, 23.2.2011.

⁸ Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') (OJ L 316, 14.11.2012, p. 1).

- (18a) **This Directive does not affect the obligations imposed on obliged entities listed in Article 2 of AML Directive (Directive 2005/60), as regards the prevention of the use of legal entities for the purpose of money laundering and terrorist financing.**
- (18b) **To ensure a high level of security and trust, in the context of on-line cross-border identification of the founders of the SUP, only electronic identification means issued under the electronic identification scheme by, on behalf of or under the responsibility of a Member State should be recognised provided that they comply with the conditions of Article 6 of E-identification Regulation. Other electronic and non-electronic identification means may be recognised in the on-line registration process by the Member States in which the registration takes place. However, in order to comply with the principle of non-discrimination, if certain identification means issued in the Member State in which the registration of the SUP takes place are recognized in that Member State for the purpose of on-line registration, the registration authorities in that Member State should also recognise such identifications means of citizens of from other Member States.**
- (19) **The founder of the SUP should be allowed to register the SUP on-line in each Member State using The use of the uniform template of articles of association should be required if the an SUP is registered electronically. Other national templates If another form of registration is allowed by national law national templates of articles of association may also be used for registration, instead of the uniform template, provided that such they templates comply with the requirements of the Directive and are not imposed on the founders of the SUP.**

(19a) The minimum capital required for the formation of a single-member private limited liability company varies among the Member States. Most Member States have already taken steps towards abolishing the minimum capital requirement or keeping it at a nominal level. The SUPs should not be subject to a high mandatory capital requirement, since this would act as a barrier to their formation. Creditors, however, should be protected from excessive distributions to single-members, which could affect the capacity of an SUP to pay its debts. Such protection should be ensured by the imposition of minimum balance sheet requirements (**total** liabilities not exceeding **total all available** assets) and the solvency statement prepared and signed by the management body.

(19b) There should be no further restrictions placed on the use of capital by the single-member. In order to provide additional safeguards for creditors, Member States should be able to require the SUP active in certain sectors, taking into consideration that some sectors of economy are more capital intensive than others, to build up legal reserves on the grounds of public interest. For the sake of transparency and in order to provide comprehensive information for the founders of SUPs, Member States should ensure that information on such requirements is provided on the registration web-sites. All accounting terms used in the Directive should be interpreted in light of Directive 2013/34/EU.

(20) In order to prevent abuse and simplify control SUPs should neither issue any further shares nor should the single share be split. Nor should SUPs acquire or own their single share whether directly or indirectly. Rights attached to the single share should only be exercised by one person. Where Member States allow for co-ownership of a single share, **following special situations provided by national law, in particular occurring with the application of their inheritance or succession law**, only one representative should be entitled to act on behalf of the co-owners and be considered as a single-member for the purpose of this Directive.

(21) ~~In order to ensure a high level of transparency, decisions taken by the single member of an SUP exercising the powers of the general meeting should be recorded in writing **a written form and may be stored electronically**. Such decisions should be disclosed to the company and their written record kept for at least five years.~~

(22) The management body of an SUP should be composed of one or more directors. Only natural persons should be appointed as directors, unless the Member State of registration allows legal persons to act as directors. **In any event, at least one natural person should be a director of the SUP.**

(23) In order to facilitate the operation of groups of companies, instructions issued by the single-member to the management body should be binding. Only where following such instructions would entail violating the national law of the ~~country Member State~~ in which the company is registered **or in which it operates**, the management body should not follow them. **This Directive, therefore, obliges the directors to take into account the interests other than that of the single-member in case national legislation where the SUP is registered or operates requires such interests to be taken into account. In taking into account such interests the directors could consider, among others, the interest of the SUP as opposed to the interest of the group which it could form part, the interest of creditors or contactors as well as the interest of protection of environment or employees.**

(23a) To ensure the protection of transactions concluded in good faith, any limitation of powers of directors, other than the one laid down in the articles of association on the representation of the company (separately or jointly) ~~With the exception of any provision in the articles of association which limit the company's representation to all directors jointly, any other limitation of powers of the directors, following from the articles of association,~~ should not be binding insofar as it concerns third parties, **unless third parties knew, or, in light of the circumstances, could not have been unaware that the acts were outside the object of the SUP.**

- (24) The Member States should lay down rules on ~~penalties~~ **sanctions** applicable to the infringements of the provisions of this Directive and should ensure that they are implemented. Those ~~penalties~~ **sanctions** should be effective, proportionate and dissuasive. **Each Member State should apply at least the same sanctions to the violation of the provisions of this Directive as it applies to private limited liability companies having registered office on its territory.**
- (25) In order to reduce the administrative and legal costs associated with the formation of companies and to ensure a high level of consistency in the registration process across Member States, implementing powers to adopt the templates for registration and for the articles of association of an SUP should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.
- (26) In order to accommodate future changes to the laws of Member States and to Union legislation concerning company types, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to update the list of undertakings contained in Annex I. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at experts' level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.
- (27) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

- (28) Since the objectives of this Directive, namely, to facilitate the establishment of single-member private limited liability companies, including SUPs cannot be sufficiently achieved by the Member States, but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve those objectives.
- (29) Since substantial amendments are being made to Directive 2009/102/EC, in the interests of clarity and legal certainty that Directive should be repealed.
- (30) **This Directive should be applied in compliance with the principles relating to the protection of personal data provided in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and in ~~with~~ national law implementing ~~that~~is Directive." [OJ L 281, 23.11.1995, p.31].**

HAVE ADOPTED THIS DIRECTIVE:

Part 1 - General provisions

Article 1

Scope

1. ~~The coordination measures provided for in~~ This Directive shall apply to the laws, regulations and administrative provisions of the Member States relating to:
 - (a) the types of company listed in Annex I;
 - (b) *Societas Unius Personae* (SUP) referred to in Article 6.

2. Member States shall inform the Commission within two months of any changes to the types of private limited companies provided for in their national law affecting the contents of Annex I.

In such a case the Commission shall be empowered to adapt, by means of delegated acts in accordance with Article 26, the list of companies contained in Annex I.

3. Where a Member State allows other companies than those listed in Annex I, **in particular public limited liability companies**, to be established as or **become companies, whose share or shares are held by a single person (single-member companies) as defined in Article 2 (1)**, Part 1 of this Directive shall also apply to them.

Article 2
Definitions

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

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

Comment: Definitions have been moved to relevant Articles. Following the deletion of Article 2, the numbering of Articles is subject to change at a later stage.

Article 3
Disclosure

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

Article 4
General meeting

1. The single-member shall exercise the powers of the general meeting of the company.
2. **Decisions taken by the single-member in the field referred to in paragraph 1 shall be drawn up in writing and kept for at least five years. They may be stored electronically in a safe and accessible format preventing the loss of integrity of decisions.**

Comment: New paragraph 2 replaces Article 21 (2)

Article 5
Contracts between the single member and the company

1. Contracts between the single-member and the company **shall be drawn up in writing and kept for at least five years. They may be stored electronically in a safe and accessible format preventing the loss of integrity of contracts.**
2. **Member States may decide not to apply paragraph 1 to current operations concluded under normal market conditions.**

Part 2 - Societas Unius Personae

Chapter 1

Legal form and General Principles

Article 6

Legal form

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

Article 7

General principles

1. Member States shall grant SUPs full legal personality.
2. Member States shall provide that the single-member shall **be liable for the subscribed share capital** ~~not be liable for any amount exceeding the subscribed share capital.~~ **This is without prejudice to other provisions on liability of the single-member laid down in this Directive or in applicable national law.**

3. The name of a company, which has the legal form of an SUP, shall be followed by an indication of the Member State of registration and then by the abbreviation 'SUP' (Societas Unius Personae). For the purpose of conversion into an SUP, the names of companies shall be adapted to comply with that requirement.

Only an SUP may use the abbreviation 'SUP'.

Companies and other legal entities, registered in a Member State before the entry into force of this Directive, in the names of which 'SUP' appears shall not be required to alter their names.

Comment: The change of paragraph 3 enables to create the following names, e.g.:
Handel (DE) SUP, Le vin (FR) SUP, Dolce Vita (IT) SUP, Car (UK) SUP
It would also be possible, after conversion, to have names: Seven-SUP (UK) SUP,
or SUP (DE) SUP

4. The SUP, and its articles of association, shall be governed by ~~the national law~~ **national laws adopted by the Member State in which the SUP is registered in order to comply with this Directive and, in case of matters not regulated by this Directive, by national laws applicable to private limited liability companies listed in Annex I of in** the Member State in which the SUP is registered, ~~including national laws adopted to comply with Directive 2009/101/EC~~ (hereinafter 'applicable national law').
5. Member States shall provide that the SUP is set up for an unlimited period of time, unless provided otherwise in the articles of association.

Chapter 2 Formation

Article 8 *Incorporation*

An SUP may be incorporated by a natural or legal person. **An SUP may also be incorporated by other entities, if allowed by national law of a Member State of registration.**

Article 9 *Conversion into an SUP*

1. Member States shall ensure that ~~an SUP may be formed by the conversion of the types of companies listed in Annex I~~ **are allowed to convert into an SUP. A conversion pursuant to this Article may not result in the transfer of the registered office of the company an SUP from one Member State to another, unless such transfer complies with the applicable laws of both Member States concerned.**
2. The formation of an SUP by conversion shall not result in any winding-up procedures, any loss or interruption of the legal personality or affect any rights or obligations existing prior to the conversion.
3. Member States shall ensure that a company shall not become an SUP unless:
 - (a) a resolution of its shareholders is passed or a decision of its single-member is taken authorising the conversion of the company into an SUP; and
 - (b) its articles of association comply with the applicable national law, **including the condition of having a single-share, and**

4. ~~(e)~~ — **Member States may decide to prohibit the conversion of a company into an SUP in case its net total assets after deducting total liabilities are not at least equivalent to the amount of its subscribed share capital plus those reserves which may not be distributed according to its articles of association.**

Article 10

Seat of the SUP

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

2. **The Member State of registration of an SUP may provide that the registered office and head office of an SUP shall be in the same Member State in accordance with the applicable national law.**

[For the purposes of this paragraph, the Member State of registration shall not consider that the SUP does not have its head office and registered office in the same Member State by sole reason that one or all directors of an SUP, or in the case of a legal person, the natural person representing it, are resident in another Member State.]

Chapter 3
Articles of Association

Article 11

Uniform The templates of articles of association

1. Member States shall require that the articles of association **or statutes or other instruments of constitution ('articles of association')** of the SUP shall cover at least the subject matters provided for in paragraph 2. **Member States may provide for the templates of articles of association ~~complying with this paragraph~~ that may be used to register SUPs on their territory. However, Member States shall ensure that the use of ~~only~~ the uniform template of articles of association, referred to in paragraphs (2) and (3), enables the SUP to be registered on-line as provided in Article 14(3) and (4).**

2. **The uniform template of articles of association shall cover:**
 - a) **information about the company and the single-member, including its name and address founders**

 - b) **SUP business object**

 - c) **SUP name**

 - d) **registered and head office,**

 - e) **SUP duration, if not unlimited**

 - f) **single share and capital**

 - g) **contributions**

 - h) **management body, representation towards third parties and supervisory body, if any**

 - i) **powers of the single-member and representation towards third parties**

 - j) **fiscal year, account and auditor, if any**

k) dissolution, termination and conversion of the company

l) an arbitration clause.

It shall be made available by electronic means.

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

Article 12

Amendments to the articles of association

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

Chapter 4 Registration

Article 13

Formalities relating to registration

1. Member States may **require only some or all of the following information or documentation** ~~may only require for the registration of an SUP the following information or documentation:~~
 - (a) the name of the SUP;
 - (b) the address of the registered ~~the central administration and/or the principal place of business of the SUP~~ **and head office** ~~and the documents proving the right to use the premises in which a registered office is located;~~
 - (c) the business object of the SUP;
 - (d) the names, the addresses and any other information necessary to identify the **founding member** ~~and where applicable the beneficial owner and a representative that registers the SUP on the member's behalf,~~ **and, where applicable, a the representative that registers the SUP on the member's behalf, if any,**
 - (da) **a declaration by the person establishing the SUP identifying the beneficial owner of the SUP;**
 - (e) ~~the names, addresses and any other information necessary to identify the persons who~~ **are members of the management body and, where applicable, the supervisory body and/or are authorised to certify the accounts of the SUP** ~~and/or~~ are authorised to represent ~~it~~ the SUP in dealings with third parties, **alone or jointly, including** ~~and in legal proceedings,~~ **together with the proof of their appointment** ~~and whether they have not been disqualified by laws of Member States referred to in Article 22;~~

- (ea) specimen signatures or electronic signatures of the persons who are authorised to represent SUP in dealings with third parties and in legal proceedings. With regard to electronic signatures the Member State of registration may recognise different standards, however, it shall -recognise in any event ~~or~~ a proof of being in possession of a qualified certificate for electronic signatures, as defined in Article 3, point (15) of Regulation (EU) N°910/2014⁹, ~~of the persons who are authorised to represent SUP in dealings with third parties and in legal proceedings;~~**
- (eb) a declaration by the person establishing the SUP that the directors ~~members of the management body~~ and, where applicable, the members of the supervisory body, are not disqualified by either the laws or a judicial or administrative decisions in any of the Member States and ~~whether the disqualification remains in force;~~**
- (f) the share capital of the SUP and the type of consideration ~~for~~ of the share. In case of on-line registration the **proof or declaration of cash payment pursuant to Article 17 (2);**
- (g) the nominal value of the single-share, where relevant;
- (h) the articles of association of the SUP;
- (i) ~~where applicable, the decision authorising the company's conversion into an SUP.~~
- (i) documents necessary to fulfil the obligations laid down in Article 9 (3) and (4);**
- (i) any licence or authorisation which must be obtained before registration as referred to in Article 14 (6);**
- (i) ~~a report in case of conversion;~~**

⁹ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

~~(k) a consent of the owner of the trade mark if the trade mark is used a business name of the company, unless an SUP is engaged in an area of activity in respect of which the trade mark is not protected;~~

~~(k) the time period for which an SUP is established, if it is established for a specific period of time;~~

~~(m) information about the place where the announcements by the company shall be made;~~

~~(l) balance-sheet date and the duration of the fiscal year.~~

Any information or documentation required by a Member State may be signed or sealed electronically in accordance with Regulation (EU) N°910/2014.

2. The Commission shall establish, by means of an implementing act, a template to be used for the registration of SUPs in the registers of the Member States in accordance with paragraph 1. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 27.

Article 14

Registration

1. An SUP shall be registered in the register of a Member State in which it is to have its registered office.
2. An SUP shall acquire legal personality on the date of the issue of the certificate of registration referred to in paragraph 4.~~on which it is entered in the register of companies of the Member State of registration.~~

3. Member States shall ensure that the registration procedure for ~~newly incorporated~~ SUPs **established *ex nihilo*** may be completed electronically in its entirety without it being necessary for the founding member to appear before any authority in the Member State of registration (on-line registration). **In addition, Member States may provide for other forms of registration of an SUP.**

4. National on-line registration web-sites shall include links to the registration web-sites in other Member States. Member States shall ensure that **the SUP may be registered on-line with the use of** the following templates ~~are used for on-line registration:~~

- (a) the uniform template of articles of association referred to in Article 11, and
- (b) the registration template referred to in Article 13.

Making use of the templates referred to points (a) and (b) fulfils the releases the founder of an SUP from any obligation to have founding instruments drawn up and certified in due legal form for the purpose of laid down in a Member State in order to comply with Article 11 of Directive 2009/101/EC.

Member States shall issue a certificate of registration confirming that the registration procedure has been completed. The certificate of registration shall be issued **For SUPs created *ex nihilo* Member States shall endeavour to issue such certificate within three working days, but** no later than ~~three~~ **8** working days from the receipt of all the necessary documentation by the competent authority. ~~If a Member State needs to verify the legality of the name of the company, the certificate of registration shall be issued no later than 8 working days.~~ **This paragraph is without prejudice to tax registration and any other formalities an SUP have to fulfil to start operations in accordance with applicable national law. Member State may provide that by using the on-line registration the founder of an SUP is informed about and consents to that the information about the newly established SUP is being automatically sent to the Member State's authorities other than the one in charge of registration.**

5. **For the purpose of registration of an SUP Member States shall lay down rules for the identification and verification of identification of the founding member and a representative that registers the SUP on the member's behalf, if any. Member States may lay down rules for the identification and risk-based verification of identification of the beneficial owner of the SUP by their own registration authorities as well as rules laying down the methods and means how the identification is to be kept up-to-date.**

5a. For the purposes of on-line registration of an SUP, the registration authorities shall recognise:

(a) any electronic identification means issued under an electronic identification scheme by, on behalf or under the responsibility of the Member State of registration;

(b) an electronic identification means issued in another Member State under an electronic identification scheme by, on behalf or under the responsibility of that Member State, provided that the conditions laid down in Article 6 of Regulation (EU) N°910/2014 are met.

The registration authorities may recognise other electronic or non-electronic identification means. When such identification means, issued in the Member State in which the registration of the SUP takes place, are recognised in that Member State for the purpose of on-line registration, the same type of identification means from other Member States shall be recognised.

For the purposes of on-line registration of an SUP, Member States shall lay down procedural rules, including the rules on the acceptability of the documents and other information submitted to the registration body. Such up-to-date rules shall be made available on registration web-sites.

Member States shall ensure that any measures taken to comply with this paragraph do not affect the possibility of on-line registration referred to in paragraph 3.

~~Member States may lay down rules for verifying the identity of the founding member, and any other person making the registration on the member's behalf, and the acceptability of the documents and other information submitted to the registration body. Any identification issued in another Member State by the authorities of that State or on their behalf, including identification issued electronically, shall be recognised and accepted for the purposes of the verification by the Member State of registration.~~

5b. Where, for the purposes of the subparagraph **verification of identification means that may be recognised by the Member State of registration and were not issued in that Member State,** - it is necessary for Member States, to **there is a need to** have recourse to administrative cooperation between them, they shall apply **Member States**, Regulation (EU) No 1024/2012 shall apply.

6. Member States shall not make the registration of an SUP conditional on obtaining any licence or authorisation, **unless obtaining it before registration is indispensable to the proper control of carrying out certain activities laid down in national law. This is without prejudice to provisions of national law that make carrying out certain activities after registration conditional on obtaining licence or authorisation.**

7. ~~The registration of the SUP, **All documents provided during the process of registration of an SUP,** and subsequent changes to them, shall be disclosed in the relevant register of companies immediately after registration.~~

CHAPTER 5
SINGLE SHARE

Article 15

Single share

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

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

Chapter 6
Share Capital

Article 16

Share capital

1. The share capital of an SUP shall be at least EUR 1. In Member States in which the euro is not the national currency, the share capital shall be at least equivalent to one unit of that Member States' currency. **Member States shall not require that the share capital exceeds EUR 1 or equivalent to the one unit of Member States' currency other than EUR.**

2. The **share** capital of the SUP shall be fully subscribed.
3. Member States shall not impose any maximum value on the single share.
4. **Member States may require the SUP active in certain sectors to build up legal reserves on the grounds of public interest. Member States shall ensure that information on such requirements is provided on the registration web-sites.**

Member States shall allow companies to build reserves in accordance with their articles of association. This is without prejudice to an obligation to include reserves, if any, in the presentation of the balance sheet in accordance with Article 10 of Directive 2013/34/EU and any disclosure obligations relating to reserves laid down in national laws.

~~Member States shall ensure that the SUP is not subject to rules requiring the company to build up legal reserves. Member States shall allow companies to build reserves in accordance with their articles of association.~~

- ~~5. Member States shall require **SUP** letter and order forms, whether in paper form or in any other medium, to state the **share capital of an SUP defined in accordance with Article 5 of Directive 2009/101**, capital subscribed and paid up. If **an SUP** the company has a website, that information shall also be made available on it **or the web-site must contain a registration number of a company and a link to the register where the information about the capital is to be found.**~~

Comment: Deleted since covered by Article 5 of Directive 2009/101

Article 17

Consideration for the share

1. The consideration for the share shall be fully paid up at the moment of registration of an SUP. **Where the share capital is changed after registration, it shall at any time be fully paid up or covered by contributions.**
2. In case of on-line registration, **the cash** consideration shall be paid **before registration on behalf of the SUP to be created before registration** into **an account** ~~the bank account of the SUP~~ **in any credit institution to which authorisation has been granted to operate within the European Union. When, in accordance with national law, an SUP may not have its own bank account before registration, Member States shall provide for the creation of a special interim or custodian account on which the considerations shall be paid. The proof of payment shall be submitted to the registration authority, unless the Member State in which the registration of the SUP is to take place accepts a declaration that the consideration has been paid up.** The subsequent increase or decrease of share capital shall be allowed at least in cash and in kind.
3. **The share capital shall not decrease below EUR 1 or to the equivalent of one unit of Member States' currency other than EUR.** In case of cash payment, the Member State of registration of an SUP shall accept payment into a bank account of a bank operating in the Union as evidence of payment or increase in the share capital.

Article 18

Distributions

1. An SUP may, on the basis of a **written** recommendation ~~from~~ **signed by all directors, after having fulfilled the requirements laid down in paragraphs (2) and (3) the management body, followed by a decision of the single-member,** make a distribution to the single member **that member** provided that it ~~such distribution~~ complies with paragraphs 2 and 3. **Such distributions, decided by the single-member are paid made by an order issued by the management body. If the single-member is the sole director, only one decision, complying with paragraphs 2 or 3, is sufficient to make a distribution.**

2. An SUP shall not make a distribution **in the form of a dividend** to the single-member if on the closing date of **the latest financial statement** ~~the last financial year~~ ~~the net assets~~ **the total assets after deducting total liabilities**, as set out in the SUP's annual accounts, are, or following such a distribution would become, lower than the amount of the share capital plus those reserves which may not be distributed under the articles of association of the SUP. ~~The calculation shall be based on the most recently adopted balance sheet~~ **or on an interim financial statement, if adopted balance sheet is more than 3 months old**. Any change in the share capital or in the part of the reserves which may not be distributed occurring subsequently to the closing date of the financial year **as well as previous distributions** shall also be taken into account.
3. The SUP shall not make a distribution **in the form of a dividend** to the single-member if it results in the SUP being unable to ~~pay its debts~~ **honour its obligations** as they become due and payable after distribution. ~~All directors~~ ~~The management body,~~ **or a single member being the sole director**, must certify in writing that, having made full inquiry into the affairs and prospects of the SUP, it has formed a reasonable opinion **on the day when the statement is signed** that the SUP will be able to ~~pay its debts~~ **honour its obligations** as they fall due in the normal course of business in the year following the date of the proposed distribution (a "solvency statement"). **The solvency statement shall also cover extraordinary business transactions, if the management body was aware or should have been aware of them at the moment when the statement was signed**. The solvency statement must be signed by ~~the management body~~ **all directors** and a copy of it must be provided to the single member **no later than** 15 days before the ~~resolution~~ **decision** on the distribution is adopted.
4. The solvency statement shall be disclosed **in the register**. If the company has a website, **the solvency statement** ~~this information~~ shall also be made available on it, **or the web-site must contain a registration number of a company and a link to the register where the solvency statement information about the statement is disclosed to be found**.

5. Any director shall be personally liable **to whoever incurred damage** for recommending or **executing** ordering a distribution if that director knew, or, in view of the circumstances, ought to have known that the distribution would be contrary to paragraph 2 or 3 **this Article, unless that director demonstrates acting with due care and that, in the view of circumstances, the director could not have been aware that the distribution would be contrary to this Article.** The same applies **conditions of liability apply** to the single-member, with regard to any decision to make a distribution referred to in Article 21.

~~6. Any director who was not a single member shall have a claim against that member in case of the director's personal liability under paragraph 5 and/or where the director incurred damage because of the removal from the office after the refusal to order a distribution not complying with the recommendation of the management body.~~

Article 19

Recovery of distributions wrongfully made

Member States shall ensure **by means available under their national law** that any distributions paid out **and/or given** contrary to Article 18(2) or (3) are refunded to the SUP, **unless the single-member demonstrates that, in the view of circumstances, the single-member could not have been aware** where it is established that the single-member knew, or, in view of the circumstances, ought to have known that the distribution would be contrary to Article 18(2) or (3).

Article 20

Share capital reduction

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

CHAPTER 7
ORGANISATION

Article 21

Decisions of the single member

~~1. Decisions taken by the single member of an SUP shall be recorded in writing by the single member. Records of decisions taken shall be kept for at least five years.~~

Comment: This provision can be deleted, since its content is already provided for in Article 4
(2)

2. A single member shall decide **at least** on the following:

(a) approval of the annual accounts;

(b) distribution to the member;

(c) increase of share capital;

(d) reduction of share capital;

(e) appointment and removal of directors **without prejudice to the employee participation in such decisions where required under applicable national law;**

(f) remuneration, if any, of directors, including when the single member is a director;

~~(g) change of the registered office;~~

(h) appointment and removal of the auditor, **or statutory audit firm**, where applicable;

(i) conversion of the SUP into another company form;

(j) dissolution of the SUP;

(k) any amendments to the articles of association;

(l) merger and division

(m) building of reserves.

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

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

Article 22

Management

1. An SUP shall be managed by a management body comprising one or more directors.
2. The number of directors shall be specified in the articles of association.
3. The management body may exercise all the powers of the SUP that are not exercised by the single member or, where applicable **required by the applicable national law or articles of association,** by the supervisory board.
4. The directors shall be natural persons. **They may be** ~~or~~ legal persons, where **this is** allowed by applicable national law. They shall be appointed for an unlimited period of time, unless otherwise specified in the single-member's decision appointing them or in the articles of association. The single member may become a director, **however each SUP shall have at least one natural person as a director.**

5. The single-member may remove a director, by means of a decision, at any time **for whatever reason whatever the cause**. Once removed from the office, a director shall be immediately deprived of the authority and power to act as a director on behalf of the SUP. **Third parties shall not be able to rely on the acts of the removed by a director so removed if the decision on removal was is disclosed in the register where the SUP was registered or the third party knew or could not have been unaware that the director was removed from the office.** Any other rights or obligations **of the removed director** under the applicable national law, **in particular employment rights of the removed director**, shall not be affected.
6. A **natural** person who is disqualified by either the law or a judicial or administrative decision of the Member State of registration cannot serve as a director **or a member of the supervisory body, where applicable**. ~~If that person has been disqualified by a judicial or administrative decision taken in another Member State and this decision remains in force, the decision must be disclosed in the register.~~ A Member State may refuse, as a matter of public policy, **to accept a person to serve as the registration of a company a director, or a member of the supervisory body, where applicable,** if a director **that person** is the subject of an outstanding disqualification **by a judicial or administrative decision** in another Member State **at the moment of application for registration.**
- If during the registration process an SUP fails to provide the registration authorities are not provided with the all names of at least one directors or members of the supervisory body required for registration that fulfils the registration requirements, a Member State may refuse to register the SUP or, if the SUP is already registered, request it to take appropriate steps to provide the registration authorities with all required the names of at least one eligible directors or members of the supervisory body. If an SUP fails to take such steps, the competent national authority shall be granted the powers necessary to dissolve the SUP.**

Where, for the purposes of this paragraph **the verification of disqualification of a director or a member of the supervisory body, where applicable, Member States there is a** need to have recourse to administrative cooperation between ~~them~~ **Member States**, they shall apply Regulation (EU) No 1024/2012 **shall apply**.

7. Any person, **directly or by an intermediary, who de facto exercises the function of a director by managing the SUP**, whose directions or instructions the directors of the company are accustomed to follow **on regular basis**, without having been formally appointed **or acting upon expired or void appointment**, shall be considered a director as regards ~~all duties and~~ **the** liabilities to which directors are subject. **This is without prejudice to the duty of disclosure of all directors in the register where the SUP is registered and any consequences which the failure of such disclosure may have under applicable national law.**
8. **Any** person, **including the single-member**, shall not be **liable** ~~considered as a~~ director **by sole reason** solely on the grounds that the management body acts on advice given by him or her in a professional capacity **or as the a representative of a Member State. Neither any person giving instructions shall be liable as a director by sole reason that or. The single-member shall not be regarded as a director by sole reason that the management body follows such the instructions referred to in Article 23.**
9. ~~A legal person shall not be considered a director for the purpose of paragraph 7 in Member States in which legal persons may not be directors.~~

Article 23

Shareholder's The single-member's instructions

1. The single-member shall have the right to give instructions to the management body.

2. Instructions given by the single-member shall not be binding for any director insofar as they violate the articles of association or the applicable national law **or the laws of the countries in which the SUP operates.**

Article 24

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

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

Article 25

Conversion of an SUP into another company law form or its dissolution

1. ~~Member States shall ensure that their national law require SUPs to be dissolved or transformed **converted** into another form of company if SUPs cease to comply with the requirements laid down in this Directive, **in particular where an SUP has more than one member, except for the situations referred to in Article 15(3), or more than one share.** If an SUP **itself** fails to take appropriate steps to convert into another company law form **within the time limit laid down by the applicable national law**, the competent authority shall be granted the powers necessary to dissolve the SUP. **The articles of association or statutes of an SUP shall not prevent conversion or dissolution.**~~
2. An SUP may **voluntarily**, at any moment, decide to convert into another company law form following the procedure laid down by applicable national law.
3. An SUP that has been converted into another company law form or dissolved in accordance with paragraphs 1 or 2, shall cease to use the abbreviation **SUP** ~~[SUP][UP]~~.

Part 3
Final Provisions

Article 26

Exercise of delegated powers

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

Article 27

Committee procedure

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

Article 28

PenaltiesSanctions

Member States shall provide for ~~penalties~~ **sanctions** applicable to infringements of the national provisions adopted to implement this Directive and shall take all the measures necessary to ensure that those ~~penalties~~ **sanctions** are enforced. **Sanctions shall be provided for in particular for the violation of obligations laid down in particular in Articles 3, 4, 5, 7 (3), 12 (1), 15, 17, 19, 21 (2), 23 (1), and 24 and 25 (1).** The ~~penalties~~ **sanctions** provided for shall be effective, proportionate and dissuasive.

Article 29

Repeal

1. Directive 2009/102/EC is repealed 24 months after the date of adoption of **the implementing acts referred to in Articles 11 (3) and 13 (2)** ~~this Directive~~ plus one day.
2. References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

Article 30

Amendment to Regulation (EU) No 1024/2012

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

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

* OJ L [...]."

Article 31

Transposition

1. Member States shall adopt and publish 24 months after the date of adoption of **implementing acts referred to in Articles 11 (3) and 13 (2)** ~~this Directive at the latest~~, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions. **The Commission shall adopt the implementing acts within 12 months after the date of adoption of this Directive.**
This is without prejudice to the implementation date of Regulation (EU) N 910/2014 referred to in Article 14 (6).
2. They shall apply those provisions from 24 months after the date of adoption of this Directive plus one day.

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

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

Article 32

Entry into force

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

Article 33

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President