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**NOTE**

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From:	General Secretariat of the Council
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Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on single-member private limited liability companies - General approach

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**I. INTRODUCTION**

1. On 10 April 2014, the Commission submitted a proposal for a Directive of the European Parliament and of the Council on single-member private limited liability companies. The overall objective of this proposal is to make it easier to set-up companies across borders between Member States. This should encourage and foster more entrepreneurship and lead to more growth, innovation and jobs in the EU.

The proposal would facilitate cross-border activities of companies, by asking Member States to provide in their legal systems for a national company law form that would follow similar rules in all Member States and would have an EU-wide abbreviation SUP (*Societas Unius Personae*).

## II. STATE OF PLAY

2. The Working Party on Company Law examined the proposal at fourteen occasions during the Hellenic, Italian and Latvian Presidencies. The latest Working Party meeting (Attachés) took place on 27 April 2015.
3. The European Parliament's Legal Affairs Committee (JURI) is due to vote its report on 15 September 2015.
4. On the basis of in-depth discussions at expert level, the Presidency submitted to the Permanent Representatives Committee on 8 May 2015 a compromise package to be adopted as a general approach by the Competitiveness Council on 28 May 2015 and to serve as basis for forthcoming negotiations with the European Parliament aiming at exploring the possibilities for a first-reading agreement.
5. At that meeting of the Committee, some delegations expressed concerns about the risks that could be associated with this Directive (on-line registration, minimum capital and seat) in particular as regards money laundering and threats to public order. Most other delegations also examined those risks but have come to different conclusions. In this context, the Presidency undertook to clarify the understanding of the proposed compromise package, including in a non-paper.
6. The main elements of the compromise are described in Section III. Limited editorial changes in the preamble compared to doc. 8320/15 are marked in **bold underlined** and ~~strike through~~.
7. It is understood that the text including the recitals will be amended during the trilogue process and that the Council preparatory bodies will be kept fully involved.

### III. MAIN ELEMENTS OF THE COMPROMISE

Following the discussions at the Committee of Permanent Representatives on 8 May 2015, the Presidency re-assessed the joint effect of provisions on minimum capital, seat and on-line registration in the compromise package. The Presidency came to the conclusion that the risks of any misuses have been minimised, as the compromise text:

- provides for a whole set of guarantees related to on-line registration,
- is without prejudice to anti-money laundering rules (and even improves them),
- leaves the question of seat of companies to national laws, and
- allows Member States to control distributions and to oblige companies to build up legal reserves.

As the text currently stands, any risks related to SUP are not bigger than they are for any other national company law types.

The main elements of the compromise package are the following:

#### A. On-line registration (Articles 11, 13, 14, 14b)

The main innovation of this Directive is the possibility for SUPs to be registered entirely on-line using on-line templates provided by Member States. Most delegations see such a possibility as an important opportunity offered by the Directive to foster economic activity, growth and jobs in the EU. It also contributes to the Digital Agenda of the EU.

A number of delegations presented their own existing national schemes for on-line registration (which exist in sixteen Member States), and many good practices have been exchanged at several occasions in the Working Party on Company Law. Among delegations having put in place a system of on-line registration, none has reported insurmountable difficulties. Although putting in place such system had presented a number of challenges, the Member States concerned mainly highlighted the benefits for citizens and public administrations alike.

However it should be noted that some delegations still have a number of concerns and see the introduction of on-line registration as presenting security risks. In order to address those concerns, provisions (see Articles 11, 13, 14 and new Article 14b) and corresponding recitals have been added to the compromise text in the Annex with a view to making on-line registration as secure and compliant with existing national rules as possible, *inter alia* by adding a reference to the e-IDAS Regulation.

The Presidency considers that the current text represents a well-balanced compromise between the various interests and concerns that have been expressed. Any further change to the on-line registration system would devoid it of its substance.

B. One euro minimum capital requirement (Article 16)

The minimum capital required for the formation of a single-member private limited liability company varies among Member States. The one-euro capital requirement is essential in order to facilitate the creation of start-ups. The compromise mitigates the risks presented by this requirement by allowing Member States to require the SUP to build up legal reserves as a percentage of the profits made by the SUP and/or up to the amount of minimum share required for other private limited liability companies listed in Annex I to the proposed Directive.

Moreover, in order to better protect creditors and other stakeholders, Article 18 requires Member States to put in place mechanisms in national law that would prevent SUPs from being unable to pay their debts after making distributions. The Presidency considers that this represents a well-balanced compromise that allows for entrepreneurs to set up businesses without endangering legitimate expectations and stability for creditors and other stakeholders.

C. Seat (Article 10, deleted)

Provisions on the seat have been deleted by the Presidency. This leaves unchanged the current legal situation.

This Directive is without prejudice to any national laws governing matters outside its scope, such as matters related to labour law, posting of workers, workers' participation in the management or supervisory bodies of companies, right to information and consultation, taxation, accounting or insolvency proceedings (Article 7(4) and recital (10a) ).

#### IV. CONCLUSION

**In the light of the above, the Council is invited to examine the compromise proposal presented by the Presidency (in Annex) with a view to reaching a general approach at its meeting on 28 May 2015.**

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 companies<sup>1</sup>, has made it possible for individual entrepreneurs to operate under limited liability throughout the Union.

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<sup>1</sup> 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 shares in a company are held by a single person, the Member State should ensure that that fact, together with the identity of the single 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. 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 minutes or drawn up in writing and Member States may provide that they may be stored electronically in an appropriate format. Records should be kept for at least five years. Part I of the Directive should apply to all single-member limited liability companies, without prejudice to the specific provisions provided by 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"<sup>2</sup> 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.

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<sup>2</sup> COM(2010) 614 final, 28.10.2010.

- (5) The improvement of the business environment, especially for SMEs, by reducing transaction costs in Europe, promoting clusters and promoting the internationalisation of SMEs, were the key elements of the initiative “Industrial policy for the globalisation era” outlined in the Commission Communication on the Europe 2020 strategy<sup>3</sup>.
- (6) In line with the Europe 2020 strategy, the Review of the Small Business Act for Europe<sup>4</sup> 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 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*). In order to reflect that the SUP is a national company law form, Member States of registration should be able to require that SUPs add to their company name an indication which enables the identification of the Member State of registration. Member States should be able to choose freely the way in which the Member State of registration is indicated in the company name; this could be, for instance, by an abbreviation of the name of the Member State, or by using the abbreviation applicable to private limited liability companies in that Member State. In any event, the location of the registered office should be mentioned in letters and order forms, whether they are in paper form or use any other medium in accordance with Article 5 of Directive 2009/101/EC.

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<sup>3</sup> COM(2010) 2020 final, 3.3.2010.

<sup>4</sup> COM(2011) 78 final, 23.2.2011.

- (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 certain aspects of operation of *SUPs*. Member States may apply Part 2 of this Directive to all single-member private limited liability companies so that all such companies would operate and be known as SUPs. They may 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.
- (10a) To ensure consistency, in case of matters not regulated by this Directive, the rules applicable to private limited liability companies limited by shares in the Member State of registration of the SUP should apply to SUPs, including Directive 2009/101/EC and Directive 2013/34/EU. This Directive should be without prejudice to Directives 96/71/EC and 2014/67/EU and furthermore be without prejudice to any national provisions governing matters outside its scope, such as matters related to labour law, posting of workers, tax, accounting or insolvency. It should also be without prejudice to the application of the national rules on the conflict of laws, to the application of EU rules on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, in particular the Directive on anti-money laundering<sup>5</sup>, as well as national rules transposing those EU rules as long as they comply with EU law and they do not undermine the effective application of this Directive, and to the application of the enforcement of rules on taxation and mutual assistance provided in Directive 2010/24/EU and employee participation rules established at national level.

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<sup>5</sup> *Note for lawyer-linguists: the reference to the new Directive should be inserted (see doc. 5933/3/15 REV 3), Directive (EU) 2015/... of the European Parliament and of the Council of ...on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.*

- (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 should be able to establish companies in the forms of SUPs or other limited liability companies.

However, Member States should be able to prohibit an SUP from being a single-member in another limited liability company in cases of cross or circular ownership, in particular in order to prevent situations where an SUP, indirectly, holds its own share, either in a situation where companies hold shares in each other, or where more than two companies holding shares in each other in such a way that the last company in the chain holds the single share of the SUP. Outside the SUP framework Member States should remain entitled to restrict the chain of companies by not allowing single-member companies to be the single-member in other companies.

- (11a) In order to avoid additional administrative burden on SUPs, the decisions taken by the single-member should not be subject to restrictions as regards the place where they are taken. This should be without prejudice to the right of Member States to impose restrictions as to the manner in which such decisions may be taken.
- (11b) Private limited liability companies that were not formed as SUPs should be able to benefit from the SUP framework to ensure that harmonised rules are applied as widely as possible. They should be able to be converted into SUPs subject to compliance with procedures and conditions in national law. In the absence of harmonisation at EU level in the field of transferring registered offices from one Member State to another, and without prejudice to the case-law of the Court of justice of the European Union, the conversion may only lead to the transfer of the registered office from one Member State to another if it is allowed by national laws of both Member States.

- (12) (deleted)
- (13) In order to make it easier and less costly to establish subsidiaries in other Member States, the on-line registration of SUPs should be allowed, i.e. it should be possible to complete the registration procedure electronically in its entirety without the need of a physical presence before any authority of any Member State
- (13a) The on-line registration should be without prejudice to the Member States' choice of persons or bodies that might be required to assist or control the legality of registration provided that the whole process can be completed electronically. Each Member State should designate (a) competent on-line registration point(s).

Member States may provide that existing points of single contact created under Directive 2006/123/EC of the European Parliament and of the Council could or should be used as a gateway to national on-line registration points. In addition to on-line registration, Member States should also be able to allow other forms of registration, for instance, on paper.

- (13b) To encourage cross-border set-ups of SUPs, Member States should include in their SUP on-line registration point(s) the links to SUP on-line registration point(s) other Member States. This may be done via a link to a central EU web-site or portal such as the E-Justice portal which could provide the links to all SUP on-line registration points in Member States.
- (14) [deleted]

- (15a) In order to encourage cross-border set-ups of SUPs, Member States should make available on-line templates for on-line registration and for the instrument(s) constituting SUPs. Those templates should be governed by national law, *inter alia*, as to their outlook, form, number, name or substance, including the right of Member States to require SUPs to have an instrument of constitution including rules regulating the internal affairs of the SUP. Member States should make such templates available in their own official language(s), but should also endeavour to make them available in other EU languages to avoid unnecessary burden on founders, especially in language(s) commonly used in business,
- (15b) To ensure foreseeability and transparency of the content of the national template(s) for the instrument(s) of constitution of an SUP-, that would enable to register SUPs with minimum delay, this Directive lays down a maximum list of information that Member States could request from the founder in the national template(s) for the instrument(s) of constitution. Member States should be able to request this information from the founder as it -will not be covered by any default national rules that could substitute this information.
- (15 ba) The maximum list of required information should be without prejudice to information the founder provides voluntarily or to individualised choices he could make under national law.
- (15c) It is crucial that founders are fully informed about the relevant national laws, in particular in cases where they decide, when establishing an SUP, to only make choices on the items indispensable for a simplest set-up and rely for the rest on default national rules. Therefore, Member States should make available to founders, clear, concise and updated information about national law in a user-friendly manner together with the relevant provisions of national default rules which apply if no individualised choice were made by the founder, or at least reference to such default rules. This Directive establishes a minimum list of information and provisions that should be available to the founder, and Member States should be free to provide more.

- (15ca) The forms and methods of providing the information and the relevant provisions should be left to Member States, as long as they can be found either in the national template(s) of the instrument(s) of constitution or on the national SUP registration web-sites or are provided by any other means which would enable the founder to get easily acquainted with them. Therefore, national template(s) for instrument(s) of constitution may set out rules to regulate the internal affairs of the SUP.
- (15d) To ensure a high level of uniformity, on-line accessibility and to facilitate cross-border set-ups of SUPs, the founders of SUPs should be allowed to register SUPs through on-line templates of registration, providing only indispensable information for simplest set-up. If the founders decided to make use of the opportunities provided by national law and make individualised choices or use bespoke templates for the instrument(s) of constitution, going beyond the simplest set-up, the registration authorities or any persons or bodies required by national law to be involved in the registration process, should be able to request more information from them.
- (15e) Member States should be able to request by registration more information from the founders which is outside the scope of this Directive, in particular for tax, social, anti-money laundering and other purposes. Member States should also be able to require the founder to submit appropriate items of evidence with a view to proving the information required for the purpose of registration under this directive; appropriate items of evidence should be those that are necessary and suitable for proving the respective items without imposing a disproportionate burden on founders.

- (16) In line with the recommendations set out in the European Commission's 2011 Review of the Small Business Act<sup>6</sup> to reduce the start-up time for new enterprises, national authorities should complete the on-line registration process within five working days, if national templates for registration and for the instrument(s) of constitution which are available on-line are used, unless there are exceptional circumstances, such as, in particular, the complexity of the case which requires a special examination in the context of registration, that would make it impossible to comply with this deadline. The deadline for completion of the registration process should be counted from the moment when the registration authority receives a complete application, including any necessary supporting documentation and a confirmation that all necessary fees for registration have been paid.
- (16a) Compliance with the five working days limit should only be required for SUPs created on-line ex-nihilo and not for existing entities that wish to convert to SUPs as the registration of such entities by their very nature, may take more time. This is without prejudice to the right of Member States to register all SUPs within five working days limit.
- (17) [deleted]
- (18) Provisions concerning the establishment of SUPs should not affect the right of Member States to maintain existing rules or enact new rules concerning possible verification of the legality of the registration process, including rules on the verification of identification and legal capacity in order to provide for safeguards for the reliability and trustworthiness of registers. Such rules may include, for example, the legality check via a video-conference or other on-line means that provide a real-time audio-visual connection-. In any event, national rules should not affect the possibility of completing the whole registration procedure on-line.

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<sup>6</sup> COM(2011) 78 final, 23.2.2011.

- (18a) To ensure a high level of security and trust, in the context of on-line cross-border identification of the founders of the SUP, electronic identification means issued in another Member States and notified to the Commission, in accordance with Regulation (EU) No 910/2014 should be accepted by the authorities of the Member State of registration. In addition, that Member State may recognise other electronic and non-electronic identification means. If, for the purpose of registration, the registration authorities recognise non-electronic identification means issued in the Member State of registration, they should also recognise the same type of identification means issued in other Member States.
- (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. Therefore, 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.
- (19aa) In order to protect creditors and other stakeholders Member States should ensure that there exist mechanisms in national law that would prevent SUPs from being unable to pay their debts after making distributions.

The choice of form and methods to ensure the compliance with this requirement is left to Member States. In this context, Member States should be able, for example, to require companies to build legal reserves, establish minimum balance sheet test requirements and/or to require the management body to prepare and sign a solvency statement which should then constitute sufficient means of complying with that requirement.

- (19b) In order to provide additional safeguards for creditors, Member States should be able to require the SUP to build legal reserves, as a percentage of the profits of the SUP and/or up to the amount of minimum share capital required for private limited liability companies listed in Annex I<sub>2</sub>. Member States should consider whether it would be appropriate to adopt a sectoral approach with regard to the requirement to build legal reserves, taking into consideration the difference in capital needed to protect creditors in different sectors of the economy. Member States should ensure that information on the obligation to build reserves forms part of the information provided to founders on relevant laws under this directive.
- (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, in particular in inheritance and matrimonial 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. The co-owners should be identified.
- (21) [deleted]
- (22) The management body of an SUP should be composed of one or more directors, and Member States should be able to provide for an SUP to have a supervisory board.

The Directive should further clarify the consequences of a removal of a director. This is without prejudice to the obligations of disclosure under Directive 2009/101/EC as regards the persons authorised to represent a company in dealings with third parties **and in legal proceedings**, as well as the obligations under that Directive to ensure that up-to-date information on provisions of national law according to which third parties can rely on particulars and documents disclosed in that context is made available.

- (22a) To increase the trustworthiness and reliability of SUPs, this Directive should lay down provisions relating to disqualification of directors. A person who is disqualified by either the law ~~of~~ **or** a judicial or administrative decision of the Member State of registration should not be able to serve as a director or a member of the supervisory body, where applicable. Furthermore, Member States should be able to decide that they wish to refuse to allow a person to serve as a director, or a member of the supervisory body, where applicable, if that person is the subject of disqualification by a judicial or administrative decision still in force in another Member State.
- (23) Where there is a need to have recourse to administrative cooperation between Member States for the purposes of exchanging information about the disqualification of the members of the management and/or supervisory body, Regulation (EU) No 1024/2012 should apply.
- (23a) Since the Annex to Regulation (EU) No 1024/2012 contains a list of provisions on administrative cooperation in Union acts which are implemented by means of the IMI, that Annex should be amended to include this Directive.

- (24) The Member States should lay down rules on sanctions applicable to the infringements of the provisions of this Directive and should ensure that they are implemented. Those 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 similar violations by private limited liability companies having a registered office on its territory.
- (25) [deleted]
- (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 requirements laid down by EU law regarding the protection of personal data, in particular with Articles 7, 8 and 52 of the Charter of fundamental rights of the EU and 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 [OJ L 281, 23.11.1995, p.31] as interpreted by the Court of Justice, and with national law implementing those requirements." In so far as the IMI is used, administrative cooperation and the exchange of information between the competent authorities should also comply with the rules set out in Regulation (EU) No 1024/2012.

## Part 1 - General provisions

### *Article 1*

#### **Scope**

1. Part 1 of 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), Part 1 of this Directive shall also apply to them.

*Article 2*

**Definitions**

[deleted]<sup>7</sup>

*Article 3*

**Disclosure**

Where a company becomes a single-member company because all its shares<sup>8</sup> come to be held by a single person, that fact, together with the identity of the single member, must 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 and decisions of the single member***

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 recorded in minutes or drawn up in writing and kept for at least five years. Member States may provide that it is sufficient for the decisions to be stored electronically by the company, in a safe and accessible format preventing the loss of integrity of decisions. Member States may also provide that decisions must be kept for a longer period than five years.

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<sup>7</sup> *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.*

<sup>8</sup> *Remark for lawyers linguists – In many Member States different words are used for shares depending on whether shares are mentioned in the context of private or public limited liability companies. Some Member States use the term "participation" for shares in private limited liability companies. The difference between private and public limited liability companies is not connected with the ownership structure in any way (private or public).*

*Article 5*

***Contracts between the single member and the company***

1. Contracts between the single-member and the company shall be recorded in minutes or drawn up in writing and kept for at least five years. Member States may provide that it is sufficient for the contracts to be stored electronically by the company, in a safe and accessible format preventing the loss of integrity of contracts. Member States may also provide that the contracts must be kept for a longer period than five years.
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**

#### **General Principles and Legal form**

*Article 6*

***Scope and Legal form***

1. Part 2 of this Directive shall apply to the laws, regulations and administrative provisions of the Member States relating to the possibility of establishing private single-member limited liability companies in the form referred to as SUP. Member States shall provide for the possibility of registering SUPs in accordance with the rules and procedures set out in this Part.

2. Member States shall not hinder SUPs from being single-members in other limited liability companies. However, Member States may establish rules prohibiting SUPs from being single-members in other limited liability companies if it leads to cross or circular ownership.

## Article 7

### **General principles**

1. Member States shall grant SUPs full legal personality
2. Member States shall provide that SUPs are a type of single-member private limited liability companies.
3. The name of a company, which has the legal form of an SUP, shall be followed by the abbreviation 'SUP' (Societas Unius Personae). The Member State of registration may require SUPs to add to the company name an indication that the company is registered in that Member State. Such indication may include an abbreviation applicable to private limited liability companies in accordance with national laws. For the purpose of conversion into an SUP, the names of companies shall be adapted to comply with those requirements.

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 the abbreviation 'SUP' already appears shall not be required to alter their names in accordance with the second subparagraph. This is without prejudice to the right of the authorities of the Member States to require such companies and other legal entities to alter their names in accordance with national law.

4. An SUP shall be governed
  - (a) by national laws adopted by the Member State in which the SUP is registered in order to comply with this Directive, and,

- (b) in case of matters not regulated by this Directive, by national laws applicable to private limited liability companies limited by shares listed in Annex I in the Member State in which the SUP is registered.

This Directive is without prejudice to any national laws governing matters outside its scope, such as matters related to labour law, posting of workers, workers' participation in the management or supervisory bodies of companies, right to information and consultation, taxation, accounting or insolvency proceedings. It is also without prejudice to the application of the national rules on the conflict of laws, EU rules on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

5. Member States may not impose any restrictions as regards the place where the single-member of the SUP takes the decisions that are disclosed in the register.

## **Chapter 2**

### **Formation**

#### *Article 8*

#### ***Incorporation***

An SUP may be incorporated by a natural or legal person. If allowed by national law of the Member State of registration, an SUP may also be incorporated by other entities not having legal personality.

*Article 9*

***Conversion into an SUP***

1. Member States shall ensure that the types of companies listed in Annex I are allowed to convert into an SUP following the procedure and subject to the conditions laid down by national law . A conversion pursuant to this Article may not result in the transfer of the registered office of the company 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 of the company or affect any rights or obligations existing prior to the conversion.

**Chapter 3**

**The instrument(s) of constitution for an SUP**

*Article 11*

***On-line template(s) for the instrument(s) of constitution of SUPs***

1. The instrument(s) of constitution of an SUP, in particular with regard to substance, form, name and number of such instruments, shall be governed by national law, subject to the requirements of paragraph 3. Member States shall make available on-line a national template for each instrument of constitution of an SUP. The template(s) shall be made available in the official language(s) of the Member State. Member States shall endeavour to make the template(s) also available in other languages, in particular in languages used in international business.

2. Member States shall ensure that an SUP may be registered on-line with the use of the national template(s). Where the instrument(s) of constitution are drawn up and submitted on-line with the use of the national template(s) and have been accepted by the registration authority, the obligation under Article 11 of Directive 2009/101/EC to have founding instruments drawn up and certified in due legal form shall be considered fulfilled.
3. Member States may only request some or all -of the following information to be provided by the founder of an SUP in the national template(s) for the instrument(s) of constitution:
  - a) the name of the SUP ;
  - b) the name and other information necessary to identify or otherwise related to the SUP's single-member,
  - ba) the name and other information necessary to identify or otherwise related to the members of the management body and, if there is a supervisory body, the members of that body ;
  - c) the number of the members of the management body and, if there is a supervisory body, the number of the members of that body ;
  - ca) the business object of the SUP ;
  - d) the SUP's registered office ;
  - e) the SUP's head office;
  - f) the duration of the SUP

- g) the SUP's share capital, the type of the single-share, the form of consideration for the share and the form and the procedure to create legal reserves;
  - h) [deleted]
  - i) provisions on when the members of the management body are absent or unable to act;
  - j) legal value of decisions made by a company in formation ;
  - k) the financial year.
4. Paragraph 3 is without prejudice to national laws which establish conditions under which the founders of an SUP may provide more information or make individualised choices in national instrument(s) of constitution.
5. Member States may request some or all of the information from paragraph 3 either in the instrument(s) of constitution of SUPs or the template for registration referred to in Article 13, or in both, even if it leads to the result that the same information is requested twice .

## Chapter 3a

### Information available to the founder

#### *Article 12*

1. Member States shall make available to the founders of SUPs, before registration, up-to-date, clear, concise and user-friendly information about national law governing at least the following aspects of the functioning and registration of an SUP :
  - a) the powers and responsibilities of the management body, including representation of the SUP towards third parties ;
  - b) requirements for member(s) of the management body, and, where applicable, the supervisory body ;
  - c) decision-making by the management body, and, where applicable, the supervisory body ;
  - d) powers of the single-member ;
  - da) dividends and other forms of distributions ;
  - e) legal reserves, if applicable ;
  - f) all formalities related to registration referred to in Article 13.

Member States shall also make available the relevant provisions of default national laws governing at least the above aspects of the functioning and registration of SUPs if any, or references to those provisions.

2. For the purpose of paragraph 1, Member States shall provide the information and default national laws , or references to them, in the national template(s) of the instrument(s) of constitution or on the national SUP registration web-sites or by any other means which would enable the founder to get easily acquainted with them.

This information and default national laws shall be available in the official language(s) of the Member State of registration and be made available free of charge. Member States shall endeavour to make them also available in other languages, in particular in languages used in international business.

3. National on-line registration web-sites for SUPs shall include links to the on-line registration web-sites for SUPs in other Member States. This obligation may be fulfilled via a link to a central EU web-site such as the European e-Justice portal providing the links to all on-line SUP registration points in Member States.

**Chapter 4**  
**Registration**

*Article 13*

***Formalities relating to registration***

1. The registration formalities related to SUPs, in particular with regard to substance and form of national registration templates, shall be governed by national law, subject to the requirements of the following paragraphs.
2. Member States shall allow SUPs to be registered via a national template of registration <sup>2</sup>available on-line, if the founder or its representative provides the registration authorities with following information for the purpose of registration:
  - (a) information listed in Article 11(3);
  - (aa) information related to the proposed SUP name;
  - (b) information necessary to identify or otherwise relating to-:
    - ba) means of communication with the SUP
    - bb) the representative that establishes the SUP on the member's behalf, where applicable ;

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<sup>9</sup> *Remark for lawyers linguists – « template » means in French « modèle », whereas « application form » means “formulaire de demande” . In French, the relevant wording should be “ "formulaire" referring to registration of a company.*

- bc) [deleted]
  - bd) [deleted];
  - be) persons authorised to certify the accounts of the SUP (auditor) ;
  - bf) persons authorised to represent the SUP in dealings with third parties, alone or jointly, including in legal proceedings, together with the powers of representation.;
  - bg) any beneficial owner of the SUP ;
- (c) whether the directors and, where applicable, the members of the supervisory body are disqualified either by law or by a judicial or administrative decision from acting as directors or members of a supervisory body in the Member State of registration or in any other Member State ;
- d) the nominal value of the single share and the amount unpaid on the share, if any ;
- e) information relating to the conversion into an SUP.;
- f) a bank account into which the consideration for the share may be paid;
- g) the instrument(s) of constitution of an SUP.
3. Member States may decide not to request all the information from the founder that is listed under paragraph 2. However, Member States may request more information than is listed in paragraph 2, if a founder has used the opportunity offered by national law to make individualised choices as referred to in Article 11(4), and additional information from the founder is needed which is not covered by national default rules. .

4. Member States may require the founder of an SUP to submit appropriate items of evidence to prove or to support the information provided under paragraphs 2 and 3 if such items of evidence are requested from private limited liability companies limited by shares listed in Annex I.
5. Paragraphs 2, 3 and 4 of this Article are without prejudice to Articles 2 and 2a of Directive 2009/101/EC and the right of Member States to request additional information or items of evidence from the founder of an SUP by the moment of registration in relation to requirements outside the scope of this Directive.
6. The national law referred to in paragraphs 2, 3 and 4 shall not affect the possibility of on-line registration referred to in Article 14 (3) of this Directive.
7. If any item of evidence is required to be signed or sealed, it may be signed or sealed electronically in accordance with Regulation (EU) N°910/2014.

#### *Article 14*

#### **Registration**

1. An SUP shall be registered in a Member State in which it is to have its registered office and complies with the rules of that Member States.
2. An SUP shall acquire legal personality on the date determined by national law. Member States shall ensure that the date on which legal personality was acquired and the completion of the registration procedure may be confirmed in electronic form.

3. Member States shall ensure that the registration procedure for 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 any Member State ('on-line registration'). In addition, Member States may allow SUPs to be registered in other ways than on-line.

For SUPs created *ex nihilo* with the use of the national templates referred to in Articles 11 and 13 Member States shall complete the registration process within five working days from the receipt of all the necessary documentation and information by the competent authority, except where there are exceptional circumstances that would make it impossible to comply with this deadline. The obligations in this paragraph are without prejudice to the registration fee and any other formalities an SUP has to fulfil to start operations in accordance with national law.

#### *Article 14a*

#### ***Rules and conditions regarding registration***

1. Without prejudice to Article 14 (3), the process of registration, including possible control of legality that may consist of verification of identity and legal capacity of the founding member and/or a representative that establishes the SUP on the member's behalf shall be governed by national law.
2. Member States shall lay down procedural rules, including the rules on the acceptability of the documents and other information submitted to the registration authority.

3. Member States shall not make the registration of an SUP conditional on obtaining any licence or authorisation, unless obtaining such licence or authorisation 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.

*Article 14b*

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

1. For the purposes of on-line registration of an SUP, the registration authorities shall recognise:
  - (a) electronic identification means issued under an electronic identification scheme approved for the purpose of on-line registration of SUPs by the Member State of registration;
  - (b) electronic identification means issued in another Member State complying with Article 6 of Regulation (EU) N°910/2014.
2. The registration authorities may also recognise other electronic or non-electronic identification means. When non-electronic identification means, issued in the Member State of registration, are recognised by the registration authorities for the purpose of on-line registration, the same type of non-electronic identification issued in other Member States shall be equally recognised.

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

**CHAPTER 5**  
**SINGLE SHARE**

*Article 15*

***Single share***

1. An SUP shall not have more than one share. This single share shall not be split.
2. An SUP shall not, either itself or through a person acting in his own name but on the SUP's behalf, acquire or own its single share.
3. Where in accordance with national law, a single share of an SUP may be owned by more than one person, those persons shall be regarded as the single-member of the SUP. They shall exercise their rights through one representative and shall notify the management body of the SUP, without undue delay, the name of that representative and the name of the co-owners and any change thereto. Until such notification, the exercise of their rights in the SUP may be suspended in accordance with national law. The identity of the representative shall be recorded in the relevant register or be entered in a register kept by the company and accessible to the public.

**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. Without prejudice to paragraph 1, Member States may require the SUP to build up legal reserves as a percentage of the profits of the SUP and/or up to the amount of minimum share capital required for private limited liability companies listed in Annex I.  
Member States shall allow companies to build reserves. 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.

*Article 17*

***Payment of the consideration for the share***

If national law requires the payment of the consideration for the share in cash, such consideration may be paid into any credit institution to which authorisation has been granted to operate within the European Union.

*Article 18*

***Distributions***

1. Member States shall ensure the establishment of mechanisms in national law that would prevent SUPs from being unable to pay their debts after making distributions.
2. For the purpose of paragraph 1, Member States may provide that an SUP is not allowed to make a distribution to the single-member if:
  - a) on the closing date of the latest financial statement 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 national laws requiring the SUP to build legal reserves in accordance with Article 16(4), if any, or under the instruments of constitution of the SUP ;  
and/or
  - b) in the case of a distribution in the form of a payment of a dividend, it results in the SUP being unable to honour its obligations as they become due and payable during the period of six months following the payment of that dividend.

3. For the purposes of paragraph 2 (b), Member States may provide that the management body must sign a statement, before the payment of a dividend, certifying in writing that, having made full inquiry into the affairs and prospects of the SUP, they have formed a reasonable opinion on the date the statement was signed that the SUP will be able to honour its obligations as they fall due in the normal course of business during the period of six months following the payment of the proposed dividend (a "solvency statement").

If a solvency statement is signed, it shall be considered as sufficient means of complying with paragraph (2) (b) and it shall be disclosed in the register.

4. The modalities for the implementation of the mechanisms referred to in paragraphs 2 and 3 shall be left to national law. This may include, in particular, the possibility of adoption of a longer period referred to in paragraphs 2b and 3 up to one year.
5. Member States may lay down in their national laws provisions limiting distributions to those covered by this Article, provided that such provisions do not subject the SUP to stricter requirements than the national laws applicable to private limited liability companies limited by shares listed in Annex I.
6. Member States shall require that any distributions, or share capital reductions leading to a distribution to the single-member made contrary to this Article, are refunded to the SUP.

7. Member States may provide for compensation to be sought for damage resulting from distributions made contrary to this Article by persons who suffered the damage under the conditions established by national laws.

*Article 19*

***Recovery of distributions wrongfully made***

[deleted]

*Article 20*

***Share capital reduction***

[deleted]

**CHAPTER 7**  
**ORGANISATION**

*Article 21*

***Decisions of the single member***

[deleted]

*Article 22*

***Management***

1. An SUP shall be managed by a management body comprising one or more directors. Member States may provide that an SUP may have a supervisory board.
2. If removed from office, a director shall be immediately deprived of the authority and power to act as a director on behalf of the SUP. Any rights or obligations of the removed director and third parties reliance on the information in the business register under national law shall not be affected.
3. A 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.
4. A Member State may refuse to accept a person to serve as a director, or a member of the supervisory body, where applicable, if that person is the subject of disqualification by a judicial or administrative decision still in force in another Member State.

If necessary, and for the purpose of the first subparagraph, Member States may exchange information regarding the decision on disqualification. To this end, Member States shall use the Internal Market Information System ('IMI') established by Regulation (EU) No 1024/2012 and this Regulation shall apply to this information exchange.

A Member State may refuse to transmit information regarding the disqualification of a specific person only if such transmission entailed the violation of requirements laid down by its national law regarding the protection of personal data. In such a case, the Member State shall state the reasons for its refusal.

In any event, for the purpose of this Article, Member States shall ensure the confidentiality of the information which they exchange and comply with the requirements laid down by EU law regarding the protection of personal data, in particular by Directives 95/46/EC and 2002/58/EC.

*Article 23*

***The single-member's instructions***

[deleted]

*Article 24*

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

[deleted]

*Article 25*

***Conversion of an SUP into another company law form***

An SUP may voluntarily, at any moment, decide to convert into another company law form following the procedure and subject to the conditions laid down by national law.

**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 a period of 5 years from the date of entry into force of this Directive. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
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***

[deleted]

*Article 28*

***Sanctions***

Member States shall provide for sanctions applicable to infringements of the national provisions adopted to implement this Directive and shall take all the measures necessary to ensure that those sanctions are enforced. The 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 entry into force of this Directive
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 X is added:

"X. Directive [...]/.../EU] of the European Parliament and of the Council of [...] on Single-Member Private Limited Liability Companies\*: Article X (22).

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\* OJ L [...]."

*Article 31*

***Transposition***

1. Member States shall adopt, publish and apply not later than 24 months after the date of entry into force of this Directive, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

This is without prejudice to the implementation date of Regulation (EU) No 910/2014.

2. 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*

Types of companies referred to in Article 1(1)(a)

— *Belgium:*

‘société privée à responsabilité limitée/besloten vennootschap met beperkte aansprakelijkheid’,

— *Bulgaria:*

‘дружество с ограничена отговорност’,

— *Czech Republic:*

‘společnost s ručením omezeným’,

— *Denmark:*

‘anpartsselskab’,

— *Germany:*

‘Gesellschaft mit beschränkter Haftung’,

— *Estonia:*

‘osaühing’,

— *Ireland:*

‘private company limited by shares or by guarantee/cuideachta phríobháideach faoi theorainn scaireanna nó ráthaíochta’,

— *Greece:*

‘εταιρεία περιορισμένης ευθύνης’,

— *Croatia:*

‘društvo s ograničenom odgovornošću’

— *Spain:*

‘sociedad de responsabilidad limitada’,

— *France:*

‘société à responsabilité limitée’,

— *Italy:*

‘società a responsabilità limitata’,

— *Cyprus:*

‘ιδιωτική εταιρεία περιορισμένης ευθύνης με μετοχές ή με εγγύηση’,

— *Latvia:*

‘sabiedrība ar ierobežotu atbildību’,

— *Lithuania:*

‘uždaroji akcinė bendrovė’,

— *Luxembourg:*

‘société à responsabilité limitée’,

— *Hungary:*

‘korlátolt felelősségű társaság’,

— *Malta:*

‘kumpannija privata/private limited liability company’,

— *The Netherlands:*

‘besloten vennootschap met beperkte aansprakelijkheid’,

— *Austria:*

‘Gesellschaft mit beschränkter Haftung’,

— *Poland:*

‘spółka z ograniczoną odpowiedzialnością’,

— *Portugal:*

‘sociedade por quotas’,

— *Romania:*

‘societate cu răspundere limitată’,

— *Slovenia:*

‘družba z omejeno odgovornostjo’,

— *Slovakia:*

‘spoločnosť s ručením obmedzeným’,

— *Finland:*

‘yksityinen osakeyhtiö/privat aktiebolag’,

— *Sweden:*

‘privat aktiebolag’,

— *United Kingdom:*

‘private company limited by shares or by guarantee’

**CORRELATION TABLE**

<b>Directive 2009/102/EC</b>	<b>This Directive</b>
Article 1	Article 1 (1)
Article 2(1)	Article <del>2</del> <u>3</u>
Article 2(2)	-
Article 3	Article 3
Article 4	Article 4
Article 5	Article 5
Article 6	Article 1 (3)
Article 7	-
Article 8	Article 31
Article 9	Article 29
Article 10	Article 32
Article 11	Article 33