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Delegations will find attached document SWD(2014) 123 final.

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COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

Proposal for a

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

{COM(2014) 212 final}
{SWD(2014) 124 final}

1. Definition of the problem

Only 2% of small and medium-sized enterprises (SMEs) invest abroad by setting up companies in other countries. This low level of investment can be explained by a number of factors, including the disparity between national laws and the lack of trust in foreign companies among potential customers and business partners. In order to gain the trust of foreign clients and to be closer to the local market in which they operate, SMEs, and other companies, often choose to act via subsidiaries which they 'wholly own'.[1] However, establishing subsidiaries abroad is often burdensome.

Linguistic, administrative and legal differences between Member States can make it expensive to set up and run subsidiaries abroad. Firstly, direct costs (incurred due to mandatory requirements for establishing a company[2]) can be higher than in the company's home country. Secondly, the differences between national laws[3] often result in a greater need for legal advice and thus in additional costs. Were the requirements more similar across the EU, there would not be such a need for extra advice. All these costs are likely to be particularly high for groups of companies, as a parent company must currently fulfil different requirements for each country in which it wishes to establish a subsidiary.

The European Commission aimed to address the obstacles facing companies wishing to operate across borders in its 2008 proposal for a European Private Company (SPE) Statute. This proposal, however, required unanimous agreement of the Member States in order to be adopted and, in view of the lack of progress made during negotiations, the Commission decided to withdraw it (a decision made within the context of the REFIT exercise[4]). It was announced that the Commission would instead propose alternative measures to address some of the problems faced by SMEs, and other companies, when trying to operate across national borders. This approach is consistent with the 2012 Action plan on European company law and corporate governance[5], which reaffirmed the Commission's commitment to launching other initiatives, further to the SPE proposal, in order to improve opportunities for companies to operate across borders. This Impact Assessment (IA) fits into that context and focuses especially on the difficulties experienced in setting up subsidiaries abroad.

2. The need for an EU initiative

To date, the solutions adopted by Member States in order to simplify the process and reduce the costs of setting up a company have focused on their respective national situations (i.e. their current national laws) and have not been coordinated with other Member States. Therefore, differences remain between national rules and it is unlikely that Member States would aim, by themselves, at introducing in national legal systems identical requirements for

[1] Subsidiaries have a separate legal personality and apply the rules of the country of registration. Therefore, while providing customers with the brand and reputation of the parent company, they also offer them the security of dealing with a company which has the legal status of a national rather than a foreign company.

[2] e.g. minimum capital requirements, registration costs or notary's fees.

[3] e.g. differences in the articles of association, in the organisation and structure of companies or in reporting requirements.

[4] The withdrawal of the SPE proposal was mentioned in the Annex to the Communication on 'Regulatory Fitness and Performance (REFIT): Results and Next Steps', COM(2013) 685, 2.10.2013.

[5] COM(2012) 740.

a particular company law form in the near future. Instead, it is likely that individual actions by Member States would continue to result in a divergent set of national approaches. Conforming to these different systems would therefore continue to impose additional costs on SMEs and would discourage them from being more active abroad. In view of this situation, the only possible way of overcoming the obstacles facing companies at present is to address them at EU level.

3. Objectives of the EU initiative

The *general objective* of the EU initiative would be to stimulate entrepreneurial activity by allowing entrepreneurs, and in particular SMEs, to set up companies abroad more easily, with the aim of stimulating growth, job creation and innovation in the EU. The *specific objective* would be to reduce certain costs typically associated with setting up and operating subsidiaries abroad. The *operational objective* would be to harmonise some relevant aspects of national laws in order to make it easier to set up companies abroad.

4. Policy options

Given that this initiative would aim to tackle obstacles faced by companies, and in particular SMEs, similar to those the 2008 SPE proposal addressed, this IA considers similar policy options, but rejects at the outset any that seem unrealistic, that are not directly related to the creation of subsidiaries or that would create unjustified discrimination between companies. In view of this, the option of setting out rules applying only to SMEs has been rejected, as they would not be practical to implement and would unnecessarily reduce the scope of the initiative. Instead, the aim would be to set out rules which are particularly suitable for SMEs and groups of companies owned by SMEs, but do not prevent larger companies from benefiting from them. Furthermore, the IA has dismissed the possibility of establishing a new European legal form *sensu stricto* or of harmonising the area of company law relating to the process of setting up subsidiaries both in the form of public and private limited liability companies.

The policy options further considered relate to single-member private limited liability companies, as this is the form of company most often used in setting up subsidiaries. The proposed harmonisation of the relevant area of company law would require Member States to make provisions within their national legislation for a national company law form that would be legally defined in the same way in all Member States and would have a common abbreviation, SUP (*Societas Unius Personae*). The more detailed policy options were considered regarding the following issues:

1) registration,

2) minimum capital requirement.

Different models of the registration process were reviewed, with consideration given to the possible options for particular aspects of the model, and the interaction of these aspects, e.g. online registration (registration only possible online, or registration possible both online and on paper) and the use of a template for the articles of association (compulsory if registering online).

Different models of the minimum capital requirement were also reviewed, likewise with consideration given to the interaction of the different aspects e.g. the minimum capital requirement (setting the minimum capital requirement equivalent to the average minimum capital requirement of EU countries or equivalent to €1), and the use of creditors' protection instruments (setting the minimum capital requirement at €1 but with the additional requirement of passing a balance sheet test and issuing a solvency statement).

5. Preferred options and their impacts

Registration

The "no-action scenario" would not achieve the objective of the EU initiative, as it would not reduce the costs associated with founding single-member private limited liability companies. Furthermore, the potential changes to national company laws not coordinated at EU level would not create sufficient consistency or compatibility between Member States' company laws.

The option which would best achieve the objectives would be making on-line registration available with a uniform template for the articles of association. Of all the options considered, this would lead to the biggest reduction in costs, with savings resulting from both the direct online registration procedure and the use of a single EU-wide template by companies choosing to register online. This option would be consistent with other EU policies.[6] It would ensure the availability of an online registration procedure, for which an EU-wide template would be provided, without forcing Member States and companies to accept it as the only registration procedure for SUPs. This option would have the greatest positive impact on the founders of companies, without having a more significant negative impact on other stakeholders than the other options. In order to provide an indication of the magnitude of the potential cost saving for the founders of single-member private limited liability companies, high-saving and low-saving scenarios were calculated. The cost savings for the founders of SUPs in the EU could vary from €21 million in the low scenario to up to €58 million in the high scenario in one year.

Of the measures proposed within the various options, the introduction of an online registration procedure would have the greatest impact on Member States and other stakeholders. The level of effect would, however differ from one Member State to another, depending on the extent to which the registration process is currently digitalised at national level, on the human resources available, and on the way in which the Member State chooses to conform to the standard imposed by the initiative, as no particular method or means of achieving the desired 'end result' would be imposed on Member States. They would still be fully responsible for the quality of the necessary checks carried out on applicants and the initiative would not lower any existing standards relating to such checks. This should alleviate the concerns of certain groups of stakeholders, such as notaries, that the level of control exercised within Member

[6] Under any of the options considered, the objectives could only be achieved at some extra expense for Member States, the extent of which would depend on the current registration arrangements in place at national level. Options offering both online and paper registration would conform to the EU Digital Agenda, as they provide the possibility – rather than the obligation - of registering a company online.

States would decrease. As is already the case in many Member States, the registration procedure could still be effectively controlled without the founder of the company appearing in person before the notary in those Member States in which such a requirement exists. Most Member States would need to adapt their current national online registration systems rather than creating new ones, and the only cost associated with the single template for the articles of association would be that of making it available online. Furthermore, these costs would be incurred by Member States once only, whereas the benefits for the founders of companies would continue in the future.

Minimum capital requirement

The "no-action scenario" would not be effective in achieving the objectives of the EU initiative as national measures may lead Member States in different directions, as illustrated by examples of reforms in Hungary, the Czech Republic and Slovakia[7]. Moreover, such reforms adopted at national level usually relate to a national context and would not be sufficiently coordinated across the EU.

The option which would best achieve the objectives would be a minimum capital requirement of €1, without any additional measures to protect creditors. This would lower the costs associated with fulfilling the minimum capital requirement for companies in a number of Member States without imposing any additional costs. However, this option is not as efficient at achieving the objectives and does not offer the same degree of consistency with other EU policies as would an option lowering the minimum capital requirement, but also requiring companies to pass a balance sheet test and issue a solvency statement. The latter option would still be beneficial, albeit to a lesser extent, to companies and would at the same time act in the interest of creditors. The impact of the two options on Member States, in terms of introducing the new rules into their national legal systems, would not differ significantly. The preferred option (a minimum capital requirement of €1, plus the requirement of passing a balance sheet test and issuing a solvency statement) could save company founders in the EU between €215 million and €595 million in one year[8] (deducting any costs for issuing solvency statements in the case of distributions being made), whilst at the same time guaranteeing an adequate level of protection for creditors.

This option would have an impact on those Member States that do not currently have a minimum capital requirement of €1 and/or that do not use solvency statements to regulate distributions in their national laws. These Member States might not therefore be in favour of this initiative. The matter of the minimum capital requirement of €1 would however be discussed in a different institutional context than was the withdrawn SPE proposal and would not be linked to other sensitive issues such as employee participation and the transfer of a company's registered offices. This, and the introduction of more robust protection for creditors than was included in the SPE proposal, should improve the chances of an agreement being reached between Member States, especially since a lack of compensatory measures to protect creditors is one of the reasons why many Member States tend to be against lowering

[7] See the full text of IA.

[8] See calculations in the Annex to the IA.

the minimum capital requirement. In exchange for a low minimum capital requirement, companies would have to devote greater attention to ensuring an adequate level of liquidity before making distributions (e.g. paying out dividends or profits to the single member).

Preferred combination of options

The combination of the preferred options from each of the above headings — online registration of SUPs, a uniform EU-wide template for the articles of association, a minimum capital requirement of €1 and a requirement to pass a balance sheet test and issue a solvency statement — would have a positive impact on the exercise of fundamental rights, and would in particular strengthen the principle of the freedom to conduct business by providing another way of exercising this right and by giving company founders greater choice as to how they engage in business activities.

The preferred options would also have positive economic and social effects. By encouraging entrepreneurial activity, these options should lead to a wider choice of goods and services for consumers, to the creation of more new jobs and to a system of protection for creditors which would be better adapted to today's business environment. As the preferred options would not have any bearing upon the matter of the transfer of registered offices or of employee participation, it would not be necessary to introduce measures to minimise the potential circumvention of the applicable social and other rights, since anti-abuse measures, are, where necessary, laid down by national law.

The combination of preferred options could lead to savings for company founders in the EU of between **€236 million and €653 million in one year.** It is difficult to predict the relative proportion of these savings for foreign and domestic founders, but the overall savings should allow particularly SMEs to take greater advantage of the opportunities to conduct business across national borders. Although they would still have to comply with other than company laws in Member States in which they would be operating, the simplification of the regulatory environment with regard to the various issues addressed by the preferred policy options should create more favourable conditions for business than currently in place.

6. Monitoring and evaluation

The European Commission would assess the progress achieved with reference to the objectives set. Monitoring would focus initially on the implementation of the proposal, after which more specific information would be gathered on its effects, e.g. by monitoring the number of single-member companies (including SUPs) created, trends in their cross-border activities, their set-up and operational costs and the availability of online registration. A subsequent evaluation would review the ways in which the proposal has been implemented in national laws, and the effect it has had on the typical costs of setting up and running a company abroad, as well as reporting on any as yet unresolved practical problems.