From Simplified Companies to One-Man Limited Enterprises*

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Small and medium-sized enterprises (as well as micro ones) make use of the company not only for the joint exercise of an enterprise with limited liability, but also, and above all, for the individual exercise of it.

The company law of the western countries meets this need by gradually modifying the provisions governing public and private companies devoted to enterprises of small and medium size, with few members or only a single member, close and which do not raise capital by selling shares to the public.

As to public companies, in 1994 Germany amends the *AktG* by allowing some simplifications for the so-called *kleine Aktiengesellschften*. In France, in the same year, next to the *société anonyme - sa* is introduced the new *sociètè par actions simplifiée – sas*, a destructured company to be used to create a corporate joint venture among large companies. In 1999, the *sas* become a tool available to any kind of members, highly flexible, which can also be held in sole proprietorship (*sasu*) and whose articles of association are free to establish company-specific rules on the structure, operation and management of the company, as well as restrictions on the negotiability of shares. The other side of coin is that such companies are prohibited from seeking funding by publicly offering their shares.

Following the example of the German *Gesellschaft mit beschränkter Haftung – GmbH*, introduced in 1892, many civil law jurisdictions feel the need for a company form more agile and flexible than the public company. The limited liability company is therefore introduced in France in 1925, in Switzerland in 1936 and in Italy with the civil code of 1942.

In common law jurisdictions, the more flexible regulation of UK companies and US corporations establishes higher charges and formalities only for public companies and corporations, preserving the wide will of the shareholders of English limited liability companies – Ltd and of the US close corporations.

As for limited liability companies, the possibility to form one-member companies widespread also in the Countries where the contractual view of the company was more alive and therefore a one-man company has to be liquidated (in France before 1985) or the single member is fully liable (in Italy before 2003). In France, following the example of many jurisdictions such as Germany, Netherlands, Denmark and Belgium, in 1985 the legislator amends the definition of company and introduces the *Entreprise Unipersonnelle à Responsabilité Limitée – EURL*, a one-man limited liability company with more flexible rules (e.g., about one-man resolutions).

In 1989, the XII Directive on one-man companies requires all Member States to allow the run of a one-man limited enterprise having the form of limited liability company or of asset partitioning destined to the run of a business (solution then existing only in Portugal). All Member States which at the time still did not recognize one-man companies chose the easiest solution of the one-man limited liability company, even surpassing the principle of the company as body that arises from a '*contrat*' between two or more members.

Some jurisdictions have further amended their law on limited liability companies, enhancing the flexibility of national legislation mainly with reference to the minimum capital required, even due to the increasing competition among EU jurisdictions, where English Ltd. is in pole position, especially after the EU Court of Justice widened the scope of the right of establishment, allowing companies incorporated in one-Member State to have its headquarters (the so-called real or administrative seat) in another Member State without being obliged to dissolve in the Country of origin and to reincorporate in the Country of destination.

The common law approach to the company's capital, that does not impose a compulsory minimum capital, has been introduced through the most destructured models of limited liability companies such as the German *Unternehmehegesellschaft – UG*, the French so called *société à responsabilitè limitée - sarl à un euro*, the Belgian *sociétè privée à responsabilité limitée - sprl starter* and the Italian *società a responsabilità limitata semplificata - srls*. A minimum capital is not required by the US State corporate law and has been introduced in the United Kingdom only for public

* For more details about bibliography on comparative and EU company law, see D. Corapi – B. De Donno, *European Corporate Law,* in *European Private Law. A Handbook* vol. II (M. Bussani & F. Werro eds., Stämpfli/Carolina Academic Press/Bruylant 2014).

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companies (not for limited liabilities companies) to implement the second EU directive.

In the civil law simplified forms of limited liability companies, the founders may choose whether the initial capital is even just one Euro, but the regulatory framework protecting the integrity of the capital has not been generally abolished.

This reform has enabled the promotion of micro and small-sized businesses by reducing the initial investment, simplifying the incorporation procedure and cutting down the start-up costs. The simplified limited liability company is a valuable technique for the promotion of start-ups, to be supported by business incubator activities, useful to promote a shift from a perspective of being employee to a perspective of being entrepreneur. Nevertheless, good intentions must deal with credit needs that are often satisfied by personal guarantees which nullify the encouraged company's under-capitalization.

The simplified limited liability company confirms the trend to use the limited liability companies as a link between companies organized on a personal basis and partnerships on the one hand and more structured company forms seeking funding on the risk capital market on the other hand. This trend is particularly evident for US and English common law, where were introduced new forms of doing business even more flexible than corporations and companies and more similar to partnerships like *US Limited Liability Companies – LLC* and the less successful English *Limited Liability Partnerships – LLP.*

Nevertheless, it is necessary to consider that the limited liability company is a company form less harmonized than the public company, recipient of most of the company law directives and recommendations. The reduced presence of EU rules weaken barriers to entry of foreign models. However, a defence can be found in the legal tradition of each Country (path dependency), now well regarded by EU law oriented to valorize the differences between Member States laws and to use soft law instruments (recommendations) instead of directives and regulations.

The evolution of the simplified forms of limited liability company is represented by the French law on the *Entrepreneur individual à responsabilitè limité* – EIRL that, resuming a proposal of the 80s, has introduced detailed provisions which since 2011 allow the individual entrepreneur to allocate part of his personal assets to the run of a business and to protect his personal assets without creating a separate legal entity. The entrepreneur shall enter into a register a declaration of destination of the goods and shall draw up the annual accounts.

The French EIRL follows the Portuguese example and echoes and perfects the US series law and the Italian solution of the public company segregation of assets for a specific business. It offers some interesting insights as it deal a further blow to the traditional principle of unity of the patrimony and is a prelude for future interesting developments in enterprise and company law resulting from its transplant in different countries.