

EU Legal Entities: New Options?

HAROLD KOSTER



Over the years, two main approaches have been used to create an EU framework for Company Law. One approach is to harmonize the Company Law of the Member States by adopting harmonized rules. This approach had some successes, but it is difficult to harmonize widely different legal systems, for example when they reflect different national

attitudes to issues such as worker involvement in the management of the company. The other approach is to construct a whole new system of EU Company Law, that co-exists alongside the individual Company Laws of the Member States. Thus, for example, in 2011 the Council Regulation on the Statute for a European Company (SE) came into effect after more than thirty years of discussion. Due to different opinions between the Member States, the final regulation was much less ambitious than the first draft, and in the end many details were left to the national laws of the Members States. In 2003, the Council Regulation on the Statute for a European Cooperative Society (SCE) established the SCE legal form. Further, on 8 February 2012 the European Commission presented a proposal on a European Foundation Statute. This statute was proposed, due to the fact that foundations and their founders are increasingly working across borders, whilst there are a number of legal and administrative barriers hindering foundations when operating across Europe at present time. It is thought that a European Foundation Statute will offer an appropriate legal tool to overcome this. The original proposal included tax provisions, but in 2013 an amended proposal without tax provisions – not yet published – was put on the table. In 2014, further discussions occurred on the scope of the proposal and some issues with regard to formation, supervision and the minimum level of assets required to set up a European Foundation, but it is unclear if and when agreement will be reached on the FE. Also, in 2008 a *Societas Privata Europaea* (SPE) Regulation was proposed, but this proposal failed due to different national attitudes to certain Company Law issues. Following that, in 2014, the European Commission published a proposal for a directive to standardize certain rules for the creation of companies in the EU with a single shareholder.

This directive is intended to make it easier for small and medium-sized entities to operate across borders. Member States have two options. First, within their national legislation, Member States can choose for a national Company Law form for single-member private limited liability companies with a number of harmonized main requirements and one common name, *Societas Unius Personae* (SUP). Thus, the SUP will be an additional Company Law form, co-existing with the other national forms for single-member private limited liability companies in a particular Member State. Second, the SUP legal form could become the only national company law form available for single-member private limited liability companies in that country. For the SUP, a uniform template for the articles of association is proposed. Further, the minimum capital requirement is to be EUR 1 and an SUP can only have one shareholder to whom only one share can be issued. According to Siems, it seems likely that Member States will provide rules similar to the ones of the SUP Directive for all private companies and possibly also public companies (M.M. Siems ‘The *Societas Unius Personae* (SUP): a Trojan horse?’, siemslegal.blogspot). I am not so sure about this and think (some) Member States might prefer to introduce the SUP as an additional Company Law form (e.g., the Dutch government seems to prefer this option). This way, existing single-member private limited liability companies do not need to comply with the new rules such as having one share.

An important feature of the SUP directive is that Member States will have to allow for direct on-line registration of SUPs without the need for founders to travel to the country of registration. This seems to rule out the possibility to perform checks on the identity of the founders. Thus, the proposal seems rather problematic with regard to mitigating money laundering and terrorist financing. Another feature of the SUP proposal is that it will have full legal personality upon registration and will be governed by the national law of the Member State where the SUP is registered. However, as an SUP does not need to have its company’s registered office and its administrative headquarters in the same country – a first for a European company form – this can cause the SUP being governed both by the law of the company’s registered office and by the law of its administrative headquarters. This might lead to complications. Hence, some changes to the current SUP proposal seem necessary. The SE and FE experiences

however learn that this is not uncommon. More noteworthy is that the SUP proposal includes two options for the Member States – another first –, harmonizing part of its law or adding a new

Company Law form. If the SUP proposal gets approved, it will be interesting to see which option the Members States will select and what this might mean for the future of Company Law in Europe.