

Members of the EU CDW

Re: proposed Directive on single-member private limited liability companies ('the SUP')

Dear Member of the European Parliament,

I am taking the liberty to write to you to bring your attention to the proposed Directive on single-member private limited liability companies ('the SUP')¹. This proposal is in discussion in JURI (leading committee), IMCO and EMPL. The vote in first reading is currently scheduled for this summer.

The ETUC has strong concerns about this proposal and we urge you to reject this text. The Commission claims the SUP is to help small businesses trade across Europe. However, the detail of the initiative is somewhat different and would deepen unfair competition in the internal market, to the detriment of bona fide smaller businesses, workers, and society in general.

The proposed Directive expressly allows the SUP to locate its registered office in a different Member State than the central administration. In fact, the company founder is free to locate the registered office in the Member State of its choice. This situation is not new but would be considerably worsened by an EU initiative transforming registration procedures into a simple formality. Under the SUP, the rules relating to registration are significantly simplified, including in particular rules for online registration. The registration process is entirely dematerialised and provides no safeguard to verify the identity and good repute of the company founder.

The choice of the registration place is an important step in the life of a company as it determines the main national regime applicable to the company. This has implication in particular for tax. Unrestricted freedom to pick and choose the place of registered seat facilitates fiscal evasion. In the field of social security coordination, there is also a risk of circumvention of mandatory contributions by the employer. Overall, the SUP establishes a 29th regime which would undermine the subsidiarity principle. Legal provisions imposed in one Member State can be circumvented by simply registering in another one.

Also, the proposed SUP contains no safeguard to prevent larger companies from misusing this company form. Larger companies will be encouraged to artificially modify their corporate structure with a view to minimise their obligations under the normally applicable national law. A company employing a significant number of workers in a Member State with elaborated legislation on information, consultation and workers' board level participation could easily "transfer" the ownership of some of its activities to

¹ COM (2014)0212

a subsidiary established as an SUP in a more lenient Member State, thereby circumventing the applicable obligations in the Member State where the business is actually carried out.

We would very much welcome the opportunity to discuss this important topic with you.

For further information, please feel free to contact me or Séverine Picard, ETUC Legal Adviser, at spicard@etuc.org or +32 2 224 0409.

Yours sincerely,



Claudia Menne
Confederal Secretary