

CCBE RESPONSE TO EC CONSULTATION ON SINGLE-MEMBER LIMITED LIABILITY COMPANIES

13/09/2013

Questions marked with an asterisk * require an answer to be given.

(Please note that some questions are missing since the online format includes only the parts that are relevant for the respondent.)

Please fill in the following questionnaire:

I. Information

1. Please indicate if you are responding as or on behalf of:*

- a) Public authority (including government)
- b) Private Sector Company
- c) Public Sector Company
- d) University/Research Institute/Think Tank or similar
- e) Lawyer/notary
- f) Business Federation/ Business Organisation/Chamber of Commerce, other federation, association or organisation
- g) Trade Union/Employee Body or similar
- h) Individual
- i) Consumers' association
- j) Other

Your Country (compulsory)

Belgium

Your name and address (optional)

CCBE

Rue Joseph II, 40

B-1000- Bruxelles

2. Information about your company

2.7 Is your organisation registered in the Transparency Register? (optional)

- a) Yes
- b) No

II Need for harmonisation

1. Do you agree with the finding that the overall participation of SME's in cross-border trade/activities in the EU is low in relation to their potential?*

- a) Yes
- b) No
- c) I do not know

Comments (Maximum 500 characters) (N/A)

2. Is it difficult for SMEs to expand their commercial activities/trade by setting-up a branch or subsidiary abroad (within the EU)?*

- a) Yes
- b) No
- c) I do not know

Comments (Maximum 500 characters) (N/A)

3. Is it difficult for SMEs to move their registered office, headquarters or principle place of business abroad (within the EU)?*

- a) Yes
- b) No
- c) I do not know

Comments (Maximum 500 characters)

The differences in the laws in different member states (not just company laws but also for example employment and social security and tax laws) and the difficulties of language make it difficult for SMEs to do this)

4. Why is it difficult to move or expand a commercial activity/trade, by setting-up a branch or subsidiary, abroad (within the EU)?*

- a) Compliance costs with foreign legislation on company law issues (translations, registration requirement/fees, capital requirements, reporting, operational/running costs including legal advice related to it, etc.)
- b) Difficulty of financing due to cross-border dimension
- c) Legal advice costs related to the set-up of the company in the foreign legal system
- d) Lack of knowledge/trust of foreign company law forms
- e) Other
- f) I do not know

Please specify:* (maximum 500 characters)

Lack of knowledge of other relevant laws such as employment, social security and tax also make it difficult. It is also difficult for companies to keep up with the changes of law in another jurisdiction, particularly where the changes are frequent.

5. Within compliance costs, which do you consider as being the biggest obstacle to moving or expanding the commercial activity/trade, by setting-up a branch or subsidiary, abroad (within the EU) ?*

- a) Registration fees (including notary fees)
- b) Initial capital
- c) Annual running/operational costs including reporting, accounting, auditing, legal advice
- d) Translations
- e) Other (e.g. labour law, health and safety issues etc.)

5.1 Is this obstacle:*

- a) strong
- b) medium
- c) weak

5.2 Is this obstacle:*

- a) strong
- b) medium
- c) weak

5.3 Is this obstacle:*

- a) strong
- b) medium
- c) weak

5.4 Is this obstacle:*

- a) strong
- b) medium
- c) weak

6. Would the legislative harmonisation of requirements concerning single-member private limited liability companies at the EU level encourage/facilitate an increase in cross-border activity of SMEs within the EU? (harmonisation could include, inter alia, registration, methods of formation, initial capital, protection of creditors, transfer of registered office, registration of branches)*

- a) Yes
- b) No
- c) I do not know

What would otherwise increase such activity of SME's?*

- a) Information campaign b) Use of points of single contact c) Other

Please specify:* (maximum 500 characters)

Consultancies which could offer tailored advice as to how to establish in another territory (as opposed to an information campaign which we assume would be more general information).

III. Quantifiable data

9. What are, in your experience/knowledge, the total additional costs incurred in relation to the setting up of a single-member private limited liability company abroad (within the EU) in comparison to setting-up the company in your own country? The amount:*

- a) 1-4.999 euros
b) 5.000-9.999 euros
c) 10.000-20.000 euros
d) More than 20.000 euros
e) No additional costs
 f) I do not know

10. What are, in your experience/knowledge, the total additional costs incurred in relation to the setting up of a single-member public limited liability company abroad (within the EU) in comparison to setting-up the company in your own country? The amount:*

- a) 1-4.999 euros
b) 5.000-9.999 euros
c) 10.000-20.000 euros
d) More than 20.000 euros
e) No additional costs
 f) I do not know

11. What are, in your experience/knowledge, the additional legal advice costs associated with the setting-up of a single-member private limited liability company abroad (within the EU) in comparison to setting-up the company in your own country? The amount:*

- a) 1-4.999 euros
b) 5.000-9.999 euros
c) 10.000-20.000 euros
d) More than 20.000 euros
e) No additional costs
 f) I do not know

12. What are, in your experience/knowledge, the additional legal advice costs associated with the setting-up of a single-member public limited liability company abroad (within the EU) in comparison to setting-up the company in your own country? The amount:*

- a) 1-4.999 euros
b) 5.000-9.999 euros

- c) 10.000-20.000 euros
- d) More than 20.000 euros
- e) No additional costs
- f) I do not know

IV Substance - A potential initiative on single-member limited liability companies

1. Should the potential initiative include simple rules for company registration on-line with one common standard registration form throughout the EU?*

- a) Yes
- b) No
- c) I do not know

Comments (Maximum 500 characters)

Will this process include any control of the information provided? Will the local registry do this?

2. Should the potential initiative include rules on on-line creation of branches abroad (within the EU) via the central platform of interconnection of national business registers?

- a) Yes
- b) No
- c) I do not know

Comments (Maximum 500 characters) (N/A)

3. Should the potential initiative harmonise the amount of minimum legal capital required for the setting-up of a single-member private limited liability company?

- a) Yes
- b) No
- c) I do not know

3.1. What should be the harmonised amount of minimum legal capital?* (N/A)

- a) 1 euro
- b) 1-999 euros
- c) 1.000-4.999 euros
- d) 5.000 euros or more
- e) I do not know

Comments (Maximum 500 characters)

Although we can see the attraction of a harmonized amount in principle we think it will be very hard to agree in practice what this should be, given the different approaches in different countries and also the fact that a single amount may be more difficult for those smaller member states to acquire.

4. Should the potential initiative include rules on distributions/dividends if a company would be unable to continue paying its due debts after the distribution/paying the dividends?*

- a) Yes
- b) No
- c) I do not know

Comments (Maximum 500 characters)

Companies should not be able to return money to shareholders unless they can reasonably expect to continue to pay their debts after that payment is made.

5. In case of minimum capital being more than 1 euro, should the potential initiative include rules on the opposition of creditors to a significant reduction of capital?*

- a) Yes
- b) No
- c) I do not know

Comments (Maximum 500 characters)

Where minimum capital is regarded as a protection for creditors they should be able to oppose a significant reduction if they can show it would be likely to prejudice their interests. There should be a court or administrative process to deal with any such opposition. If a company can show that it reasonably expects it will still be able to pay its debts as they fall due, then there should be no prejudice to creditors.

6. Should the potential initiative include rules on the transfer of registered office? *

- a) Yes
- b) No
- c) I do not know

Comments (Maximum 500 characters)

Given the decision not to do further works on this for companies in the EU generally and the potential difficulties of getting member states to agree on this, we do not think this should be included (although in principle we support making this easier for all companies).

7. If the number of members in a single-member private limited liability company increases to more than one, should the potential initiative provide for recourse to national laws to convert the single-member private company into another national company law form?*

- a) Yes
- b) No
- c) I do not know

Comments (Maximum 500 characters)

Some member states do not require this – but the company’s bylaws deal with what is to happen in such a case.

8. Should the potential initiative provide for limits as to how many single-member private limited liability companies one natural or legal person can create?*

- a) Yes
- b) No
- c) I do not know

What kind of rules do you suggest? (Maximum 500 characters) (N/A)

Comments (Maximum 500 characters)

We suggest member states be allowed an option on this (in the same way for the Twelfth Directive).

9. Should the potential initiative include special rules for SMEs which would make the setting-up of single-member private limited liability companies easier and cheaper for them than for bigger companies?*

- a) Yes
- b) No
- c) I do not know

10. Should the potential initiative provide for a new common abbreviation (like SEUP – Societas Europea UniPersonam) for all single-member private limited liability companies in the EU in order to increase the trust in “foreign” company law forms?*

- a) Yes
- b) No
- c) Other abbreviations
- d) I do not know

Your proposition for an abbreviation* (N/A)

11. Should the potential initiative cover, not only single-member private limited liability companies, but also single-member public limited liability companies ?*

- a) Yes
- b) No
- c) I do not know

Comments:*

Some member states do not recognise single member public limited liability companies and we think it would therefore be confusing to extend the initiative to cover public limited liability companies.

V. Comments

We suggest that a person forming a company should have an option whether or not to use this harmonised form of single member private limited liability company rather than the initiative mandating that this new form must be used for all single member companies. Although harmonisation of company law requirements should encourage more cross border trade, it is not enough alone to solve all the potential difficulties an SME faces when expanding cross border – including problems with language culture and other laws which are relevant to it.

The CCBE would also like to provide additional comments for

Question IV.9 - Special rules for SMEs: "We believe it should be simple to set up a single member company regardless of who is setting it up. We think the information needed is likely to be the same whether it is a SME or a bigger company".

Question IV.10 - Common abbreviation: "If the law on single member companies is harmonised for all the companies we do not think this is needed. If, as we suggest, those forming a company have an option whether or not to use this new harmonised form of single member company, then we think a name to denote that is a company of this sort would be useful".

In addition we would like to respond to question 2 in section 3 (quantifiable data) as follows:

How many single-member public limited liability companies are there in your country at the date of filling the questionnaire?

In some member states, including Belgium, France and Italy this concept is not recognised.