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JOINT POSITION

Proposal for a Directive of the European Parliament and of the Council on single-member private limited liability companies of 9 April 2014 (SUP – COM (2014) 212 final)

The European social partners of the construction industry (FIEC and EFBWW) have jointly assessed the "*Societas Unius Personae*" (SUP) draft Directive and came to the conclusion that they have major concerns regarding the proposed text, which would facilitate fraudulent practices. In this respect the proposed Directive contradicts the statements made by the President of the European Commission Mr. Jean-Claude Juncker as regards the fight against the negative aspects of workers migration and against fraudulent practices such as, for example, the setting up of "letter box companies".

The new proposed Directive of 9 April 2014 on single-member private limited liability companies (*Societas Unius Personae* - SUP) is intended to make it easier to establish foreign subsidiaries by means of harmonised conditions, particularly as regards the registration procedure and initial capital.

Specifically, the Directive provides for the establishment of an SUP by online registration, within three working days, and with a minimum capital requirement of €1.

The European social partners of the construction industry note, that currently – without this Directive - each Member State is free to set-up a legislative framework for single-member private limited liability company, taking into account specific national safeguarding measures, according to the needs of each Member State. By presenting a European Directive, the EU tries to impose a common standard which sidesteps the national competences of the Member States, in particular with regard to creditors' and workers' protection, by establishing a maximum permissible level of regulation.

Our main concerns are as follows:

- Firstly, adopting the proposed Directive would open the door for companies, independently of their size, to set up letterbox companies in order to minimise their responsibilities under national law. We cannot accept that the simplified rules for a SUP could be used to circumvent more elaborate company law forms such as the European Company¹. Indeed, the text makes no mention of the size of the company concerned and does not restrict the SUP to natural persons.
- Furthermore, the proposed Directive expressly allows the registered office of a company to be located in a different Member State from its principal place of business. This situation is not new but would be strengthened by a European initiative that makes registration procedures into a simple formality, with no guarantees as to the reliability of the company founder. Without such guarantees the enforcement of judgements or fines would practically not be possible. As regards social security coordination, there is also a risk that this provision would facilitate the circumvention of payment of mandatory contributions.
- Finally, the proposed Directive would create a legal loophole for transferring bogus-self-employment from one Member State to another. As the preconditions to set-up a SUP are extremely low, a SUP could very well hide bogus self-employed workers in its structures and then post them temporarily to another country.

Furthermore, genuine SMEs, especially if they are one-person businesses, are normally active at local level. 98% of SMEs do not operate outside their country of origin. This is definitely not due to red tape, as the Commission claims. Therefore, the added value of an EU intervention for such companies is questionable.

The possibility of instantly establishing companies in all corners of the EU together with the lack of any requirement for companies to report their earnings in the country where they do business opens up the real risk of networks of letterbox companies emerging which are difficult to monitor.

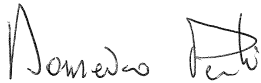
We expect the European institutions to work together with the social partners to find appropriate solutions for a sustainable approach to European company law. Prior to any further initiative on company law and in order to solve the problem of letterbox companies, we would like the European legislator to devise appropriate rules to ensure that the place of registration is linked to the principal place of business. Moreover, registration procedures must provide the necessary guarantees for verification of the identity and good repute of the company founder. Satisfactory safeguards must also be put in place to guarantee the sound financial management of the company.

Substantial equity capital in particular can offer basic protection to workers and other stakeholders, including customers and creditors. We also reject the minimum capital requirement of €1 which, combined with a simplistic online registration procedure, opens the door to social and fiscal dumping. The SUP proposal contains almost no guarantee for customers, workers and creditors in the event of bankruptcy.

¹ *European Directive 2001/86/EC supplementing the Statute for a European company with regard to the involvement of employees*

For these reasons, the European social partners of the construction industry ask the European Parliament and the Council to reject the proposed SUP Directive, respectively the Commission to withdraw it.ⁱ

Brussels, 27 February 2015



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Mr. Johan Willemen
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Created in 1905, FIEC is the European Construction Industry Federation, representing via its 33 national Member Federations in 29 countries construction enterprises of all sizes, i.e. small and medium-sized enterprises as well as "global players",

The EFBWW is the European trade Union Federation for the construction, wood, furniture and forestry sector. The EFBWW represents blue and white collar workers from 76 national trade unions in 34 countries

ⁱ For information, please note that the European Economic and Social Committee has already issued a similar opinion.

<http://eescopinions.eesc.europa.eu/eescopiniondocument.aspx?language=en&docnr=2794&year=2014>