

## **REASONED OPINION**

**of the European Affairs Committee of the Federal Council  
of 27 May 2014**

**pursuant to Article 23g (1) of the Austrian Constitutional Law in conjunction with Article 6 of  
Protocol No.2 on the application of the principles of subsidiarity and proportionality**

**COM (2014) 212 final**

**Proposal for a Directive of the European Parliament and of the Council on single-member private  
limited liability companies**

### **A. Reasoned Opinion**

The project under consideration is incompatible with the principle of subsidiarity.

### **B. Grounds for Reasoned Opinion**

The European Commission bases its proposal for a directive on Art. 50 TFEU, arguing that the draft proposal does not aim to establish a new supra-national legal form for single-member companies, but rather contributes to the progressive abolition of restrictions on the freedom of establishment.

The European Commission's reasoning is not convincing:

In this context, it appears appropriate to refer, in particular, to the judgment of the Court of Justice of the European Union of 2 May 2006 in C-436/03 on the Statute for a European Cooperative Society (SCE): The Court of Justice of the European Union states that the Regulation aims to introduce a new legal form, in addition to the national forms of cooperative societies. As underlined by the Court, Art.308 EC (now Art.352 TFEU) is the only provision that can be referred to as a legal basis for such newly established, supra-national legal forms existing in addition to national legal forms provided for under national law.

However, the proposal for a directive now submitted aims to create a supra-national legal form, similar to the European cooperative society, which would co-exist in the Member States with the national legal forms of limited liability companies, governed by a largely uniform regime and operating under the same designation. This can be clearly derived, inter alia, from Article 9 of the draft directive referring to the conversion of existing types of companies into an SUP, as well as from the fact that throughout Europe such single-member companies are to be called "SUP" (Societas Unius Personae), and from recitals 9 and 10 of the Commission proposal, which we understood to allow Member States to maintain existing forms of limited liability companies under national law, but to oblige them to alternatively provide for the establishment of an SUP as a separate company law form.

Thus, the Commission's intention is to create a new legal form to be established in addition to the existing national legal forms – as stated by the CJEU in its judgement C-436/03. However, the creation of a new, largely uniform and therefore supra-national legal form cannot be based on Art.50 TFEU.

On the issue of subsidiarity: In its present form, the proposal for a directive introducing single-member private limited liability companies cannot be based on a legal norm providing the basis for action by the European Union; the proposal is excessive and would, ultimately, lead to the introduction of a new supra-national legal form allowing anybody to establish a company.

The Federal Council has serious doubts about the competence of the European Union to require its Member States to introduce a new company law form on a national basis. This might be an inadmissible interference with the national regulatory power of the Member States. Moreover, the proposal disregards the principle of proportionality. The objectives of the proposal could also be achieved through national legislative provisions.

Moreover, the model of the single-member company proposed invites abuse; it harbours the risk of national standards, such as minimum capital requirements, being evaded and is likely to promote fictitious self-employment on a cross-border basis.