



DECISION

In its 103rd sitting on 7 May 2015, the German Bundestag,
decided on the basis of printed paper 18/4843 on the

Proposal for a Directive of the European Parliament and of the Council on single-member private limited liability companies COM(2014) 212 final; Council doc. 8842/14

here: Position stated to the Federal Government under Article 23(3) of the Basic Law

with regard to the information in Bundestag printed paper 18/1524 No A.4, to adopt the following resolution under Article 23(3) of the Basic Law:

I. The German Bundestag notes:

1. The strategy of growth pursued by the European Commission, particularly in the area of small and medium-sized enterprises (Small Business Act for Europe of 25 June 2008, COM(2008) 394 final), is to be welcomed. It reflects the extraordinary importance of small and medium-sized enterprises to the innovative strength and dynamism of the European Economic Area. Small and medium-sized enterprises play a central role in the development of new technologies and the long-term safeguarding of jobs and prosperity.
2. The German Bundestag particularly welcomes planned efforts by the European Commission to make cross-border activity easier for these businesses. Establishments in other EU Member States can be associated with disproportionately high administrative, advisory and cost expense, especially for small and medium-sized enterprises. A single European legal framework can reduce this expense.
3. Companies that establish for their Single Market activities subsidiaries in various Member States are confronted with up to 28 very different corporate law systems of the EU Member States, resulting in a considerable need for information and advice concerning not only the requirements for setting up businesses under each State's national law, but also the ongoing management of the companies. For medium-sized companies, whose human and financial resources are limited, this means a considerable burden.
4. That is why creation of a uniform European corporate legal form, particularly for small and medium-sized enterprises, should be a primary goal of European legislation to reinforce the Single Market.



5. Such a company form should not make the GmbH superfluous. In its more than 120-year history, the GmbH has proved to be extraordinarily successful, in particular for medium-sized business. Instead, the common European legal form for small and medium-sized corporate entities should take its place alongside the GmbH, creating an additional option for medium-sized enterprises to carry on their Community-wide activities through a uniform legal form with limited liability that is accepted in all Member States.

6. Nevertheless, the approach pursued by the European Commission with regard to a *Societas Unius Personae* (SUP) (COM(2014) 212 final; Council doc. 8842/14 of 10 April 2014) in the form of a directive suffers from several deficits:

- The SUP encompasses only single-member companies. Multi-person structures such as joint ventures or other associations of persons (as in the case of an investment by a financially strong investor) would be unable to take advantage of the SUP. Moreover, an only partially harmonised legal form does not provide a real alternative to a true supranational legal form.
- While, in the original version, the proposed directive sought clear harmonisation of national corporate laws in the area of single-member companies, which nonetheless would have profoundly altered the proven GmbH law in many places, the changes worked out under the Italian and Latvian Council presidencies leave the German GmbH law largely untouched. This concerns primarily capitalisation and creditor protection in the proven limited liability system. Even so, it is regrettable that the necessary national implementation of the directive would defeat the attempt to create uniform rules and to avoid the need for advice in the interests of small and medium-sized enterprises.
- Online set-up without adequate identity verification opens up far-reaching possibilities for abuse and would undermine confidence in the accuracy of the commercial register. In particular, a company started in this way could be used for dubious purposes and pose a specific risk of being abused for tax evasion, money laundering and terrorist financing. Furthermore, legal advice for the founder and verification of the documents to be submitted would not be ensured. The changes achieved under the Italian and Latvian Council presidencies concerning the directive proposal provide that Germany would be able to require high security standards in the process of setting up an SUP by electronic means, that notaries remain involved as an important link in the set-up process and that video conferencing can additionally be required to enable remote identification of the registered persons.
- The lack of requirements concerning worker participation rights in cases in which the registered office is different from the place of administration carries the risk of undermining national co-determination rules at the expense of employees.
- In particular, the possibility of separate seats would make it possible to set up an SUP in another Member State that does not provide for co-determination, or has a lower level of co-determination, and locate the place of administration (including facilities and associated employees) in Germany. While this is currently already possible (as in the case of a British limited liability company), an SUP would further aggravate the situation. Merely enabling Member States to stipulate company seat identity at a national level is under no



circumstances sufficient. If seat identity is not prescribed at a European level along the lines of SE Regulation Article 7, there is the risk of German co-determination rules being undermined.

7. The German Bundestag considers that the approach originally pursued by the European Commission to provide, in particular, small and medium-sized enterprises with their own European legal form in the shape of the *Societas Privata Europaea* (SPE) is preferable. This approach should be taken up again and further developed, while ensuring that national requirements concerning co-determination, commercial register regulations and tax laws are not circumvented. These goals can be reached, in particular, by ensuring the identity of registered office and place of administration as prescribed for the legal form of the *Societas Europaea*, which has been established for quite some time (Article 7 of Council Regulation (EG) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE)). Moreover, European co-determination rules along the lines of Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees (negotiations, agreements, application of standard rules) should apply to companies that generally employ more than 250 people. In companies with facilities in different Member States, the co-determination law of the Member State with the comparatively higher level of co-determination shall apply as the standard rule to the extent that at least a third of the total workforce is employed in that State. Unlike in the case of the SE, co-determination should not be "frozen" at the level of co-determination existing at the time the company is formed.

II. Against this background, the German Bundestag calls on the Federal Government to

1. reject the present Proposal for a Directive of the European Parliament and of the Council on single-member private limited liability companies unless the improvements to the directive proposal achieved under the Italian and Latvian Council presidencies with regard to online registration and interference with the national GmbH law are at least maintained and it is possible to attain a ban on separate company seats (main interests within the meaning of section 8(4) of the Act on Cooperation between the Federal Government and the German Bundestag in Matters concerning the European Union – *Gesetz über die Zusammenarbeit von Bundesregierung und Deutschem Bundestag in Angelegenheiten der Europäischen Union* – EuZBBG),
2. encourage prompt submission and adoption of a new proposal that creates a reputable single European corporate legal form, particularly for small and medium-sized enterprises,
3. while preventing circumvention of national rules concerning co-determination, commercial register regulations and tax laws. The place of administration and the registered office should be located in the same Member State, and adequate identity verification should be ensured as part of the registration process when a company is set up. Moreover, European co-determination rules along the lines of the corresponding SE provisions should apply to companies that generally employ more than 250 people. Unlike in the case of the SE, co-determination should not be "frozen" at the level of co-determination existing at the time the company is formed.