

DG MARKT
Unit F2
European Commission
B-1049 Brussels
Belgium

A POSSIBLE STATUTE FOR A EUROPEAN PRIVATE COMPANY (EPC)

The European Commission has launched a consultation in order to assess the economic need for a European Private Company (EPC). The Central Chamber of Commerce of Finland submits the following statement.

I. Information about the respondent

A. Name of the company/organisation and your function

The Central Chamber of Commerce of Finland.

B. Its legal form/size/field of activity

National body of the Finnish chambers of commerce as regulated in the Chambers of Commerce Act.

C. Indicate whether you conduct cross-border activity and in which form (branches, subsidiaries, provision of services, export/direct sales of goods) and/or plan to expand your activity to other Member State(s) in the foreseeable future? If so, please indicate in which Member State(s).

We have no direct commercial cross-border activity.

II. Do SMEs need a European Private Company Statute?

Question 1

Q 1.1. Do you face barriers related to the legal form of your company when you are conducting cross-border activity?

No, we do not face barriers as a chamber of commerce. However, representatives of Finnish companies have indicated to us that they face barriers.

*Q 1.2. If so, please explain which of these barriers are the most burdensome:
- difficulty in dealing with a number of different company law systems (legal and other counsel's fees),*

- *lack of trust in foreign legal forms in business relations with business partners from other Member States,*
- *different national rules for the operation of a company which makes day-to-day management more expensive,*
- *other barriers related to the legal form of your company (which ones?).*

According to representatives of Finnish companies, companies face difficulties due to the differences of company laws and registrar authority practices in different Member States. Many companies have subsidiaries in other Member States, and each jurisdiction has different laws and regulations on setting up a company and the basic company structure. Local expertise is needed for the establishment of a simple and small subsidiary. This may cause relatively high costs for companies.

In many occasions the barriers are related to the very bureaucratic and formal practises of the registrar authorities, including notary requirements. According to the Finnish experience it is possible to develop the authorities' operations in a positive manner. During the past fifteen years our company registrar authority has developed into an efficient and flexible actor. During the 1980's the registration procedure of a limited liability company typically lasted almost a year, whereas today the typical time required for the registration procedure is only one or two weeks. In many occasions documents are accepted even if they are written in other languages than our official languages.

We find it crucial that the EU does its utmost to develop company registration in all Member States especially for cross-border situations.

Question 2

Do you consider that the current legal framework is sufficient for your company's current or future cross-border business?

- *yes, in particular because:*

- *companies may operate under a foreign legal form, following the recent case law on corporate mobility;*
- *companies have the possibility to merge with businesses from other Member States;*
- *other reasons;*

- *no (please give reasons).*

No, we don't. The great differences in the Member States' company laws and registrar authorities' practises make it difficult for companies to operate cross-border if they wish to set up a subsidiary company in another Member State.

Question 3

Q 3.1. Do you think there is a need for a European Private Company (EPC)? Please give reasons to your answer.

Q 3.2. Do you think that the company form of an EPC itself ('European label') would give an added value to your business? Would it be helpful in cross-border activities?

Q 3.3. Do you consider that a Statute for an EPC would address the problems identified by you in Q 1? Would it be the most appropriate means? Please explain why.

Companies would appreciate the option of a uniform European company form, including models for the Articles of Association and other documents required for the establishment of a company. We believe that a Statute for an EPC would at least to some extent address problems faced by companies.

The European label would give some added value as it might help win recognition for a company conducting cross-border transactions.

Question 4

Q 4.1. If your company conducts or intends to conduct cross-border activities, do you/would you prefer to:

- *set up an establishment in another EU Member State,*
- *provide cross-border services while keeping the permanent establishment in your own Member State?*

Companies will choose the approach according to their individual needs. We expect both approaches to be attractive to companies.

Q 4.2. If you have/would like to have an establishment in another EU Member State, do you/would you prefer to set it up:

- *as a company (subsidiary), or- as a branch, or*
- *without any formal organisation (de facto branch)?*

We believe that this depends on the size of the company and its operations in the other Member State. Larger companies probably choose to operate through a subsidiary or a branch rather than without any formal organisation.

Q 4.3. If you prefer to set it up as a company (subsidiary), would you prefer to register it in the other Member State:

- *in a legal form of that Member State, or*
- *in a legal form of your own Member State, if it were allowed and recognised by the other Member State automatically or if certain minimum requirements were fulfilled (this procedure may be described as a single company passport)*
- *in the legal form of an EPC having multiple shareholders (Model A)*
- *in the legal form of an EPC having a single shareholder (Model B)?*

Please give reasons and, if you choose more than one alternative, please rank in order.

We believe that the most practical choice would be to register the subsidiary in the legal form of an EPC, either having multiple shareholders or a single shareholder depending on the situation.

Q 4.4. Do you think it would be useful for groups of companies to set up subsidiaries in the form of an EPC?

We assume that it would be most useful for groups of companies to have the possibility to set up subsidiaries in the form of an EPC.

Question 5

Q 5.1. Do you know an existing legal form of a private limited liability company, except for the limited liability company of your own jurisdiction, which you would consider suitable for an EU-wide activity of your business? If so, please indicate which one and explain why.

No.

Question 6

Should the EPC be allowed to have its registered office and its headquarters in different Member States? Please give reasons.

We are not aware of a need to allow the EPC to have its registered office and its headquarters in different Member States.

Question 7

Q. 7.1. Do you think that the access to an EPC should:

- be open to any person (natural or legal)
- be somehow limited? If so, which should be the limitations and why?

Q 7.2. Should it be possible to establish a single-shareholder EPC?

Q 7.3. Would you support an EPC Statute if it were restricted to a single shareholder (Model B outlined in chapter III)?

An EPC should be open to any person. Additionally, an EPC should be possible regardless of the number of its shareholders. However, if it becomes apparent that only a single shareholder ownership structure is realistic we support also this model. This would make a fully owned subsidiary possible as an EPC.

Question 8

Q 8.1. If the question of taxation in relation to the EPC Statute would not be addressed at the EU level, would you nevertheless find the EPC useful?

Q 8.2. If so, what would be in your view the added value of this legal form?

Yes, we find the EPC useful regardless whether taxation will be addressed at the EU level. According to our experience, companies face problems in establishing and running subsidiaries in other Member States as the legal forms and registration formalities differ so much in the Member States. The EPC would make it easier and cheaper to establish a company cross-border.

III. Which model of an EPC?

Question 9

Which EPC model presented in section 3.1 do you find the most feasible:

- Model A (EPC having multiple shareholders)
- Model B (EPC having a single shareholder)
- other model (please describe its characteristics)?

Please explain why you prefer this model.

We would not wish to restrict the use of EPC for merely companies with a single shareholder.

Question 10

Which of the regulatory options presented in section 3.2 do you find best for the EPC Statute:

- Option 1 (comprehensive and complete Statute)
- Option 2a (flexible statute with references to the general principles of EU law)
- Option 2b (flexible statute with references to national law)
- other option (please describe its characteristics)?

Please explain why you prefer this model.

We believe that the statute should establish a uniform company form. Thus, the statute should be comprehensive and complete as regards to the formation of a company, registration formalities and the basic structure of the company. Further issues could be regulated at Member State level.

IV. The structure and the core elements of a European Private Company

Question 11

Please indicate in the table below, by ticking the appropriate box(es) in columns (2)-(4) or (5)-(7) (depending on which model you have chosen in Question 9), whether in your opinion certain elements of company law would be best dealt with:

- under a possible EPC Statute (EU) or
- should be left for the shareholders to decide in the articles of association (AoA) or
- should be referred to existing national law in the Member State where the EPC is registered (MS).

If you believe that the regulation of a certain issue should be dealt with by more than one category of rules (e.g. by EU and AoA), please indicate it in the table and list the issues that should be covered by the EPC Statute in the box for comments.

	Full EPC: multiple shareholders			Simple EPC: single shareholder			No view (8)	Comments (9)
	EU (2)	AoA (3)	MS (4)	EU (5)	AoA (6)	MS (7)		
MAIN ELEMENTS OF COMPANY LAW FORMATION								
Formation Registration	X			X				
	X			X				
Name of company Public disclosures	X			X				
	X			X				
SHAREHOLDERS								
Keeping records	X			X				
Information rights General meeting (convocation) Resolutions, voting	X			X				
	X			X				
Minority rights Mergers			X			X		
			X			X		
SHARE CAPITAL								
Minimum legal capital Share classes, rights	X			X				The basic rights of shares of an EPC should be regulated at EU level. Rights regarding different share classes should be regulated by MS's.
Offers, issues Pre-emption rights							X	
Minimum capital Capital increase	X			X				
							X	
Capital reduction Distribution limits							X	
							X	
Redemptions Public disclosures							X	
							X	
Creditor protection MANAGEMENT							X	
Nomination of directors Powers of directors	X			X				
	X			X				
Duties of directors Eligibility	X			X				
	X			X				
Liability Public disclosures			X			X		
			X			X		
Board structure Conflicts of interest	X			X				
			X			X		

Question 12

12.1. Do you agree that the possible elements of company law listed in the table are exhaustive for the EPC?

No. The winding up of an EPC is not covered in the table.

V. Social aspects – employees' involvement (information, consultation and participation) in the company's decision-making process**Question 13**

What would be, in your opinion, the best solution for the EPC:

- should there be a uniform or a minimum EU standard on employees' involvement for the EPC,*
- should the EPC Statute follow the same solution as regards the employees' involvement as the one applicable for the European Company (SE),*
- should rules on employees' participation be determined by the law of the Member State in which the EPC's seat is located,*
- should existing employees' rights be maintained when a national company is converted into an EPC or an EPC into a national company (if their level is higher than in the national law applicable after the conversion)?*

Please give reasons for your answer.

We would prefer the employees' participation to be determined by the law of the Member State in which the EPC's seat is located. We believe that this is the only realistic approach in order to avoid unnecessary burdens for companies and lengthy discussions and disputes at the legislative stage.

THE CENTRAL CHAMBER OF COMMERCE OF FINLAND

Kari Jalas
Director General