



27.6.2014

NATIONAL PARLIAMENT REASONED OPINION ON SUBSIDIARITY

Subject: Reasoned opinion of the Austrian Federal Council on the proposal for a directive of the European Parliament and of the Council on single-member private limited liability companies
(COM(2014)0212 – C7-0145/2014 – 2014/0120(COD))

Under Article 6 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, national parliaments may, within eight weeks of the date of transmission of a draft legislative act, send the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity.

The Austrian Federal Council has sent the attached reasoned opinion on the aforementioned proposal for a regulation.

Under Parliament's Rules of Procedure the Committee on Legal Affairs is responsible for compliance with the subsidiarity principle.

Reasoned opinion pursuant to Article 23g, paragraph 1, of the Federal Constitution, in conjunction with Article 6 of Protocol No 2 on the application of the principles of subsidiarity and proportionality by the Standing Sub-Committee on Matters of the European Union of the Principal Committee of the National Council of 28. Mai 2014

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 proposal under consideration is incompatible with the principle of subsidiarity.

B. Justification

The Commission believes it can base the proposal for a directive on Article 50 TFEU. By way of justification, it states that the proposal for a directive is not intended to propose a new supranational legal form for single-member companies, but rather to help gradually remove restrictions on freedom of establishment.

This justification is not convincing:

In this context, reference should be made firstly to the finding of the European Court of 2.5.2006 in Case C-436/03 on the European Cooperative Society (SCE). In regard to this Regulation, the European Court held that it introduced a new legal form in addition to the national forms of cooperative societies. For such supranational, newly created legal forms existing in parallel to those provided for under national law, the CJ has made it clear that the sole legal basis is Article 308 ECT (now Article 352 TFEU).

However, like the European Cooperative Society, the proposal for a directive in question is intended in effect to create a legal form which is to a great extent uniformly regulated and bears one and the same legal form designation, and is hence de facto supranational - a legal form that will exist in each Member State alongside the national legal form of private limited company. This is clear from the provision in Article 9 of the proposal for a directive for converting a private company into an SUP, as well as from the separate legal form designation for such single-member companies which are to be known as 'SUP' (*Societas unius personae*) throughout Europe, and also from Recitals 9 and 10 of the Commission proposal, from which it follows that Member States may, at least alternatively, retain the existing legal form of private limited liability company in their national law, but are obliged to provide for the establishment of the SUP as a separate company law form as an alternative.

It is thus clear that – within the meaning of the CJ Judgment C-436/03 – it is intended to create a new legal form in addition to the existing national legal forms. However, the creation of such a new and to a great extent uniformly regulated legal form, which is therefore de facto supranational, cannot be based on Article 50 TFEU.

As regards subsidiarity: the proposal for a directive on the introduction of a single-member private limited liability company in its present form cannot be based on a legal norm which is necessary for the EU to have competence to act and goes far beyond the intended objective, leading in effect to the creation of a generalised new supranational form of company.

Serious doubts exist about whether the European Union is even entitled to require Member States to introduce a new national form of corporate entity. It is likely that this amounts to an unacceptable encroachment on national regulatory sovereignty. The proposal under review has also failed to take into account the principle of proportionality. The objectives of the proposal can also be attained by national regulations

Furthermore, this model of single-member company would actually encourage abuse and the circumvention of national standards such as minimum capital requirements and cross-border bogus self-employment.