

# Consultation on the future of European Company Law

## I. Background information

<b>1. Please indicate your role for the purpose of this consultation:</b> -single choice reply-(optional)	Business federation
<b>2. Please indicate the country where you are located:</b> -single choice reply-(optional)	Spain
<b>3. Please provide your contact information (name, address and email-address)</b> -open reply-(optional)	
EMISORES ESPAÑOLES (Jesús Gragera - Secretary) Paseo de la Castellana, 135 28046 Madrid (SPAIN) E-mail address:jgragera@emisoresespanoles.es Tax identification number: G-85 839.470.	
<b>4. Is your organisation registered in the Interest Representative Register ?</b> -single choice reply-(optional)	No.

## II. Objectives of European company law

<b>5. What should be the objective(s) of EU company law ?</b> -multiple choices reply-(optional)	Improve the environment in which European companies operate, and their mobility in the EU. - Facilitate the creation of companies in Europe. - Setting the right framework for regulatory competition allowing for a high level of flexibility and choice.
--	--

## III. Scope of European company law

<b>6. Would you support that the EU's priority should be to improve the existing harmonised legal framework or, rather, to explore new areas for harmonisation?</b> -single choice reply-(optional)	Yes, both approaches could be combined and further work could target.
Please specify -multiple choices reply-(optional)	The Directives on the merger and divisions of public limited-liability companies. - The Directive on cross-border mergers. - Cross-border transfer of registered office. - Cross-border divisions. - Cross-border conversion. - Other.
<b>7. Should the focus of EU company law move away from the distinction between public/private towards listed/unlisted in order to ensure adequate protection to shareholders?</b> -single choice reply-(optional)	Yes, for all the legal instruments harmonising EU company law.

## IV. User-friendly regulatory framework for European company law

8. Do you think that codifying existing EU company law Directives, thus reducing potential inconsistencies, overlaps or gaps, is an idea worth pursuing? -single choice reply- (optional)

No, this is not an idea worth pursuing.

Please specify -open reply-(optional)

It is a good idea but there is much work in modernising the existing UE legislation as well as in exploring new areas. Thus, we are of the opinion that this should not be considered a priority.

## V. EU company legal forms

9. What, if any, is the added value that EU company legal forms bring for European business? -multiple choices reply-(optional)

The European image of those company law forms. - Their European label ("SE", "SCE"). - Savings in costs of cross-border transactions. - Ad hoc solution to cross-border related issues. - Workable alternatives to existing national company law forms. - The possibility to carry out operations, like cross-border transfer of seat.

10. What, if any, are the main shortcomings of EU legislation introducing EU company legal forms? -multiple choices reply-(optional)

The complexity linked to frequent cross-references to relevant national legislation. - The differences in the way EU company law forms are understood and used at national level.

11. Should existing EU company legal forms be reviewed -single choice reply-(optional)

Yes, in particular concerning...

Please specify -multiple choices reply-(optional)

Simplification and rationalisation of existing procedures. - Increased uniformity through reduction of cross-references to national legislation.

12. Could optional models such as the EMCA –or similar projects- be a suitable alternative to traditional harmonisation? -single choice reply- (optional)

No.

Please explain -open reply-(optional)

We are of the opinion that taking into account that each Member State has its own national legislation, EU Company law should be developed through harmonisation by means of Directives.

## VI. The particular case of the *societas privata europaea* (SPE) statute

<p><b>13. Should the Commission explore alternative means to support European SMEs engaged in cross-border activities?</b> -single choice reply-(optional)</p>	<p>Yes.</p>
<p>for example: -multiple choices reply-(optional)</p>	<p>The scope of application of the SE Statute could be modified to allow smaller EU companies to benefit from it on the basis of more flexible requirements. - Other.</p>
<p>Please specify -open reply-(optional)</p>	<p>At the same time, the Commission should keep making efforts to reach an agreement on the current SPE statute proposal.</p>

## VII. Cross-border transfer of a company's registered office

<p><b>14. Should the EU act to facilitate the cross-border transfer of a company's registered office?</b> -single choice reply-(optional)</p>	<p>Yes, through some other measure.</p>
<p>Please give further reasons for your opinion -open reply-(optional)</p>	<p>We propose amendment of existing Merger Directive including new chapter concerning transfer of registered office due to the fact that the final result of both regimes is the transfer of a company's registered office. Besides, as existing Merger D provides protection to affected interested groups and such protection shall also be applied in case of transfer of registered office, amending present D means avoiding unnecessary duplication of EU regulation.</p>
<p><b>15. What should be the conditions for a cross-border transfer of registered office?</b> -multiple choices reply-(optional)</p>	<p>A transfer should not be possible if proceedings for winding up, liquidation, insolvency, suspension of payments or similar proceedings have been brought against the company. - Member States should be able to decide whether or not they require the transfer of the company's headquarters or principal place of business together with the transfer of the registered office. - A transfer should be accepted by all Member States even when not accompanied by the transfer of the company's headquarters or principal place of business.</p>
<p><b>16. What should be the consequences of a cross-border transfer of registered office?</b> -multiple choices reply-(optional)</p>	<p>There should be no winding-up of the company in the home Member State. - The company should not lose its legal personality. - The transfer should be tax neutral following the approach of Directive 90/434 applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States. - A transfer should not result in the loss of the pre-existing rights of shareholders, members, creditors and employees of the company.</p>

## VIII Cross-border mergers

**17. Do you support further harmonized rules in the Directive?** -single choice reply-(optional)

Yes.

Please specify which area -multiple choices reply-(optional)

The duration of the review by national authorities of cross-border mergers. - The methods for valuation of assets in cross-border mergers. - The date of the start of the protection period regarding creditors' rights. - The duration of the protection period regarding creditors' rights. - Other.

## IX Cross-border divisions

**18. Do you support introducing regulation regarding cross-border divisions at EU level?** -single choice reply-(optional)

Yes.

**And these harmonised rules should aim at the following :** -multiple choices reply-(optional)

Building rules on cross-border divisions around the framework established in the Directive on cross-border mergers. Please specify why. - Shared liability of the involved companies for claims existing at the time of the division.

Please specify why: -multiple choices reply-(optional)

The framework presents the best structure to deal with this type of cross-border activities.

Should this shared liability be based on the distribution of assets in the division? -single choice reply-(optional)

Yes.

Please specify -open reply-(optional)

It should be based on the previous agreement reached by the companies involved in the cross-border division.

## X. Groups of companies

**19. Do you see a need for EU intervention in this field** -single choice reply-(optional)

No, there is no need for EU intervention.

## XI. Capital regime

**20. In your opinion, should the Second Company Law Directive be reviewed?** -single choice reply-(optional)

No.

Please specify -multiple choices reply-(optional)

Current rules are flexible and leave a significant margin of

manoeuvre to Member States. - Other.

Please specify -open reply-(optional)

We do not agree with the proposal of revision of the 2nd Directive, particularly concerning (a) Abolition of the minimum capital requirement and (b) Replacement of the balance sheet test by a solvency test .

## XII. Additional Comments

**21. Do you wish to upload a document with additional comments?**

Yes.

If you have additional comments you have the possibility to upload these in a separate document here. We kindly ask you to use this option only for comments you haven't already expressed. -single choice reply-(optional)