

Consultation on the future of European Company Law

I. Background information

1. Please indicate your role for the purpose of this consultation: -single choice reply-(optional)	Business federation
2. Please indicate the country where you are located: -single choice reply-(optional)	United Kingdom
3. Please provide your contact information (name, address and email-address) -open reply-(optional)	
Murray Cox Secretary, City of London Law Society Company Law Committee One Bunhill Row London, EC1Y 8YY murray.cox@slaughterandmay.com	
4. Is your organisation registered in the Interest Representative Register ? -single choice reply-(optional)	Yes.

II. Objectives of European company law

5. What should be the objective(s) of EU company law ? -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. - Other.
Please specify -open reply-(optional)	EU company law should respect each member state's right to determine how to balance the differing interests of shareholders, creditors and directors and to structure companies' boards and whether employee involvement is a company law matter.

III. Scope of European company law

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? -single choice reply-(optional)	No, further harmonisation is not needed, the approach should rather be based on:
Please specify -multiple choices reply-(optional)	Soft-law instruments, like Recommendations. - Increased administrative co-operation and exchange of good practices.
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? -single choice reply-(optional)	No opinion.

IV. User-friendly regulatory framework for European company law

<p>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)</p>	<p>No, this is not an idea worth pursuing.</p>
<p>Please specify -open reply-(optional)</p>	

V. EU company legal forms

<p>9. What, if any, is the added value that EU company legal forms bring for European business? -multiple choices reply-(optional)</p>	<p>The European image of those company law forms. - Their European label ("SE", "SCE"). - Their full legal personality. - Workable alternatives to existing national company law forms. - The possibility not to be subject to compulsory national requirements (for example, the SE allow public limited-liability companies to choose between one-tier and two-tier management structure). - The possibility to carry out operations, like cross-border transfer of seat.</p>
<p>10. What, if any, are the main shortcomings of EU legislation introducing EU company legal forms? -multiple choices reply-(optional)</p>	<p>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. - The limitations that derive from unanimity decision-making.</p>
<p>11. Should existing EU company legal forms be reviewed -single choice reply-(optional)</p>	<p>Yes, in particular concerning...</p>
<p>Please specify -multiple choices reply-(optional)</p>	<p>Simplification and rationalisation of existing procedures. - Increased uniformity through reduction of cross-references to national legislation. - Reduction of minimum capital required. - Possibility to have the registered office and the headquarters in two Member States.</p>
<p>12. Could optional models such as the EMCA –or similar projects- be a suitable alternative to traditional harmonisation? -single choice reply-(optional)</p>	<p>Yes.</p>
<p>Please explain -open reply-(optional)</p>	<p>Member states may find EMCA's work helpful when considering a particular point of law. However we do not think EMCA provides a suitable basis for any European Company Law because it has not benefited from the views of business, investors, creditors, legal practitioners and other interested parties.</p>

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

13. Should the Commission explore alternative means to support European SMEs engaged in cross-border activities? -single choice reply-(optional)	Yes.
for example: -multiple choices reply-(optional)	The Commission could prepare a new legislative proposal aimed at promoting EU SMEs through the European labelling of existing national company law instruments that meet a number of pre-defined harmonised requirements. - The 12th Company Law Directive could be reviewed in order to introduce a simplified company charter to facilitate the organisation of groups (i.e. single member private limited-liability companies would be exempted from certain harmonised rules, not indispensable for a single member company). - 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.

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

14. Should the EU act to facilitate the cross-border transfer of a company's registered office? -single choice reply-(optional)	Yes, through a harmonizing Directive.
15. What should be the conditions for a cross-border transfer of registered office? -multiple choices reply-(optional)	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. - 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.
16. What should be the consequences of a cross-border transfer of registered office? -multiple choices reply-(optional)	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.

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 consequences of creditors' rights on the completion of a cross-border merger. - 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 is well known by the relevant stakeholders. - 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) No.

Please specify -open reply-(optional) Companies may want to determine where a particular liability should go. A liability may exist in a particular part of the organisation and should stay there rather than being apportioned based on assets.

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

<p>20. In your opinion, should the Second Company Law Directive be reviewed? -single choice reply-(optional)</p>	<p>Yes.</p>
<p>Please indicate what should be the aim of the review* * Apart from the scope private-public, see question no 7. -multiple choices reply-(optional)</p>	<p>Abolition or change of the minimum capital requirement. - Alternative use of the balance sheet test and of the solvency test. - Other.</p>
<p>Please specify -open reply-(optional)</p>	<p>Any consideration of the solvency test should consider what the approach should be to contingent and prospective liabilities.</p>

XII. Additional Comments

<p>21. Do you wish to upload a document with additional comments?</p> <p>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)</p>	<p>Yes.</p>
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Additional submission to the European Commission's consultation on the future of European company law

Our view is that Question 7 is too simplistic. The question of whether future measures should be based on a distinction between listed and non-listed companies, rather than on the distinction between private and public companies, should depend on the measure in question and should be reviewed on a case by case basis.

Murray Cox
Secretary, City of London Law Society Company Law Committee
One Bunhill Row
London EC1V 7ER

murray.cox@slaughterandmay.com