

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)	Trade Union/Employee body
2. Please indicate the country where you are located: -single choice reply-(optional)	Belgium
3. Please provide your contact information (name, address and email-address) -open reply-(optional)	
European Trade Union Confederation (ETUC) Boulevard du Roi Albert II, 5 1210 Brussels, Belgium Register no. 06698681039-26 Contact: wkowalsk@etuc.org	
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)	Better protect employees. - Other.
Please specify -open reply-(optional)	Worker rights and working conditions in Europe have been eroded by competition between national regulatory regimes, globalization and shareholder value. EU company law should protect the interests of workers and other stakeholders, not just support shareholders and short-termism. EU company law should define high standards encouraging high road, sustainable company strategies. Worker involvement rights in Europe must be implemented and strengthened to realize Social Europe

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)	Yes, both approaches could be combined and further work could target.
Please specify -multiple choices reply-(optional)	The Directives on the disclosure of companies and their branches as well as the validity of their obligations and their nullity. - The Directive on maintenance and alteration of the capital of public limited-liability companies. - The Directives on the merger and divisions of public limited-liability companies. - The Directive on take-over bids. - The Directive on cross-border mergers. - The Directive on certain rights of shareholders of listed companies. -

	Cross-border transfer of registered office. - Groups of companies. - Other.
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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.
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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.
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Please specify -open reply-(optional)	Given that previous initiatives with the goal of simplification or codification of EU legislation have pursued an agenda of reducing worker rights rather than advancing genuine company needs, the ETUC is wary of a similar initiative in the area of EU company law directives. Instead of following an abstract codification agenda, serious discussions between the social partners should take place regarding reforms supporting both the interests of workers and sustainable company strategies
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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"). - Their full legal personality. - Savings in costs of cross-border transactions. - Labour law reasons. - Other.
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Please specify -open reply-(optional)	Research undertaken by the ETUI, SEEurope Network, Hans Böckler Foundation and others highlights that companies have incorporated as SEs or SCEs for a wide range of reasons, which varies from company to company. Positive reasons include a European image/label, savings of unnecessary costs and internationalization of worker representation. Negative reasons include avoiding national worker participation laws and tax "optimization"
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10. What, if any, are the main shortcomings of EU legislation introducing EU company legal forms? -multiple choices reply-(optional)	Other.
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Please specify -open reply-(optional)	For the ETUC, the main shortcomings here are the lack of a consistently high standard for worker involvement, the lack of registration at European level and the lack of transparency of many companies with European legal forms. Hundreds of SEs are shelf or "UFO" companies, for the most part registered in
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	the Czech Republic, on which very little information is available. European legal forms should promote “high road” business practices and Social Europe rather than avoidance strategies
11. Should existing EU company legal forms be reviewed -single choice reply-(optional)	Yes, in particular concerning...
Please specify -multiple choices reply-(optional)	Explicit solution to the issue of shelf companies. - Other.
Please specify -open reply-(optional)	In the recent first stage social partner consultation on the SE, the ETUC took the position that discussions on the revision of the directive should include discussion of the regulation as well. With regard to the SCE, the ETUC has spoken out for a European minimum standard of worker involvement, oriented to the SE directive, and against liberalizing SCE legislation simply for the sake of encouraging more SCE formations
12. Could optional models such as the EMCA –or similar projects- be a suitable alternative to traditional harmonisation? -single choice reply-(optional)	No opinion.

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. - Other.
Please specify -open reply-(optional)	The ETUC has been very concerned about the negative implications of previous proposals on the SPE for worker involvement, taxation and minimum capital requirements. The need for an SPE company form has not been adequately demonstrated from the point of view of a “high road” approach to employment creation and innovation. An alternative could be European labeling of national instruments, which meet minimum requirements for worker involvement, minimum capital and environmental and social reporting

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.
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<p>15. What should be the conditions for a cross-border transfer of registered office? -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. - A transfer should be allowed only if accompanied by the transfer of the company's headquarters or principal place of business.</p>
<p>16. What should be the consequences of a cross-border transfer of registered office? -multiple choices reply-(optional)</p>	<p>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

<p>17. Do you support further harmonized rules in the Directive? -single choice reply-(optional)</p>	<p>Yes.</p>
<p>Please specify which area -multiple choices reply-(optional)</p>	<p>Other.</p>

IX Cross-border divisions

<p>18. Do you support introducing regulation regarding cross-border divisions at EU level? -single choice reply-(optional)</p>	<p>No.</p>
<p>Please specify why -multiple choices reply-(optional)</p>	<p>The division between EU regulation and national legislation does not pose a problem. - Other.</p>
<p>Please specify -open reply-(optional)</p>	<p>The need for legislation in this area has not yet been adequately demonstrated.</p>

X. Groups of companies

<p>19. Do you see a need for EU intervention in this field -single choice reply-(optional)</p>	<p>Yes, there should be an EU intervention.</p>
<p>Please specify -multiple choices reply-(optional)</p>	<p>The EU should require groups to provide information on their structure in a consolidated, investor-friendly and easy-to-read document. - Other.</p>
<p>Please specify -open reply-(optional)</p>	<p>There is a need for greater transparency in the legal and ownership structure and the economic, social and environmental performance of groups of companies in the EU</p>

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>Cumulative use of the balance sheet test and of the solvency test. - Other.</p>
<p>Please specify -open reply-(optional)</p>	<p>The financial and economic crisis, in particular the negative effect on workers of companies that are highly leveraged and/or pressured to make high dividend payouts, demonstrates the need for requiring companies to have adequate levels of capital. Given the varying size of companies, this should be based not only on a minimum absolute level, but also on adequate relative levels/ratios, for example through a solvency test</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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