

STRENGTHENING WORKERS' VOICE IN EU COMPANY LAW

Is it on the Agenda of the EU Company Mobility Package and the REFIT Programme?

2014: EU Commission Proposes Single Member Private Limited Liability Company (SUP)



It was the explicit aim of the Single European Act (SEA) to **foster cross-border economic activities**. This process is not yet completed, and several of the steps designed to implement it have adverse implications for the core institutions that give workers a voice. Going back to 2014, when the EU Commission proposed the SUP, the Single Member Private Limited Liability Company – stakeholders including **trade unions criticized it harshly** and it sparked **controversial debate** in the European Parliament.

2017: Announcement for New Initiative on Company Law

EU Commission initiative aims to facilitate...



Use of **digital tools** to make it easier to **register companies digitally**



Cross-border mergers and **restructuring**, including the **transfer of corporate seats**

Public Consultation to Collect Views and Check for Conflicts

EU Company law upgraded: Rules on digital solutions and efficient cross-border operations

10/05/2017

Deadline: 6 August 2017

Policy Field

Civil and Commercial Justice

Period of consultation

From 10 05 2017 to 06 08 2017 (min 12 weeks)



Trade unions and other stakeholders expressed alarm about the implications of the new package: saying it **creates manifold opportunities for legal and institutional arbitrage** by companies seeking to **maximize short-term profits.**

Package Could Lead to Paradigm Change in Company Law



Stakeholders objections revolve around two sets of concerns:

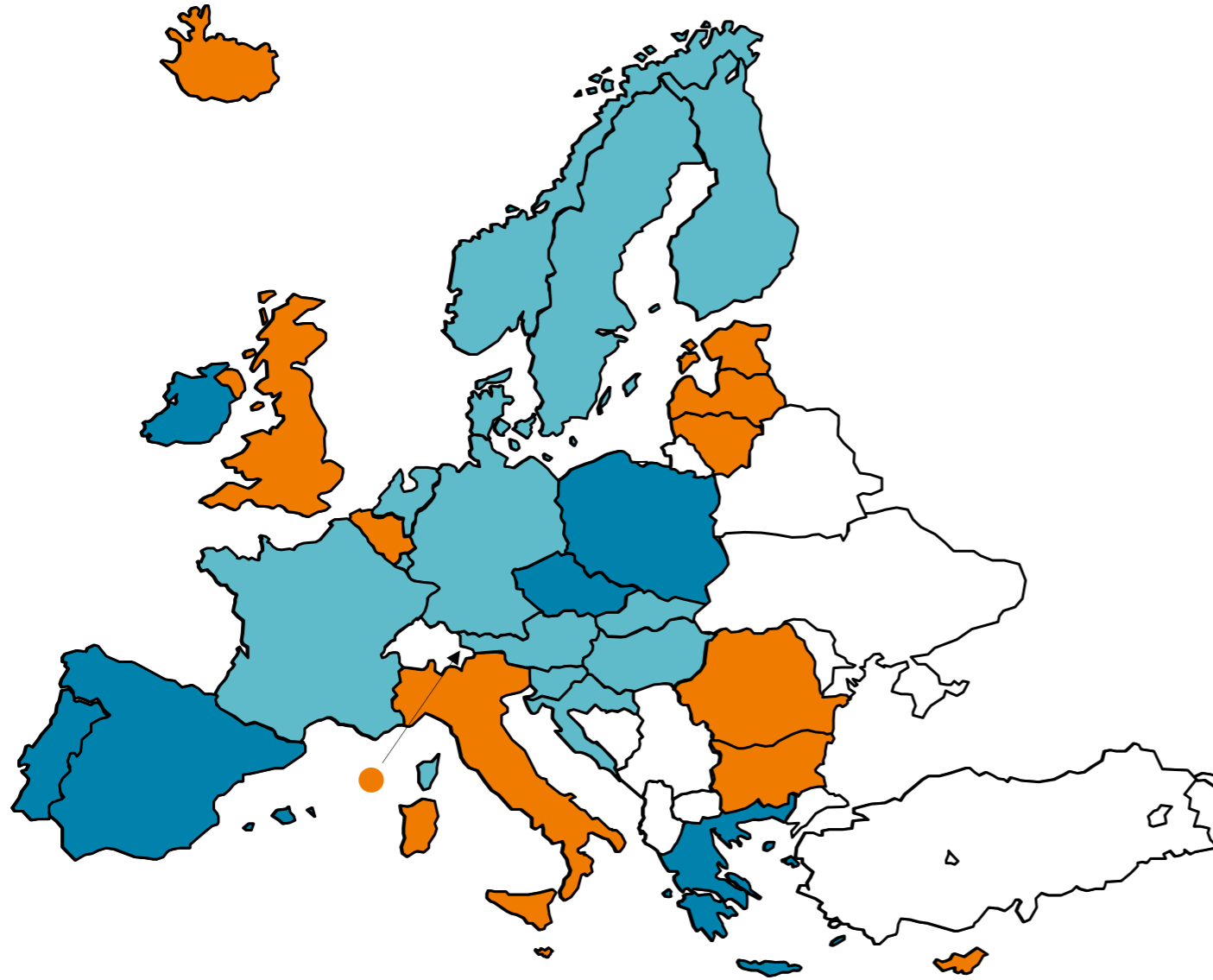
- Multiple potential risks for **worker participation and co-determination**
- Removing established protection for **consumers, minority creditors** and **employees**

Risk 1: Facilitation of Seat Transfers

Directive on cross-border conversions could make it easier for corporations to transfer their seat of business **without substantial economic activity** in the **country of destination** thereby enabling them to **"cherry pick" locations, choosing tax and labor law "havens"** in order to **avoid regulation** including worker participation rules.



Risk 2: Undercutting Numerical Thresholds for Workers' Board Level Representation



Objections have also been raised to the directive on corporate division - on the grounds that it could be **abused by companies seeking to appear "leaner"** in order to undercut numerical thresholds for workers' board level representation.

- Widespread participation rights
- Limited participation rights
- No (or very limited) participation rights

Source: A. Conchon, N. Kluge & M. Stoltz (2015) - European Trade Union Institute

Risk 3: Potential Increase in Letterbox Companies



One of the primary goals of the new initiative has been to foster use of digital tools. There was concern that digital registration without notarial control could open the door to **misrepresentation and evasion, facilitating the creation of letter-box companies for purposes of social dumping**...which would subvert the effects of a prior revision of the posting workers directive.

A first analysis of the new EU Commission company law proposal indicates that this concern has been taken into consideration - at least in part.

Risk 4: Lack of Transparency and Reduced Accountability

Finally, a fourth aspect of the package that has come in for criticism is its proposal to harmonize conflict of law rules. Critics say this could **undermine accountability** by making it **more difficult** to hold **companies incorporated in one member state liable in another** even when their main activity takes place there.

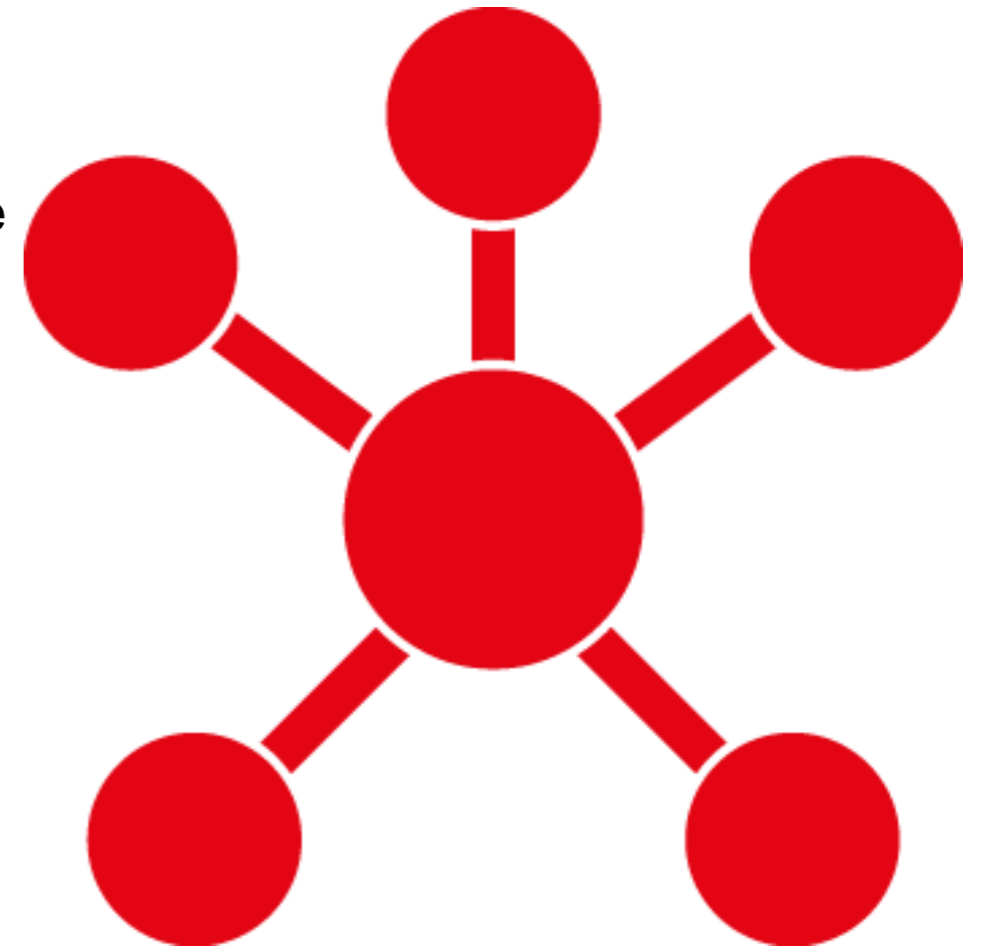


Target Solution: Sustainable Company

In sum, the approach to date reflects ambivalence to widening workers' voice. It is an approach that takes **shareholder value** as the main **standard for corporate governance** and settles on the LEAST common denominator amongst Europe's diverse corporate law traditions when it comes to consultation and participation. But the EU can do better!

Why not consider a true paradigm change, to a new corporate governance standard: the **sustainable company for all?**

Such a standard could make EU company law a catalyst for a more **social Europe** –widening channels for participation and co-determination would **foster socially responsible corporate management** that promotes not only a **fairer distribution of economic gains**, but also **societal stability**.



Finally: Looking Forward to the EP Elections 2019



MUST become a major issue on the future political agenda for Social Europe

Labor remains the **main source for social welfare**. Corporate Governance in the EU company law has a co-responsibility for companies' management to **counter** on-going **social division** in Europe.

Brief remark

This presentation served as an introduction to a panel discussion during the “European Dialogue 2018” by the Hans-Böckler-Stiftung and the European Trade Union Institute. This document was created with the kind support of Dr. Melinda Crane.

On April 25, 2018 the EU-Commission published the "Company law package". For further information please refer to:

http://europa.eu/rapid/press-release_IP-18-3508_en.htm