



BNP PARIBAS

**BNP PARIBAS RESPONSE TO THE EUROPEAN COMMISSION
CONSULTATION ON THE FUTURE OF EUROPEAN COMPANY LAW**

I. Background information

1. Please indicate your role for the purpose of this consultation:

Banking

2. Please indicate the country where you are located:

France

3. Please provide your contact information (name, address and email-address):

BNP PARIBAS
16 boulevard des Italiens
75009 Paris

Contact : Karine Sally – BNPP Group Legal Department – Company law

4. Is your organisation registered in the Interest Representative Register ?

Yes (EC Interest Representative Register ID : 78787381113-69)

II. Objectives of European company law

5. What should be the objective(s) of EU company law ?*

Improve the environment in which European companies operate, and their mobility in the EU.

Other :

The objective of the European company law should be to facilitate the co-operation and the merger of the companies beyond the borders of the Member States, to allow the mobility of the companies by the adoption of a directive on the head office transfer and to rationalize the organization of the groups of companies by preserving the legal security.

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?

Yes, new areas could be explored for further harmonisation, such as...

Please specify :

- ⇒ Cross-border transfer of registered office.
- ⇒ Cross-border divisions.

Other :

A revision of the directive on the mergers for the purpose of integrating the triangular mergers and the partial transfer of assets.

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?

- Yes, for all the legal instruments harmonising EU company law.

Other :

This distinction should not lead to new requirements regarding the listed companies. In addition, this distinction listed/unlisted should concern only the companies whose shares are admitted to trading on a regulated market. The companies whose only bonds are listed should not be included.

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?

- No, this is not an idea worth pursuing.

Please specify :

A codification could appear useful but should not be regarded as a priority. In addition, it is advisable to be vigilant on a possible codifying of the European company law Directives which could succeed with the addition of new requirements; which does not correspond to the objective.

V. EU company legal forms

9. What, if any, is the added value that EU company legal forms bring for European business?

- The European image of those company law forms.
- Ad hoc solution to cross-border related issues.
- 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).

10. What, if any, are the main shortcomings of EU legislation introducing EU company legal forms?

- The complexity linked to frequent cross-references to relevant national legislation.

Other :

The implication of the employees in the SE constitutes a brake with its implementation.

The SE will have interest only if it is included of an attractive tax device.

11. Should existing EU company legal forms be reviewed ?

Yes, in particular concerning...

Please specify :

⇒ Simplification and rationalisation of existing procedures.

⇒ Deletion of cross-border element requirement.

⇒ Possibility to have the registered office and the headquarters in two Member States.

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

No

Please explain :

The implementation of a model act in company law is a principle strongly inspired of the Anglo-Saxon system. This alternative is not the best way of proceed at the European level taking into account the diversity of the laws. However, an alternative solution could be consisted in the use of the model act on precise and occasional points of the company law.

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?

No, further efforts should be made to get an agreement on the current SPE statute proposal.

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?

Yes, through a harmonizing Directive.

Please give further reasons for your opinion:

It is necessary to offer to the companies this tool which must rest on three essential principles: maintenance of the legal entity, decision taken with a majority which cannot be lower than two thirds of the votes cast and fiscal neutrality.

15. What should be the conditions for a cross-border transfer of registered office?

- 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?

- 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.

VIII. Cross-border mergers

17. Do you support further harmonized rules in the Directive?

- Yes

Please specify which area :

- ⇒ Approval of the cross-border merger by the general meeting.
- ⇒ 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.
- ⇒ The consequences of creditors' rights on the completion of a cross-border merger.

Please specify :

The directive could be supplemented by provisions on the partial transfer of assets in order to facilitate cross-border transactions.

IX. Cross-border divisions

18. Do you support introducing regulation regarding cross-border divisions at EU level?

- Yes

And these harmonised rules should aim at the following :

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

Please specify why :

The framework has proven to be sustainable.

Should this shared liability be based on the distribution of assets in the division?

Yes

Please specify :

Under French law, companies which are resulting from the spin-off are joint and several debtors of the bondholders and the nonbond creditors instead of the divided company. Solidarity between the profit companies for the payment of the liabilities of the divided company can be avoided by the spin-off agreement. In this case, an opposition right is given to the creditors of the divided company like with those of the profit companies. This approach could be adopted by the European company law.

X. Groups of companies

19. Do you see a need for EU intervention in this field ?

No, there is no need for EU intervention.

XI. Capital regime

20. In your opinion, should the Second Company Law Directive be reviewed?

Yes

Please indicate what should be the aim of the review*

Clarifying the regime of abstention vote.

XII. Additional Comments

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

Yes

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