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PROPOSALS FOR START-UP FINANCING WITHIN THE EU

WORKSHOP ON COMPANY LAW – MARCH 31ST, 2015

I. Context

Setting up a company within the European Union remains complex in the current legal environment. Though this complexity varies from one member state to another, it nonetheless constitutes an overall obstacle to developing cross-border operations as a result of the time needed and the costs associated with start-up creations that unnecessarily scare entrepreneurs.

This problem is not trivial as it directly impacts job creations within the EU, a key concern in the current macro-economic environment. As an example, in Greece it is estimated that 80% of jobs will come from new firms vs. existing ones. In France, though this percentage much lower (i.e. 22%¹), it highlights this importance

The European Commission wishes to promote start-up creations within the EU as a part of its agenda to fuel growth and innovation and is currently exploring several paths.

As a part of its reflexion, a discussion was organized on March 31st 2015 by Allied for Startups, a non-profit organization², and the EU commission in which different experts and entrepreneurs took part to expose their views on the subject.

Two concrete paths emerged from this workshop. A first path to explore is the creation of a new form of company, *Societas Unius Personae*. A second path is to promote a different form of bankruptcy law more favorable to entrepreneurs as a part of a will to develop a more entrepreneur friendly set of mind.

¹ Source : France Digitale

² Allied for Startups brings together startups & representatives to improve the start-up environment and overcome the many hurdles faced by startups.

II. Speakers' interventions

1) Expert testimonies

Melissa Blaustein (Founder of Allied for Startups)

Spreading across borders is difficult within the current European landscape. Each country has a different number of procedures.

In addition, start-up creation is made difficult by the time and costs associated with this process. It is estimated that it takes 12 days in average in Europe to start a company, with significant differences across countries.

It's important that the voice of startups is heard by MEPs.

Bartłomiej Kurcz (Head of Company law section, DG Just)

The problem in company law is having a Europe wide company form. Setting up the European company took 30 years and only concerns a small number of large companies as of today.

Also, the "European private company" failed because there was no legal basis that allowed for its creation. It would have required the unanimity procedure which appears to be complex. The idea was withdrawn after 9 years because it did not get through.

In this context, the European Commission intends to try another path, SUP (*Societas Unius Personae*) – a single member company, to be able to pass the project via a qualified majority. SUP provides companies with a simplified legal frame (online registration, articles of association, etc.). The Commission is fully aware of the limits associated with this sole-person company, but presents the initiative as a pragmatic first step.

Resistance towards SUP is strong. First, lobbies (amongst which the ones representing notaries) are involved heavily to keep the status quo and kill the SUP initiative. They warn about the uncertainty of registering a business online, and also complain about the fact that SUP will not help creating jobs, because all are single member companies. Also, unions say that SUP favors forced labor. The counterargument for the last comes from the fact that those people will be unemployed otherwise.

The commission argues that already sixteen Member States have online registration processes, but others are really lagging behind. Online is as safe or maybe more than normal procedures and more precise.

Though it appears that some actors are not prepared to face the online process of company registration thus fostering strong resistance, the simplified legal frame offered by the SUP appears as a new path to boost company set-ups within the EU. As such, it should be given a chance and supported by the start-up ecosystem.

Nils-Erik Jansson (President of Young Entrepreneurs of Sweden, Author of Swedish Startup Manifesto, and Lawyer and Partner at Jansson and Norin)

Set-up costs in the EU are too strong with significant legal fees involved even for non-complex creations.

Alternatives exist in some cases. In Verksam.se, the one-stop shop portal for companies, it takes 15 min. to create a company.

Maybe it is a bad idea to leave it to the MS to create the platform to register a company, instead of leaving the task to the private sector.

If the EU Commission were to move forward with the SUP directive, it should spend a lot of effort marketing the SUP to get it legitimate and trustworthy. It's essential to make SUP a brand. A path would be to leave marketing efforts to the private sector.

It's also crucial having online registration of companies and an EU wide platform as a single point of contact. We also need a uniform electronic ID. To allow for this, security should be a priority.

Jan Kallmorgen (Entrepreneur, Investor and partner at Bohem and Kallmorgen Public Affairs)

Boosting start-up creations within the EU is heavily dependent on factors such as access to capital, talent and taxes.

Access to capital and talent are crucial at all stage of a company's development. Developing tax systems that give incentives to start-ups is also a key.

However, we also need to change our mentality to embrace failure, and to have an entrepreneurial spirit.

As of today, too many potential entrepreneurs are scared and do not go forward with their ideas. In Germany for example, 72% of Germans don't want to start a company, 82% of them see it very difficult. Only 18% of Germans consider starting a company.

In Germany, there's a bankrupt stigma, an informal black listing of entrepreneurs that fail. It takes 6 years to disappear from bankruptcy files. For example, to access a CEO position, having no failure record is crucial. Far from

Insolvency law is thus a roadblock; there should be tax incentives for VCs; startup financing programmes with bank associations must be explored; the public should be educated on why failure is a good experience.

Robin Wauters (Co-founder and editor-in-chief Tech.eu)

Concerns about the SUP are not founded.

First, critics about uncertainty in online registration are not really valid – this is done in a lot of member states, like Estonia.

Second, regarding forced labour, SUP up to some extent could be misused to avoid paying for social security. This is yet to prove.

Karen Boers (Startups.Be Founder)

In the B to C business, major platforms such as Uber or AirBnB help users deal with different legislations.

Use of such platforms should be experimented when it comes to start-up creations. They could take the burden of dealing with different regions/countries regulations in the backend, so users don't see the friction on the frontend.

Raphaelle d'Ornano (Attorney and expert on Company Law and Insolvency Law, Member of Rules for Growth)

Two actions should be implemented to help startup development within the EU.

1. - Encourage the creation of SUP

Cross-border investment within the EU is complex as a result of a lack of visibility for investors in company structures from a legal standpoint. It appears necessary to simplify not only the creation of new businesses but to make it easy for cross-border investments to flow from investors in one country to companies in another.

The current directive on the creation of a new type of corporation — the SUP (*Societas Unius Personae*) that has unified requirements across the EU and can be created by anyone with a short time frame should be encouraged.

A next step would be to create a European LLC.

2. - Better treatment of individual bankruptcy

Fear of personal bankruptcy on behalf of many entrepreneurs restricts innovation and creation.

A modernized system of personal bankruptcy should allow, at first, to cancel the debts of the entrepreneur in return of the total liquidation of its assets in both professional and personal fields in benefit of its creditors. Parallel to this liquidation, it appears necessary to implement a safety net that would guarantee a minimum capital for the entrepreneur in order for him to bounce back in case of bankruptcy.

Efficient insolvency rules also improve access to credit, which encourages investment. Creditors are more likely to lend when they are confident that they will be able to collect their loans. It appears necessary to consider a reform of law of security interests with a more frequent use of collaterals (vs. personal guarantees) in order to ensure protection of creditor rights. Such a reform would imply a change in perspective on behalf of banks.

2) Startup Case Studies

The workshop also focused on hearing testimonies from entrepreneurs to analyze the hurdles encountered in developing cross-border activity within the EU. Complex and time and money consuming procedures constitute an obstacle to developing start-ups within the EU.

Nikoloas Maniatis (Founder and Manager Director, Museotechniki)

Regarding the setup of SUPs in every country, there are difficulties on getting a similar name for the company in each country, and dealing with different regulation.

Bert Catoor (Founder and CEO, Kianos)

It's difficult to deal with data privacy regulation, because it differs from country to country.

Marjolaine Grondin (CoFounder and CEO, JAM)

Setting-up a company within the EU raises two issues: the lack of a unified market from a consumer perspective and the costs associated with cross-border operations.

Europe doesn't have a unified market. There are no incentives to grow across borders in the EU, comparing to go to one market of 300 M people (US).

Faced with important set-up costs, companies face the dilemma of bidding for contracts involving presence in different member states with upfront costs not systematically covered by future revenue.

Bram Lerouge (General Manager, Doccle)

It's better to go for a very simple step, such as SUP, than going for a big approach.

Valerie Mocker (Senior Researcher Startups & Entrepreneurship, NESTA UK)

To build more scaleups, first we need to have more startups.

The number of procedures and the days that it takes to create a company varies from country to country. In Germany it is as complex as in Zimbabwe or the West Bank. This situation is absurd.

It's crucial to open corporate data. Strong differences yet exist with some countries in the EU being very open, while others not.

III. Next steps

The European commission is aware that changes are needed within the startup environment to foster innovation and job creation.

A first concrete move is to go forward with the implementation of the SUP directive. Though this directive will not foster revolutionary changes, at least in the near term, it is a first step in harmonizing the EU legal environment and thus in reducing complexity that impedes startup creations. One has to keep in mind that this process will be long and iterative, but clearly a first step is needed.

Second, it appears necessary to allow best practices to stem from concrete cases and to develop actions based on real life situations. For this ensuring an effective communication between startup communities and European decision makers.

In this process, it is clear that startup communities like startup.be and organizations such as Allied for startups can use the viral pull from the market to help Europa and member states implement pragmatic measures that will directly help entrepreneurs in their will to develop startups in the EU.