



## Response to the Commission's plan for a 28th company regime for Innovative Companies - Defending workers and labour law

Adopted at the Executive Committee meeting of 04-05 March 2025

The Draghi report on 'The future of European competitiveness' proposed the creation of a new EU-wide legal status for innovative companies. Commission President Ursula von der Leyen echoed this proposal in her political guidelines for the European Commission 2024-2029 and in her mission letter to Commissioner Michael McGrath, announcing that she would present a proposal in the near future. Although it is not yet clear what exactly the Commission will propose, statements by von der Leyen suggest that this new pan-European legal entity is likely to encompass several areas of law, including company law, enforcement law, insolvency law, financial market law, tax law and labour law.

The ETUC is highly critical of this announcement of specific, fully harmonised rules for a new European legal entity. Any potential legislative proposal must therefore be examined very carefully in terms of its potential to lead to downward convergence and to open up new possibilities for companies to circumvent important national legislation, particularly in the areas of workers and trade union rights, including the right to strike, taxation and employment and social security. **The ETUC strongly rejects the announced inclusion of labour law provisions that would undermine workers' protection, the EU social acquis Communautaire, national labour law and collective agreements, with the risk to circumvent national law and the autonomy of social partners autonomy in a 28<sup>th</sup> regime.** The EU's last attempt to introduce a single harmonised set of employment rules was met with an outcry and actively opposed by workers across the EU. The so-called Bolkenstein Directive was based on the unacceptable principle that employers could apply the 'country of origin' principle, creating the risk of forum shopping and social dumping, undermining national industrial relations systems and threatening the ability of trade unions to negotiate or take collective action to win or secure better conditions. In fact, the same negative consequences arising from the 'country of origin' principle can result from a harmonised labour law which is only applicable to a specific European legal company form. **The ETUC condemns any initiative that would go down this road and calls the Commission to not repeat the mistakes of the past.**



The ETUC is generally in favour of proposals that contribute to deeper EU integration, provided that those proposals respect and strengthen workers' rights and opportunities. European company law instruments can streamline obligations to simplify and harmonise processes and stakeholder protection. To achieve this, company law must however ensure robust corporate governance checks and balances in order to secure sustainable long-term value creation, stronger workers' rights, public welfare and upwards social cohesion. The ETUC therefore strongly believes that **models of corporate governance which motivate capital and labour to agree on key elements of a company's policy and management will enable companies to perform better** in the long run, ensure stability and secure a focus on long-term objectives which are socially and economically sustainable.

Unfortunately, the experience until now has been far from reassuring. For example, the Statute for a European Company (*Societas Europaea*, SE) which was introduced in 2004<sup>1</sup> was initially welcomed by the ETUC, in particular because of the accompanying legislation on workers' information, consultation and employee board-level representation. However, 20 years of practice has proven alarming and disappointing. Rather than contributing to a Europeanisation of industrial relations to keep pace with deepening economic integration, the SE, in conjunction with the 2019 Company Law Package, has increasingly been subverted into an instrument to avoid and circumvent workers' participation.

Corporate groups, who account for most of all cross-border company transactions, are using existing EU company law forms to minimize or circumvent workers' rights, for example by using inter alia shelf-SEs (3200 of 4753 registered SEs, 68 %). In SEs, the level of co-determination is set at the time of formation and does not adapt as the workforce expands. In the case of shelf-SEs, this could freeze the absence of worker participation going forward in order to ensure that after activation of such companies, no workers' rights can be enjoyed that would normally be applicable under national laws due to the absence of a flexible regime (i.e. escalator principle).<sup>2</sup>

After the SE, the Commission launched two unsuccessful attempts to create new European company forms with its proposals for a European Private Company (*Societas Privata Europaea*, SPE) and for a single-member private company (*Societas Unius Personae*, SUP). The ETUC criticised both proposals strongly, stressing in particular that greater flexibility for companies, in particular SMEs, must not be at the expense of workers' rights.<sup>3</sup> The SPE proposal lacked any requirements concerning proper workers' information, consultation and participation and the SUP proposal raised even more concerns about tax avoidance, workers' rights and sustainable corporate governance in general. If it had been adopted, it would have been an open invitation to companies to evade their responsibilities under national law. This new proposal for a European company form to be made available to “innovative” companies while being subject to

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<sup>1</sup> Council Regulation (EC) No 2157/2001 on the Statute for a European company (SE) & Council Directive 2001/86/EC supplementing the Statute for a European company with regard to the involvement of employees

<sup>2</sup> T. Biermeyer, and M. Meyer-Erdmann, Cross-Border Corporate Mobility in the EU: Empirical Findings 2023 (December 20, 2024)

<sup>3</sup> ETUC Statement to the proposal for a European Private Company (SPE) & ETUC position on single-member private limited liability companies



lower legal obligations raises all these concerns and more. Given these experiences and given the new European political context of massive simplification and deregulation, it seems highly unlikely that the Commission proposal will deliver for in full compliance with workers' rights. On the contrary, there are renewed risks that the Commission will table another tool for companies to circumvent national regulation.

Therefore, **the ETUC calls on the Commission, before proposing any new company form, to fix the well-identified and evidenced problems arising from the current legislation.** It is essential that the Commission presents the results of the evaluation of the Directive on cross-border conversions, mergers and divisions, scheduled for January 2027. In addition, the European Commission should, in the meantime, in accordance with Article 4(1) of this Directive and following the call of the European Parliament, start work on a harmonised and strengthened framework for board-level employee representation and enhanced information and consultation provisions for companies using European Company Law in order to address the evident misused of EU law to circumvent national worker participation rights. Furthermore, a detailed assessment of the Directive on the use of digital tools in company law<sup>4</sup> must be carried out. In particular, it must be carefully examined, in cooperation with the relevant national enforcement authorities, whether the new online procedures and the simplification provisions are in fact hampering proper anti-abuse controls and deprive workers and their representatives of the crucial information business should deliver.

Clearly, any new company law initiative must fully safeguard workers and trade union rights at European and national level, and contain strong provisions on worker involvement which not only strengthen workers' information, consultation and participation rights under company law in accordance with employment law, but which also provides for dynamic safeguards to take future company size and structure into account.<sup>5</sup> In earlier positions, the ETUC advocated setting the rules for worker participation in SEs as the minimum benchmark for European legal forms. However, these provisions are increasingly proving to be not respected nor sanctioned in case of non-compliance by businesses. The recent ECJ's Olympus judgment<sup>6</sup> is only the latest example of European company law being misappropriated in order to actively circumvent national workers' participation rights, not only in relation to the supervisory board, but also with respect to the SE and the European Works Council. This underlines once more the shortcomings and the legal abuse of the SE Directive to avoid workers' involvement. **The ETUC therefore calls for an urgent revision of the SE Directive and for an EU Framework on Information, Consultation and Participation** for European company forms and for companies making use of EU company law instruments enabling company mobility.

To prevent further abuse, **more systematic European-level controls must be resourced and defined.** For example, rather than disappearing into fragmented national

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<sup>4</sup> Directive (EU) 2019/1151 amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law

<sup>5</sup> [ETUC Position on a new EU framework on information, consultation and board-level representation for European company forms and for companies making use of EU company law instruments enabling company mobility](#)

<sup>6</sup> [European Court of Justice, judgement Konzernbetriebsrat vs. Olympus Holding SE \(C-706/22\)](#)



company registries, the use of European company forms and cross-border legal restructuring must be registered in an official European company register controlled by a European supervisor with enforcement powers. The European Labour Authority (ELA) should cooperate with this supervisor and be given powers of control, sanction and intervention in the event of disregard for workers' information, consultation and participation rights in European company forms or if a company makes use of European company mobility law. Any ELA measure must be accompanied with the involvement of Member States and social partners, fully respecting national trade union roles, autonomy and prerogatives. In order to prevent tax and social security fraud, by letter-box companies in particular, the administrative and corporate headquarters must be identical and must have a direct link with the main place of business (the "real seat principle").

A 28<sup>th</sup> regime for a legal form of European company carries a number of risks for existing workers' rights, especially if other policy areas for these companies are to be harmonised at the same time. The ETUC considers that the Commission should abandon this project in order to address the problems described above as a matter of priority. The ETUC also reiterates its call for a Social Progress Protocol as a basic condition for further EU integration.