# EUROPEAN UNION'S PROPOSAL FOR A DIRECTIVE ON SINGLE-MEMBER PRIVATE LLCS AND SHARE CAPITAL: ONE OBSTACLE DOWN OR CREDITOR FRAUD WAITING TO HAPPEN?

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## I. INTRODUCTION

On September 4, 2014, the European Commission proposed the *Directive of the European Parliament and of the Council on single-member private limited liability companies* (hereinafter, the "2014 Directive").[1] The purpose of the 2014 Directive is to facilitate investments across Member States. To achieve this purpose, Member States shall adopt a uniform legal entity known as, *Societas Unius Personae* (hereinafter, "SUP"), which is basically a single-member liability company (hereinafter, "single-member LLC"). However, the nature and extent of regulations in the European Union regarding single-member LLCs have caused controversy among Member States. Consequently, scholars, interest groups, and professionals have seriously criticized and

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[1] *See Commission Proposal for a Directive of the European Parliament and of the Council on Single-Member Private Limited Liability Companies*, COM (2014) 212 final (Apr. 9, 2014), *available at* http://eur-lex.europa.eu/resource.html?uri=cellar:100dbdec-c08b-11e3-86f9-01aa75ed71a1.0002.01/DOC_1&format=PDF.

analyzed the 2014 Directive. Although many agree with numerous parts of the 2014 Directive, others have expressed grave concerns. Accordingly, this article, examines certain thoroughly studied issues of the 2014 Directive. Specifically, we will focus on the minimum share capital requirements provided by the 2014 Directive. Therefore, we will review the comments made regarding this requirement and discussing the positive and negative aspects discussed by a diverse array of professionals. In addition, we will examine the minimum capital requirements in other jurisdictions such as the United States, China, and Japan to establish how minimal capital requirements pose negligible risks to creditors. Finally, we will demonstrate how the purpose of minimum capital requirements is outdated.

## II. CONTEXT AND BACKGROUND

Single-member limited liability companies (hereinafter, "single-member LLCs") are not new to the European Union. In fact, single-member LLCs have been subject to intense debate for over twenty years. Since 1989, the European Union has had a directive (hereinafter, the "1989 Directive") regarding single-member LLCs that provided for limited regulation.[3] In this sense, the 1989 Directive only aimed at harmonizing national law, by requiring Member States to allow limited liability companies to have a sole member.[4] The 1989 Directive did not regulate technical or controversial issues regarding single-member LLCs. As a result, there was diverse regulations regarding single-member LLCs throughout the European Union.

Regulation of single-member LLCs was still a topic of deep interest for the European Union, and further regulation of these entities was not out of their scope. Consequently, in 2008 the European Commission proposed a regulation regarding the establishment of a statute for a European private company, or as the proposal called it, *Societas Privata Europaea* (hereinafter, "SPE").[5] "). The SPE proposal was designed to help small and medium-sized enterprises (hereinafter, "SMEs") establish throughout the European Union.[6] Nonetheless, the SPE proposal failed at being adopted.[7] According to Pierre-Henri Conac, a Professor of Commercial and Corporate Law at the University of Luxembourg, this proposal failed due to opposition of many important Member States, such as the United Kingdom.[8] In short, the author suggests that the failure of the SPE was mainly caused as a result of the rejection by Member States of a corporate entity form created by the European Corporate Act.[9] It is to say, a corporate form at a European Union level. However, this intent of establishing a corporate regulation or directive at a European Union level responds to the doctrine of *freedom of establishment*.

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[3] Twelfth Council Company Law Directive of 21 December 1989 on single-member private limited-liability companies 89/667/EEC, 1989 O.J. (L 395) 40.
[4] *Proposal for a Directive on Single-Member Private Limited Liability Companies*, PRICEWATERHOUSECOOPERS LEGAL (June 2014), A Legal Update from PwC's Legal Services, *available at* https://www.pwclegal.co.uk/pdf/directive-on-single-member-plc.pdf.
[5] *See Commission Proposal for a Council Regulation on the Statute for a European private company*, COM (2008) 396 final (Jun. 25, 2008), *available at* http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008PC0396&qid=1491328105299&from=EN (last visited Apr. 4, 2017).
[6] *Id.*
[7] *See Proposal for a Directive on Single-member Private Limited Liability Companies* , PRICEWATERHOUSECOOPERS LEGAL (June 2014), A Legal Update from PwC's Legal Services, *available at* http://www.pwclegal.co.uk/pdf/directive-on-single-member-plc.pdf.
[8] Pierre-Henri Conac, *The Societas Unius Personae (SUP): A "Passport" for Job Creation and Growth*, 12 EUR. COMPANY & FIN L. REV. 139, 141 (2015).
[9] *Id.* at 141–42.

### A. Freedom of Establishment

Pursuant to Article forty-nine of the Treaty on the Functioning of the European Union:

> [R]estrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.[10]

As we can appreciate, the Article mainly aims at prohibiting discrimination by Member States of citizens from another Member State. In other words, it is primarily focused on facilitating transfer of citizens between Member States. In this manner, if a citizen from Member State A wishes to invest and establish a subsidiary in Member State B, no restrictions or obstacle can be place by Member State B that hinders this investment. Accordingly, the European Court of Justice has faced a considerable amount of cases alleging discrimination by Member States on basis of nationality. Said Court, in the case of *Reinhard Gebhard v. Consiglio dell'Ordine degli Avvocati e Procuratori di Milano,* formulated a four tier test for the review of alleged discriminatory measures adopted by Member States.[11] This test consisted of evaluating if the measure: (1) was applied in a non-discriminatory way, (2) was justified by imperative requirements in the general interest, (3) had a rational relation with the end sought, and (4) does not go beyond what is necessary in order to achieve the goal pursued by the Member State.[12] It is apparent that the European Court of Justice established an intermediate scrutiny for evaluating alleged discrimination by Member States. It is important to note that this anti-discrimination rule was established before the adoption and ratification of the Treaty on the Functioning of the European Union. In this sense, Christoph Allmendinger explains that the antidiscrimination rule set out by the Treaty on the Functioning of the European Union, was already established in article fifty-two of the Treaty of Rome almost fifty years earlier.[13]

When facing cases regarding article fifty-two of the Treaty of Rome, the European Court of Justice has consistently given a broad meaning to the term "freedom of establishment".[14] For example, in *Ordre des Avocats au Barreau de Paris v. Onno Klopp,* Advocate General Sir Gordon Slynn stated that prohibiting an attorney from establishing himself in more than one place violated the freedom of establishment, which the Court determined was a fundamental right.[15] Moreover, in *Dieter Kraus v. Land Baden-Württemberg*, the European Court of Justice reiterated that the freedom of establishment was a fundamental right and no national measure could impair this right.[16] In this context, it is imperative to analyze the case *Centros Ltd. v. Erhversus-og Selskabsstyrelsen.*[17] The shareholders of Centros, a Danish couple, listed their main office address in United Kingdom. However, when they tried to establish a branch in Denmark, the Trade and Companies Board of Denmark (hereinafter, "Board") refused. The Board alleged that the

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[10] Consolidated Version of the Treaty on the Functioning of the European Union art. 49, May 9, 2008, 2008 O.J. (C 115) 47 (emphasis added).
[11] Case C-55/94, Reinhard Gebhard v. Consiglio dell'Ordine degli Avvocati e Procuratori di Milano, 1995 E.C.R. I-4165.
[12] *Id.* at ¶ 37 (Judgment of the Court).
[13] Christoph Allmendinger, *Company Law in the European Union and the United States: A Comparative Analysis of the Impact of the EU Freedoms of Establishment and Capital and the U.S. Interstate Commerce Clause*, 4 WM. & MARY. BUS. L. REV. 67, 75–76 (2013).
[14] *Id.*
[15] Case C-107/83, Opinion of AG Slynn in Ordre des Avocats au Barreau de Paris v. Onno Klopp 1984 E.C.R. 2971, 2992.
[16] Case C-19/92, Dieter Kraus v. Land Baden-Württemberg, 1993 E.C.R. I-1663, ¶ 32.
[17] Case C-212/97, Centros Ltd. v. Erhversus-og Selkabssyrelsen, 1999 E.C.R. I-1459.

shareholders were trying to evade meeting minimum capital requirements pursuant to the Law of Denmark.[18] Considering this, the United Kingdom, where Centros was listed, did not have a minimum capital requirement, contrary to Denmark where there was a minimum capital requirement of no less than 200,000 DKK. For sustaining this, the Board argued that Centros had never engaged in a business in the United Kingdom.[19] On the other hand, Centros challenged the determination of the Board. After various appeals and procedural issues, the case arrived before the European Court of Justice. In this proceedings, Centros sustained that it met the requirements "imposed by the [Law of Denmark] on private limited liability companies relating to the registration of a branch of a foreign company."[20] Also, it sustained that it had the right to establish pursuant to Article fifty-two, fifty-eight of the Treaty of Rome.[21] When solving this suit, the European Court of Justice stipulated that the right of free establishment, as stipulated in the Treaty of Rome, "includes the right for [persons] to take up and pursue activities as self-employed persons and to set up and manage undertakings under the same conditions as are laid down by the law of the Member State of establishment for its own nationals."[22] More importantly, the Court established that the Treaty of Rome requires Member States to treat persons of other Member States "in the same way as natural persons who are nationals of Member States."[23] Furthermore, when solving this case, the European Court of Justice determined that the requirement made by Denmark was "an obstacle to the exercise of the freedoms guaranteed by those provisions."[24] When evaluating the claims by Denmark, the Court determined that, although fraudulent conduct may be incurred by persons who do not meet minimum capital requirements, this should be determined by courts on a case by case basis.[25] It is important to take note the opinion submitted by the Advocate General, Antonio Mario La Pergola.[26] In said opinion, La Pergola argues that the right of establishment contains "the right to set up and manage undertakings under the conditions laid down for its own nationals by the law of the host country and the setting up of agencies, branches or subsidiaries by Community nationals having their principal establishment in the territory of another Member State."[27] In other words, it is clear that the European Court of Justice concurred with the opinion of the Advocate General. By following the opinion of La Pergola, the Court determined that the right of establishment entails a right to invest across borders, without foreign national laws serving as obstacles for this investment.

In short, we can see how the relevant case law and the Treaty on the Functioning of the European Union are reluctant to accept any discrimination among Member States. Thus, the freedom of establishment set out on said treaty serves as one of the issues addressed by the 2014 Directive.

### B. The *2014 Directive*: A Fresh Start

The 2014 Directive is the European Commission's third and latest attempt at regulating single-member LLCs throughout all Member States. Unlike the fate of the SPE proposal, Jesper Lau Hansen suggests that the 2014 Directive has greater possibilities of being adopted, as it only

[18] *Id.* at ¶ 12.
[19] *Id.* at ¶ 7.
[20] *Id.* at ¶ 10.
[21] *Id.*
[22] Case C-212/97, Centros Ltd. v. Erhversus-og Selkabssyrelsen, 1999 E.C.R. I-1459, ¶ 19.
[23] *Id.*
[24] *Id.* at ¶ 22.
[25] *Id.* at ¶ 25.
[26] *Id.* at I-1461 (Opinion of AG La Pergola).
[27] *Id.* ¶ 12 (Opinion of AG La Pergola).

requires Member States to adjust national law accordingly.[29] In contrast, some suggest the SPE proposal failed, in part, since it aimed at establishing a new company form under Europe's Company Law, which required a unanimous vote from Member States; a figure many Member States were not comfortable with.[30] In other words, the 2014 Directive does not impose a new company figure onto the Member States. It is to say, it does not create a European Union level regulation. Instead, it opts at harmonizing national laws in order to have identical legal requirements.[31] This effort could have been done in coordination between Member States, but the European Commission clarified that this would be highly unlikely. Therefore, intervention at a European Union level was needed.[32] In this sense, it has been noted that the European Commission does not want the 2014 Directive to have the same fate as that of 2008 Directive.[33]

### C. SME, Economic Development, and the SUP

The 2014 Directive arose in a specific context and preoccupation of the European Union. In 2008, over ninety-nine percent of the companies established in the European Union consisted of SMEs.[34] Of these, only eight percent established business in other Member States, and five percent had subsidiaries abroad.[35] Six years later, these estimates do not seem to have changed much. The 2014 Directive states that because of the costs and difficulties that represent doing business across borders, only a small number of SMEs undertake this type of investment.[36] When doing business across borders, SMEs face a variety of obstacles and challenges. Specifically, customers and business partners do not trust foreign SMEs, and there is diversity of national legislations.[37] Furthermore, SMEs "have an essential role to play in strengthening the EU economy."[38] In this sense, SME's generate fifty-eight percent of the European Union's gross domestic product and sixty-seven percent of the private sector.[39] It is for the aforesaid reason that the 2014 Directive proposes to:

> [F]acilitate cross-border activities of companies, by asking Member States to provide in their legal systems for a national company law form that would follow the same rules in all Member States and would have an EU-wide . . . . It would be formed and operate in compliance with the [harmonized] rules in all Member States which should diminish set-up and operational costs. In particular, the costs could be reduced by the [harmonized] registration procedure, a possibility of on-line registration with a uniform template of articles of association and a low [share] capital required for the set-up. The creditors would be protected by the obligation imposed on the SUP enable require that an SUP's

[29] Jesper Lau Hansen, *The SUP Proposal: Registration and Capital (Articles 13–17)*, 12 EUR. COMPANY & FIN L. REV. 177, 177 (2015).
[30] *Id.*
[31] *See Commission Proposal for a Directive of the European Parliament and of the Council on Single-Member Private Limited Liability Companies*, COM (2014) 212 final (Apr. 9, 2014) at 5–6.
[32] *Id.*
[33] Audrey Kravets, *Discussion Report: The Proposal for a Directive on the Single-Member Private Limited Liability Company*, 12 EUR. COMPANY & FIN L. REV. 125, 125 (2015).
[34] *See Commission Proposal for a Council Regulation on the Statute for a European private company,* COM (2008) 396 final (Jun. 25, 2008) at 2.
[35] *Id.*
[36] *See Commission Proposal for a Directive of the European Parliament and of the Council on Single-Member Private Limited Liability Companies*, COM (2014) 212 final (Apr. 9, 2014) at 2.
[37] *Id.*
[38] *Id.*
[39] *Directive on single-member private limited liability companies*, MODEL EUROPEAN UNION ZAGREB, http://meuz.eu/single-member-company-directive/ (last visited Aug. 5, 2017).

registered office and its central administration be necessarily located in the same Member State.[40]

Correspondingly, the 2014 Directive creates what it denominates as the SUP. The SUP serves as an integral part of the 2014 Directive. In fact, the SUP has been stated to be "*an opportunity for change and modernization*."[41] In this sense, the SUP has been praised due to its objective of facilitating business,[42] which influences employment and investments abroad.[43]

The aforementioned context provides a historical recount on to how and why the 2014 Directive is being proposed. Accordingly, we established how the European Union has, throughout the last thirty years, tried to create the ideal vehicle for investment abroad. Likewise, by taking into consideration that SME's are the economic motor that mainly drive the European Union's economy, the European Commission has taken a different approach in order to get the proposal adopted by the Member States. Hence, we understand the European Commission has determined that SUP serves as the ideal vehicle for SMEs to invest transnationally. Lastly, it is clear that this directive serves as a means for enforcing the right of *freedom of establishment* codified in the Treaty on the Functioning of the European Union. For this reason, some have seen how the SUP represents a *passport* for easy and fast establishment across all Member States.[44] Regarding this idea, Pierre-Henri Conac in his article, *The Societas Unius Personae (SUP): A "Passport" for Job Creation and Growth*, mantains that this directive proposal "is designed to facilitate the establishment of single-member companies under the form of an SUP (1) and also the functioning of those companies (2)."[45] In other words, the author suggests SUPs are intended to serve as a key vehicle for facilitating SME to invest across Member States.[46]

Despite the apparent sound and efficient mission, this proposal has been subject to extended criticism on key points. For example, some have criticized the form of registration, given that it is on-line.[47] This concern arises from the apprehension for the authenticity and safety of the process.[48] More importantly, others have expressed worries about the low capital requirement. This will be examined in the next section.

## III. Capital Requirements, Creditors, and the 2014 Directive

Throughout this part, we will focus on the comparison between the minimum capital requirements made by other Member States with those proposed in the 2014 Directive. Initially, we will examine how low capital requirements serve as a key element for the success of SUPs, without increasing the risk to creditors. Finally, we will establish what other tools can be used to safeguard creditor's interests. Given that other, more efficient tools can be employed, there is consensus that the concept of share capital is obsolete.

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[40] *Commission Proposal for a Directive of the European Parliament and of the Council on Single-Member Private Limited Liability Companies*, COM (2014) 212 final (Apr. 9, 2014) at 3.
[41] Kravets, *supra* note 32, at 125 (emphasis added).
[42] *Id.* at 126.
[43] *Id.*
[44] Conac, *supra* note 7.
[45] *Id.* at 144.
[46] *Id.* at 144–45.
[47] Lau Hansen, *supra* note 28, at 179.
[48] *Id.*

### A. Preliminary Comments

The 2014 Directive states that the minimum capital requirement shall be at least one euro, or one unit of national currency in a Member State that does not use the euro.[49] This is not the first time that the European Union has examined a low capital requirement. In fact, the 2008 SPE proposal also set minimum capital requirement of one euro.[50]

Now, how has the European community reacted to this requirement? First, the European Trade Union Confederation (hereinafter, "ETUC") reacted skeptically to the 2014 Directive overall.[51] Specifically, they condoned the way the European Commission established the minimum capital requirement: unilaterally, thus, undemocratic. The ETUC took another approach as to why low capital requirements are evil. Companies need this capital requirement, not only to protect creditors, but also clients and the workforce. In this sense, the ETUC maintained that the SUP would serve as a *letterbox company*, therefore, affecting workers' rights.[52] Although the ETUC positions may be correct to some extent, it did not analyze other means by which creditors are protected. The approach it decided to take is different to that which has been subject to debate. Others argue that "companies with low share capital will not command the respect of the business community."[53]

One could wonder why the European Commission would insists in establishing such a low minimum capital requirement, if said proposals were just six years apart from each other and provided the same justification for such requirement. Regarding this, the European Commission explains that low capital requirements serve as a savings for entrepreneurs.[54] The reason for this is that SMEs typically do not need any capital to start a business. In other words, low capital requirements facilitate business across borders and provide cost savings to entrepreneurs. These savings are crucial since high capital requirement would most likely discourage investment across borders.[55] Additionally, low capital requirements may provide the flexibility companies need to "determine the amount of the [company's] capital by reference to their business model and the requirements of third parties such as those providing financing to the company without requiring the single member to commit more share capital than is needed at an early stage."[56]

Before we continue, a key question must be answered: What is share capital? On one hand, according to Palmiter and Partoney, share capital represents "a cushion of capital [required by state corporation law] designed to protect debt holders."[57] They also state the way to calculate it. Meanwhile, Manning and Hanks maintain that the concept of share capital is driven to calm the conflict of interest between shareholders and creditors, since shareholders are

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[49] *Commission Proposal for a Directive of the European Parliament and of the Council on Single-Member Private Limited Liability Companies*, COM (2014) 212 final (Apr. 9, 2014) at 7.
[50] *See Commission Proposal for a Council Regulation on the Statute for a European private company*, COM (2008) 396 final (June 25, 2008) at 7.
[51] *ETUC position on Single-Member Private Limited Liability Companies*, EUROPEAN TRADE UNION CONFEDERATION (June 12, 2014), *available at* https://www.etuc.org/print/11878#.Vx760se7dhB (last visited Apr. 5, 2017).
[52] *Id.*
[53] Lau Hansen, *supra* note 28, at 184.
[54] *See Commission Staff Working Document, Impact Assessment, accompanying the document Proposal for a Directive of the European Parliament and of the Council on Single-Member Private Limited Liability Companies*, SWD (2014) 124 final (Apr. 9, 2014) at 14, *available at* http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014SC0124&qid=1491498121511&from=EN (last visited Apr. 5, 2017).
[55] *Id.*
[56] Vanessa Knapp, *Directive on Single-Member Private Limited Liability Companies: Distributions*, 12 EUR. COMPANY & FIN L. REV. 191, 200 (2015).
[57] ALAN PALMITER & FRANK PARTNOY, CORPORATIONS: A CONTEMPORARY APPROACH 278 (1st ed. 2010).

interested in the distribution of the assets of the company, while the creditor is interested that the assets maintain committed to the corporation's treasury.[58] Moreover, share capital is a legal requirement for companies to have a reserve of money, mainly for creditor protection. On another part, share capital is required by law in order to pacify the adverse interest present between shareholders and creditors. Now, it is important to ask ourselves if this scenario is present in SUP. It should be noted that some authors have argued that share capital should be a uniform requirement among the Member States. In this sense, Jesper Lau Hansen argues that "[e]ither something is so dangerous that it requires an immediate safeguard or it is not. The same goes for share capital in a limited liability company, *either it is necessary when the company commence its business or it is not necessary at all*."[59]

### B. Share Capital Requirements as a means for Creditor Protection

When facing low share capital requirement, Member States have expressed their concern regarding the protection of creditors. In fact, rules relating to share capital have been the focus of recent European Company Law debates.[60] For example, when the SPE proposal was proposed some Member States expressed their concerns given that the low share capital requirement would substantially reduce creditor protection.[61] Likewise, others argue that by requiring high share capital requirements current and future creditors would have certainty regarding the quantity of corporate resources and may not distribute freely to shareholders.[62] When explaining the benefits of share capital requirements, Shuangge Wen explains that this requirements has two aspects: "[t]hey were to create genuine rather than 'empty-shell' investment vehicles by preventing frivolous incorporation and they were to furnish a sufficient material basis—the so-called 'equity cushion'—for a company's operation so that the risk of insolvency, if not eliminated, could at least be reduced for the benefit of creditors."[63] Those in favor of share capital requirements sustain that this demand brings creditors a fair valuation of the company, therefore bringing lenders a key variable to measure risk.[64] Furthermore, Kraakman exposes that this type of requirement *compensates* creditors for having to give asking individuals for personal liability.[65] The issue regarding creditor protection is especially important given that "lending-and-borrowing procedure is an age-honored tradition in all societies and almost in all creeds, *as an indispensable aspect of commercial activities*."[66] It is in this commercial activity that creditors incur in the risk of losing their invested monies.[67] Therefore, it is important for creditors to have the tools available to measure the risk they would incur when lending to a certain company. Likewise, they would also be prone to incur in lending

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[58] BAYLESS MANNING & JAMES J. HANKS, JR., LEGAL CAPITAL 5 (3d ed. 1990).
[59] *See* Lau Hansen, *supra* note 28, at 189 n.28 (emphasis added).
[60] *See* John Armour, *Legal Capital: An Outdate Concept*, 7 EUR. BUS. ORG. L. REV. 5, 6 (2006).
[61] *See* Conac, *supra* note 7. *See also* Corrado Malberti, *The Relationship Between the Societas Unius Personae Proposal and the Acquis: Creeping Toward an Abrogation of EU Company Law?*, 12 EUR. COMPANY & FIN L. REV. 238, 260 (2015).
[62] Luca Enriques & Jonathan R. Macey, *Creditors versus Capital Formation: The Case against the European Legal Capital Rules*, 86 CORNELL L. REV. 1165, 1186 (2001).
[63] Shuangge Wen, *The Ideal and Reality of a Legal Transplant — The Veil Piercing Doctrine in China*, 50 STAN J. INT'L L. 319, 329 (2014).
[64] *See* Enriques & Macey, *supra* note 61, at 1186–88.
[65] *See* Reinier Kraakman, *Concluding Remarks on Creditor Protection*, 7 EUR. BUS. ORG. L. REV. 465, 466 (2006).
[66] Sinan Caya, *Creditor-Psychology, with Special Emphasis on the Eurozone Crisis*, 185 SOCIAL AND BEHAVIORAL SCIENCES 84, 84 (2015) (emphasis added).
[67] *Id.* (citation omitted).

if they would have legal tools that control corporate decision making regarding spending and distributions to shareholders.

### C. Recent Comments on Share Capital: An Outdated Concept?

The concept of share capital has been subject to large debate and criticism for decades. For example, Palmiter and Partnoy sustained that since the 1970s "few people believed the notion that [share] capital actually protected anyone."[68] They go further and establish that "[c]reditors *[don't] actually rely on par value for protection*, and *par value [doesn't] reflect economic value*."[69] Others, such as Jesper Lau Hansen, argue that low share capital requirements are a fallacy, since creditors will often demand personal guarantees; eliminating limited liability.[70] Consequently, Lau Hansen sustains that it is rare to establish a SUP with only one euro, since *creditors*, and not banks, will *require higher capitalization*.[71] Hansen clarifies that "to stipulate that the share capital of a company can be one EUR is not to say that it should be that sum; *it is to say that the size of the share capital should be determined ad hoc by the parties themselves and not by legislators*."[72] The author suggests that low share capital requirements are more of a legislative aspiration, than a practical reality. Therefore, if creditors demand certain share capital requirements from borrowers, it can be concluded that these seem to view share capital as a means for their protection. In fact, Enriques and Macey state that in the real world, creditors do not care about share capital requirements.[73] They argue that:

> The primary reason that creditors do not give significant weight to [share] capital is that as soon as a firm starts to operate, it can use its capital to purchase assets that decline in value. Because a firm may immediately begin to incur losses, either merely in the normal course of business or by entering into one of the many kinds of unfair transactions that Article 11 of the Second Directive does not cover, the initial paid-in capital is a meaningless amount. In other words, creditors willing to inform themselves about a firm's existing equity cushion must examine its entire balance sheet. Moreover, creditors must consider the current value of the firm's assets, not the value of such assets at the time of purchase.[74]

Conclusively, Palmiter and Partnoy explain that the concept of share capital has lost its meaning since 1970, and "[o]ver time, the teeth of these statutes have been removed, and states permitted corporations to issue low-par or no-par stock."[75] Furthermore, they elaborate that legislation in the United States regarding share capital requirements has basically disappeared.[76] This may respond to a change in the financial field. In this sense, these *traditional* rules of capital requirement were implanted in a moment mere financing "was primarily based on debt rather than equity financing."[77] The concept of share capital responded to a historical reality that is no

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[68] PALMITER & PARTNOY, *supra* note 56, at 279.
[69] *Id.* (emphasis added).
[70] Lau Hansen, *supra* note 28, at 185.
[71] *Id.*
[72] *Id.* (emphasis added).
[73] *See* Enriques & Macey, *supra* note 61, at 1186.
[74] *Id.* at 1186-87.
[75] PALMITER & PARTNOY, *supra* note 56, at 279–80.
[76] *Id.* at 280.
[77] *See* Wolfgang Schön, *The Future of Legal Capital*, 5 EUR. BUS. ORG. L. REV. 429, 432 (2004).

more. This, since capital markets have become key and leaders of financing operations and ventures of companies.[78]

Additionally, other authors suggest that the concept of share capital is just plain and *outdated*.[79] John Armour, in his article *Legal Capital: An Outdated Concept?*, rebuttals various arguments which favor share capital requirements, in order to establish that this concept has no present value or effect.[80] First, he states that the benefits obtained by creditors through share capital requirements have been substituted by loan covenants.[81] Sophisticated lenders do not simply rely on present legislation. They take affirmative steps to reduce their risk exposure by including in said loan covenants limitations to the actions and decisions by the borrower's company. In other words, commercial parties already incur in these costs themselves by stipulating in the agreement with the borrower. Additionally, Armour states that the minimum capital requirements impose an undue burden to small companies, which are typically owner managed.[82] This affects both the entrepreneurial spirit of individuals and the economic growth in Member States.[83] Moreover, Armour suggests that share capital requirements do not reflect the quality of an entrepreneur's project.[84] Thus, share capital requirements do not give *certainty* to creditors on the possibility of default, hence, its uselessness. Accordingly, "it makes no sense for a highly-leveraged company that transports radioactive waste to have the same minimum capital requirements as a company with little leverage that designs software."[85] In other words, requiring the same share capital to different types of companies does not result in equal creditor protection. This arises due to companies having different financial structures depending on what industry it develops its business.

Similarly, legal scholars often scrutinize the costs capital requirements impose in parties. Armour suggest that mandatory rules based on share capital are outweighed by the benefits creditors can obtain from them.[86] Regarding this issue, the author maintained that minimum share capital requirements constitute a substitution to the possible negotiations and terms the contracting parties may stipulate. Accordingly, these types of requirements reduce the need for creditors to negotiate a more efficient alternative; *default terms*.[87] On this issue, Armour suggest that the possibility to negotiate default terms with borrowers equals a more efficient alternative than capital requirements.[88] Also, Wolfgang Schön exposes that Member States, such as the United Kingdom, have considered eliminating minimum capital requirements and replacing it with fiduciary duties towards directors of corporations.[89] That is to say, it substituted the supposed creditor protection provided by minimum capital requirements for a fiduciary duties towards them. This proposal is troubling to us, given that in most instances creditors are protected by the agreements they reach with the lenders. Consequently, they do not need this *extra protection*. To this effect, Armour establishes that "[j]ust as it is undesirable to offer

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[78] Dorothea Schäfer *et al.*, *The Determination of Debt and (Private) Equity Financing: The Case of Young, Innovative SMEs from Germany*, 11 INDUSTRY AND INNOVATION 225 (2004).
[79] Armour, *supra* note 59.
[80] *Id.*
[81] *Id.* at 16.
[82] *Id.* at 17.
[83] *Id.* at 17–18.
[84] *Id.*
[85] Enriques & Macey, *supra* note 61, at 1186.
[86] Armour, *supra* note 59 at 21.
[87] *Id.*
[88] *Id.* at 21–22.
[89] *See* Schön, *supra* note 76, at 431.

creditors *too little* protection, it may be equally undesirable to mandate *too much protection* that is to emphasi[z]e creditors' interests at the expense of other constituencies."[90]

In contrast, Enriques and Macey stipulate the adverse effect and inefficiency of the share capital doctrine.[91] These authors analysed that different aspects of the share capital doctrine impose substantial costs. First, they maintain that the share capital doctrine "burdens companies. . . by making their financial structures inflexible, burdening them with cumbersome procedures, and forcing them to pay for useless expert reports and legal advice."[92] Equally, this problem eliminates certain opportunity costs from the company, since it compromises a determined amount of assets to be *frozen*. [93]

Finally, it has been suggested that minimum capital requirements alone "[do] not necessarily ensure that the company will have enough money available to meet debts and other liabilities as they fall due . . . and so may not provide protection to creditors."[94] In view of this possibility, the Impact Assessment for the 2014 Directive clarifies that "some creditors, such as banks, often *insist on other means of additional protection be it a personal guarantee, a mortgage or any other form of security*."[95] Consequently, although in reality creditors are very well protected by their own requirements, other *legislative* means should be required regarding corporate decisions in order to ensure creditor protection. The 2014 Directive does not fall short in providing these alternative safeguards that ensure the SUP will be able to pay its debts over the next year after a distribution has been made.[96] These alternative safeguards will be examined in the following section.

### D. Alternative Safeguards for Creditors

The 2014 Directive explains that various stakeholders were concerned with the proposed low share capital requirement.[97] Nonetheless, they maintained that if this requirement was accepted as proposed, it should be complemented with other protective measures, such as *solvency tests*.[98] In other words, stakeholders are, to some degree, concerned with the low share capital requirements, and agree that there are other means that may provide them the certainty and protection needed. To this effect, Vanessa Knap examines the alternative safeguards provided by the 2014 Directive.[99] In her article, she explains how the 2014 Directive tries to balance the *moral hazard* that can arise between the single member of the SUP, distributions,[100] and creditor protection.[101] In this sense, the author explains that the 2014 Directive proposes to create two tests in order to deal with the protection of creditors *vis-à-vis* the moral hazard faced by single

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[90] Armour, *supra* note 59, at 11 (emphasis added).
[91] Enriques & Macey, *supra* note 61.
[92] *Id.* at 1184–85.
[93] *Id.*
[94] *See* Knapp, *supra* note 56, at 200
[95] *See Commission Staff Working Document, Impact Assessment, accompanying the document Proposal for a Directive of the European Parliament and of the Council on Single-Member Private Limited Liability Companies*, SWD (2014) 124 final (Apr. 9, 2014) at 37 (emphasis added).
[96] *Id* at 36.
[97] *See Commission Proposal for a Directive of the European Parliament and of the Council on Single-Member Private Limited Liability Companies*, COM (2014) 212 final (Apr. 9, 2014) at 4.
[98] *Id.*
[99] Knapp, *supra* note 56.
[100] *Id.* at 191. (The author explains that when referring to distributions, she means distributions made to stockholders. It is to say, dividends or *any financial benefit* derived from to SUP to the single-member).
[101] Knapp, *supra* note 56, at 191.

members when determining the making of distributions.[102] These tests serve as the *alternative* for high share capital requirements. It is to say, the European Commission seems to have found that in order for this proposal to receive better *acceptance*, the net asset and solvency tests would serve as a compromise between share capital requirements and creditor protection. As explained by Knapp, the *net asset test* establishes that the "SUP cannot make a distribution if [its] net assets on the closing date of the last financial year are, or following the distribution would become lower than the amount of the share capital plus those reserves which may not be distributed under the SUP's articles of association."[103] On another hand, the *solvency test* states that the "SUP shall not make a distribution to the single member if it results in the SUP being *unable to pay its debts as they become due and payable after distribution*."[104] Moreover, this test requires the SUP to make a full inquiry into the businesses that may affect its solvency, and prevents the SUP from making distributions that would make it unable to meet its financial obligations.[105] Finally, it is important to clarify that in order to make distributions, the SUP must meet *both* tests. Thus, these tests are clear examples of how there are efficient alternatives for dealing with creditor protection; share capital requirements are not the only route available.

This was not the first instance these tests were devised. Authors such as Manning and Hanks, in their book *Legal Capital*, have proposed similar tests as an alternative to share capital requirements. Regarding the *solvency test*, these elucidate that it aims at barring shareholders from distributing the company's assets, leaving it with insufficient funds to pay its creditors.[106] Similar to the solvency test in the 2014 Directive, the solvency test proposed by Manning and Hanks aims at determining if the company is able to pay its creditors even after a distribution is made.[107]

Another test suggested by Manning and Hanks is the *bankruptcy test*, also known as the balance sheet test.[108] As the name suggests, under the balance sheet test, the balance sheet of the company is analyzed to compare the assets of the company in relation to its liabilities.[109] By doing this comparison, the shareholder, or a person contesting a distribution, should determine that if the company performs a certain business activity, it would not constitute an impairment of its financial obligations.[110] Nonetheless, this test has different variations, such as stated capital/surplus, stated capital, earned surplus, net worth, and adjusted net worth that serve as different types of tests to determine a company's solvency.[111]

Although many tests exist to provide creditors with a greater degree of protection, the 2014 Directive only aims at adopting two tests: the solvency test and the net asset test. As a result, the Impact Assessment expressed that it is their opinion that —in order to provide better protection to creditors— other tests should be demanded from single-members before making a

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[102] *Id.* at 193.
[103] *Id.* at 193–94.
[104] *Id.* at 194 (emphasis added).
[105] *Id.* at 194.
[106] MANNING & HANKS, *supra* note 57, at 63.
[107] *Id.* at 63.
[108] *Id.* at 65.
[109] *Id.* at 65.
[110] *Id.*
[111] MANNING & HANKS, *supra* note 57, at 67–78.

distribution; they suggested the balance sheet and solvency test.[112] Nonetheless, they agree with maintaining a minimum capital requirement of just one euro.[113]

Another alternative not involving tests relates to the terms that can be negotiated between the parties. In this sense, if a creditor feels it is negotiating a transaction with a substantial risk, he or she may charge higher interests, request a collateral of some kind, or impose limitations and restrictions on shareholder distributions.[114]

## IV. Share Capital Requirements: A Comparative Analysis

### A. United States of America

According to Catá Backer, the United States has taken two approaches to share capital requirements.[115] The first one consist of the traditional approach, which is related to the Law of Delaware. Under this approach, companies must retain a minimum on their capital account, based on the statutory minimum price.[116] It is to say, the product of par value (statutory price) and outstanding shares is equal to share capital. Conversely, Catá Backer explains the approach taken by the Revised Model Business Corporations Act (hereinafter, "RMBCA"). The approach taken by the RMBCA "is based on assessment of corporate solvency at the time of distributions to shareholders."[117] Nonetheless, both approaches do not demand from companies a minimum amount to be saved to guarantee their solvency.[118] In other words, these approaches are identical to that of the 2014 Directive, in the sense that neither of these three require companies to have save a determined minimum amount of money.

Of the two approaches aforementioned, the one that has gained major popularity in the United States is that of Delaware. Delaware has been considered the jurisdiction that has most influenced the development of American Corporate Law.[119] Therefore, it is important to examine the relevant case law of Delaware and its implications on share capital requirements. Nonetheless, it is important to take into consideration the fact that minimum capital requirements have been abolished in the United States.[120] In *Klang v. Smith's Food & Drug Centers, Inc.*, the Supreme Court of Delaware examined an action of the board of directors which was contested on the grounds that it did not meet the requirements of the *Delaware General Corporate Law*.[121] To this effects, the Supreme Court of Delaware clarified that the board of directors is not subject to one method of valuation in order to determine if it meets the requirements made by law.[122] When examining the validity of a revaluation of the company's assets, the Court determined that, "[r]egardless of what a balance sheet that has not been updated may show, an actual, though unrealized, appreciation reflects real economic value that the corporation may borrow against or

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[112] *See Commission Staff Working Document, Impact Assessment, accompanying the document Proposal for a Directive of the European Parliament and of the Council on Single-Member Private Limited Liability Companies*, SWD (2014) 124 final (Apr. 9, 2014) at 40–41.
[113] *Id.*
[114] *See* Enriques & Macey, *supra* note 61, at 1188.
[115] LARRY CATÁ BACKER, COMPARATIVE CORPORATE LAW: UNITED STATES, EUROPEAN UNION, CHINA AND JAPAN 793 (2002).
[116] *Id.*
[117] *Id.*
[118] *Id.*
[119] *See* Harwell Wells, *The Modernization of Corporation Law: 1920-1940*, 11. U. PA. J. BUS. L. 573 (2009).
[120] Michael P. Dooley & Michael D. Goldman, *Some Comparisons Between the Model Business Corporation Act and the Delaware General Corporation Law*, 56 BUS. LAW. 737, 739–42 (2001).
[121] Klang v. Smith's Food & Drug Centers, Inc., 702 A.2d 150 (Del. 1997).
[122] *Id.* at 152–56.

that creditors may claim or levy upon."[123] Furthermore, the Court determined that "[a]llowing corporations to revalue assets and liabilities to reflect current realities complies with the statute and serves well the policies behind this statute."[124] As we can see, the Supreme Court of Delaware chose a different path to determine the financial soundness of the company. We think that if the same Court, seventy years ago, would have examined these same facts, it would have relied heavily on the concept of share capital requirements to determine the legality of the board's actions. On the contrary, the Court in *Klang* relied heavily in the impairment of capital doctrine.[125] Said court emphasized in other means for creditor protection, such as the surplus and insolvency tests.[126] These being alternative tools to using the primitive concept of share capital. Finally, the concept of share capital in the United States has been said to have no future, and that it can be *categorized as obsolete*.[127]

### B. Japan

According to Catá Backer, share capital requirements in Japan are "[closer] in spirit to those of Germany and France than they are to those of the United States."[128] However, the author was referring to the Germany and France of 2002, when both States had strong minimum capital requirements. Nonetheless, this comparison is still valid, since these States currently do not have minimum capital requirements. Accordingly, by 2016 the scene has changed dramatically. Tomotaka Fujita gives us an insight regarding this issue in Japan.[129] Fujita illustrates that Japan has no share capital requirement, and that it is possible to "incorporate a company with a capital of *one yen*."[130] Moreover, the author establishes that prior to 2005, the Commercial Code *had share capital* requirements, but an amendment in 2005 eliminated that requirement.[131] Fujita goes further to suggest that the elimination of share capital requirement, by the amendment of 2005, removed a "burden for the incorporation of small firms while the requirement had not provided significant protection for their creditors."[132] Nevertheless, it is important to distinguish that the *Companies Act* of 2005, still does not attend specifically the issue regarding small and medium sized companies.[133] This, being a legislative requisite present in all other States.

The share capital requirements of Japan are identical to that of the 2014 Directive. Consequently, if the removal of share capital requirements in Japan did not result in creditor fraud, it would not be of a surprise that the 2014 Directive is going to have the same outcome. Finally, it is important to note that Japan is consistently shaping its Corporate Law to resemble that of the United States.[134] This, since —for example— the phenomena of takeover bids arrived to this State in 2005.[135]

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[123] *Id* at 154.
[124] *Id.*
[125] CATÁ BACKER, *supra* note 114, at 806.
[126] *Id.* (these tests were discussed in part II (D).
[127] *See* Armour, *supra* note 59, at 7.
[128] CATÁ BACKER, *supra* note 114, at 967 (citation omitted).
[129] Tomotaka Fujita, *Regulation on Simplified and Foreign Companies in Japan*, 33 ARIZ. J. INTL'L & COMP. L. 93 (2016).
[130] *Id.* at 100 (emphasis added).
[131] *Id.*
[132] *Id.* at 101.
[133] *Id.* at 93–94.
[134] Michael Cody, *Hostile Takeover Bids in Japan? Understanding Convergence using the Layered Approach*, 9 RICH J. GLOBAL L. & BUS. 1, 1 (2010).
[135] *Id.*

### C. The People's Republic of China

The People's Republic of China's Corporate Law has the particularity of having a substantial socialist influence.[136] Consequently, the Chinese share capital requirements differ greatly from the other States we have examined. Hence, the People's Republic of China employs serious share capital requirements in its Company Law. It is important to note that the previous Chinese Company Law *explicitly prohibited single member companies*. Under the previous Company Law, limited liability companies were required to have at least two shareholders.[137]

Steven Dickinson provides an analysis of the share capital requirements required by the Chinese law, which was enacted only ten years ago.[138] On one point, the author suggest that the minimum capital requirement of the People's Republic of China is due to its primitive credit reporting system.[139] On another point, the author states that the new capital requirement, which was drastically decreased, aimed at making "the corporate form available to more individual investors and to more investors from China's less developed regions."[140] In this sense, the previous Company Law of China imposed different capital requirements from companies depending in the type of business activities these were to incur. For example, 100,000 Chinese Yuan[141] were required to incorporate businesses that provided services.[142] The new Company Law of China imposes a minimum share capital requirement of 30,000 Chinese Yuan[143] to limited liability companies with two or more shareholders, without distinction of the type of business and of 100,000 Chinese Yuan for companies with a single shareholder.[144] It is to say, that for the new Company Law of the People's Republic of China, instead of using the type of business as the criteria for share capital required, it now uses the number of share-holders as a determinant factor.[145]

Single-member LLCs are also subject to restrictions under the new Company Law of China.[146] To this effect, Dickinson clarifies that the said law requires single members to pay the capital requirement in a single installment and these are proscribed from organizing another single-member LLCs.[147] In other words, in addition to the substantial minimum capital required, the sole shareholder of a single-member LLCs cannot have more than one single-member LLC.

### D. European Union

Member States from the European Union have different national minimum capital requirements.[148] Nevertheless, Piere-Henri Conac indicated that, by the time of the 2014 Directive, only *eleven* Member States had share capital requirements above one euro.[149] In other word, the author identified how in only twelve years the European Community has initiated a trend toward

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[136] CATÁ BACKER, *supra* note 114, at 973.
[137] *See* Steven M. Dickinson, *Introduction to the New Company Law of the People's Republic of China*, 16 PAC. RIM. L. & POL'Y J. 1, 4 (2007).
[138] *Id.* at 3.
[139] *Id.*
[140] *Id.*
[141] This is equivalent to 15,500 U.S. dollars.
[142] *See* Dickinson, *supra* note 136, at 3.
[143] This is equivalent to 4,500 U.S. dollars.
[144] *See* Dickinson, *supra* note 136, at 3–4.
[145] *Id.*
[146] *Id.* at 4.
[147] *Id.*
[148] *See* CATÁ BACKER, *supra* note 114, at 881.
[149] Conac, *supra* note 7, at 150.

the abolition of share capital requirement.[150] Specifically, he identified Member States such as Poland, Spain, Greece, and Luxembourg that since 2012 have initiated or enacted legislation for the establishment of companies without any share capital requirement.[151] From the insight brought by Conac, it is clear that the reality in Member States concerning share capital in SMEs does not differ greatly from that contained in the 2014 Directive. Moreover, it is important to consider the expressions made by Advocate General La Pergola in the case of *Centros*.[152] In said case, La Pergola sustained that "in the absence of [harmonization], competition among rules must be allowed free play in corporate matters."[153] Moreover, the author argues that this *trend* is not an issue regarding harmonization of legislation, but a recognition of the consequences of the rivalry between nations.[154]

In short, as we exposed, share capital requirement throughout the Member States have drawn a uniform trend towards eliminating said requirements. Thus, it is evident for us that the share capital requirement proposed in the 2014 Directive does not differ from the already present trend.

### E. Comparative Analysis: Findings

When Catá Backer wrote his book, *Comparative Corporate Law: United States, European Union, China, and Japan*, it seems that the world had a different view on share capital requirement from nowadays. It is evident that, prior to 2002, share capital requirements were an indispensable tool for creditor protection and corporate solvency. Nevertheless, from 2002 to the present day, this view has drastically changed. As discussed previously, these States do not have minimum share capital requirements nowadays. We understand that this is the product understanding that share capital requirements were not an efficient means for creditor protection. Also, it would be no surprise that the *trends* that influenced the European and Western community could have spread through the entire world. Consequently, this has caused States to modify the tools they use to protect creditors and ensure capital structure health.[155] Nonetheless, from the States examined, it is important to distinguish the circumstances of China. As we explained, China has a socialist influence and background. Taking this factor into account, we understand that this has caused China to lack the innovation other States have integrated into their national laws. However, it would not be of any surprise that in a near future China will succumb to the *trend* other States have gone into, and eliminate share capital requirements. This, given that China has "experienced a gradual opening to capitalist initiatives."[156]

## V. Conclusion

Without a doubt, the 2014 Directive would prove successful at achieving the goal it states concerning the economic development of the Member States of the European Union. It is our conclusion that the way said Directive is structured provides SUPs the flexibility needed to facilitate cross border investments.

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[150] *Id.*
[151] *Id.*
[152] Case C-212/97, Opinion of AG La Pergola in Centros Ltd. v. Erhversus-og Selkabssyrelsen, 1999 E.C.R. I-1459, at I-1461.
[153] *Id.* at ¶ 20.
[154] Conac, *supra* note 7, at 150.
[155] These tools were described in part II. D.
[156] Yves Dezalay & Bryant G. Garth, *Corporate Law firms, NGOS, and Issues of Legitimacy for a Global Legal Order*, 80 FORDHAM L. REV. 2309, 2319 (2012).

Nevertheless, despite our thesis and evidence that show that low share capital requirements do not reduce creditor protection, some Member States *still* argue the contrary. It is to say, they still view share capital requirement as a tool for protecting creditors. The reason for this is not completely clear. However, we can speculate that this is a mere protectionist measure, albeit extreme. A more rational explanation is that States that support high capital requirements suffer from poor development in the accounting and financial sector.[157] Likewise, since minimum capital requirements serve as the "easy way out" for States who do not have complex and developed accounting and financial sectors.[158] Therefore, States that support high share capital requirements do not acknowledge nor recognize the advantages brought by other more efficient alternatives. Nonetheless, we see no other justification for imposing such burdensome requirements, since there are more efficient alternatives available for States.

Regarding this last issue, other tests provide better measures for creditor protection. The solvency and liquidity tests provide more assurance as to the risks faced by the debtor. One measure is not enough though. Thus, a more holistic approach should be ideal to quantify and clearly identify these risks. This approach should evaluate the following: (1) debtor's business and industry,[159] (2) cash flow of the debtor, (3) debt to equity and debt to asset ratios, (4) future cash flow projections, and (5) debtor's credit history. This would provide a more comprehensive and holistic analysis to determine if distributions may be made.

Notwithstanding, some issues still require attention to provide the best possible solution. Although SUPs are a great vehicle for investments across border given their limited liabilities, the European Economic and Social Committee have serious concerns regarding said limited liability.[160] To this effects, they establish that given that SUPs cannot build up reserves, this may cause creditors to require personal guarantees. Hence, losing the limited liability.[161] Accordingly, the European Economic and Social Committee sustained that SUPs should be able to build up reserves, since this may permit them to prevent long-term undercapitalization in subsequent years.[162] This issue should be reevaluated, since the requirement of personal guarantees has become a common practice between creditors.

Nevertheless, as linked capital markets continue to develop and grow, these requirements will continue to be no more.[163] Noting the present trend among Member States regarding share capital requirement, we see no obstacle nor opposition for the implementation of this proposal. Accordingly, the world is moving towards an era where share capital is becoming more of a primitive concept, the European Union has not been the exception in this movement.

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[157] MANNING & HANKS, *supra* note 57, at 20–23.
[158] *Id.* at 20.
[159] Within this, risk and nature of the industry should be evaluated.
[160] *See Opinion of the European Economic and Social Committee on the "Proposal for a Directive of the European Parliament and of the Council on Single-Member Private Limited Liability Companies*, 2014 O.J. (C 458) 19, *available at* http://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:52014AE2794&qid=1491869699244&from=EN (last visited Apr. 5, 2017).
[161] *Id.* at ¶ 1.3.
[162] *Id.* at ¶ 1.4.
[163] *See* CATÁ BACKER, *supra* note 114, at 794.