Why not have a Go with an East African Limited Company?
What Company Law can contribute to the Integration Process in East Africa

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Abstract

Despite sharing the same tradition, regulations for Limited Companies vary throughout the East African Community – and continue to part even further. What the Partner States have in common, however, is their proclivity for keeping foreign companies out of their own backyard. While this policy is to some extent understandable regarding Western or Asian companies, it becomes a serious problem for companies from other EAC Partner States: Restrictions and dissimilarities require expensive legal consultation, which makes it unattractive for small- and medium-sized enterprises to expand across borders. Not to mention the fact that basing a community on the foundations of a common market is a noble cause, but worthless if the fundamental freedoms that should come with it are only written on paper. This article suggests a rather radical, but nonetheless promising solution: Why not introduce a new legal entity based on a common legal framework, an *East African Limited Company*?

A. Introduction: East African Community and Limited Companies

I. The East African Community

While many legal technicalities regarding the East African Community (EAC) remain unresolved,[1] its key features are quite clear: The EAC is an intra-governmental organisation composed of the five countries Burundi, Kenya, Rwanda, Tanzania and Uganda. In April 2016, South Sudan agreed to join the bloc.[2] The main objective of the EAC is, as Art. 5

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1 With the legal character of the EAC laws ('soft-law' or 'strict-law' approach?) being the most prominent question, see section II. 3. b) below and *Tomasz Milej*, What is wrong about supranational laws?, in: Heidelberg Journal of International Law 75 (2015), 578 et seq. with further references.

2 For more information see the official webpage www.eac.int; for a historical overview see *Msuya Waldi Mangachi*, Regional Integration in Africa – East African Experience, Ibadan 2011, 15 et seq.

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para. 1 of the Treaty provides, "widening and deepening co-operation among the Partner States in political, economic, social and cultural fields, (...) legal and judicial affairs, for their mutual benefit." To accomplish that, the Partner States initiated a process of regional integration which should eventually lead to a political federation (para. 2).[3] And significant steps have already been made: Between 2005 and 2010 the Partners States established the East African Customs Union and signed the Common Market Protocol to ban tariffs and other trade barriers.[4] In 2001 the East African Court of Justice was formed to monitor the application of the Treaty, both by interpreting the Treaty itself and, more importantly, by reviewing national acts in the light of the Treaty.[5] In terms of unification though, the process is faltering. The honourable, yet very ambitious goal of a political federation seems to be further away than ever.[6]

II. General features of a Limited Company

In comparison to the unclear political situation, the principles of East African company law[7] are much more precise – and due to the English heritage rather familiar too. Entrepreneurs have more or less the same options as in any Western jurisdiction.[8] If they don't fear personal liability, a *partnership* can be a good choice, since regulations – similar to

and *Richard Frimpong Oppong*, Legal Aspects of Economic Integration in Africa, Cambridge 2011, 24.

3 The complete text of the Treaty can be accessed at http://www.eac.int/sites/default/files/docs/treaty_eac_amended-2006_1999.pdf; for details see *Sengondo Mvungi*, The Draft Treaty for the Establishment of the Eastern African Community. A Critical Review, Dar es Salaam 2002.

4 For the full text of the protocols, visit http://www.eac.int/sites/default/files/docs/protocol_eac_customs-union.pdf or http://www.eac.int/commonmarket/index.php?option=com_docman&task=doc_download&gid=48&Itemid=6; see also *Mangachi* (note 2), 167 et seq.

5 See Art. 9, 27, 28, 30 EAC Treaty; for more details see *John Eudes Ruhangasi*, The East African Court of Justice: Ten years of Operation, http://eacj.org/2014/docs/EACJ-Ten-Years-of-Operation.pdf (accessed on September 21 2016), and *Mangachi* (note 2), 185 et seq.

6 Besides the on-going violent conflicts in the region (Burundi, South Sudan, Ruanda), unilateral moves are on the rise. Tanzania and Uganda, for example, decided out of the blue to reject an Economic Partnership Agreement (EPA) with the EU – after negotiating it as a bloc for 12 years – because it was not in their "national interest", see *The East African,* July 16 2016, http://www.theeastafrican.co.ke/news/No-deal-with-EU-as-Tanzania--Uganda-refuse-to-sign-up/2558-3297270-vrptdpz/index.html (accessed on September 21 2016).

7 In order to limit the scope of this paper, it focuses on the founding members of the EAC (Kenya, Tanzania, Uganda). However, the regulations in the other Partner States are roughly the same since most of them share the same English heritage. For details see *Aspen Network of Development Entrepreneurs*, East African Legal Guide, https://www.aspeninstitute.org/publications/ande-east-africa-working-group-toolkit/ (accessed on September 21 2016).

8 For the situation in Europe see, for instance, *Stefan Grundmann*, European Company Law, Antwerpen and Oxford 2007, 9 et seq.; *John Hynes Farrar*, Company Law, London 1998, 42 et seq.; for the US see *Stephen Bainbridge*, Corporate Law, St Paul 2015, 13 et seq.

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those in Europe or the US – are much more flexible.[9] However, if they want to stay unharmed from creditors, they need to build up an entity: a so-called *Limited Company* (Ltd.). This corporate body exists in every jurisdiction throughout the EAC, just the title is slightly different.[10] *Limited* means liability to the share capital only; unlike in a partnership, the shareholders are not personally liable for the debts of the company. So, if the company goes bankrupt, the shareholders will loose the money they invested in the company, but their personal funds remain untouched. Corresponding to their individual needs, entrepreneurs can choose between a *private* and a *public* company. The main difference between those two is that only the shares of a public company can actually be listed and dealt on the stock exchange; in other words, only the public company can literally "go public". Of course, this privilege comes with certain responsibilities such as strict capital and auditing regulations.[11] For most entrepreneurs such big business seems far out of reach; that's why the vast majority of companies – especially in East Africa – are private ones.[12] Therefore this paper focuses on them.[13]

B. Cross-border expansion of companies: Two options on the table

So far we outlined the process of founding a company from scratch. But what if an existing enterprise, such as a company localised in Dar es Salaam and incorporated under Tanzanian law, wants to expand to Kenya in order to reach new markets? Throughout East Africa a company can take two routes: (1) Form a branch and register as a *foreign company*; or (2) found a new *sub-company* at the desired location. This may sound like an easy ride, but it is in fact the very point where the road gets bumpy: Even though each state provides a roughly similar framework for establishing a company by one of their own – it becomes a totally different matter if you want to join the club as a foreigner.

I. Form a branch and register as a foreign company

The registration procedure is more or less the same throughout East Africa: A company must submit certain documents, such as certified copies of the memorandum and articles of association, information about its directors and its (new) location. Ultimately, the company

9 See *Aspen Network of Development Entrepreneurs* (note 7), 12 et seq. with more references.

10 Kenya: Limited Company (general) or Company Limited by Shares (specific); Tanzania: Company Limited by Shares; Uganda: Private Company Limited by Shares.

11 See *Aspen Network of Development Entrepreneurs* (note 7), 10 et seq. with more references.

12 See the data collected by the *Worldbank Doing-Business-Project*, http://www.doingbusiness.org/data/exploretopics/~/media/GIAWB/Doing%20Business/Documents/Miscellaneous/DB-Yearly-Number-of-Limited-Liability-Companies.xlsx (accessed on September 21 2016) and *Aspen Network of Development Entrepreneur* (note 7), 10 et seq.

13 Hence, speaking in the following of a 'company' refers to a private Limited Company (or Private Company Limited by Shares).

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needs to pay registration fees after which it obtains a document, certifying the successful conclusion of the registration process.[14] Besides all the paperwork, the company has to name a local representative.[15] In most countries this representative is primarily used for service of process and as a “mailbox” for the authorities. In Kenya, however, the local representative must also ensure that the company complies with the Companies Act – if not, he is personally liable for any penalties imposed on the company (Sec. 981 para. 1 lit. b).

Usually a company chooses to open a branch abroad because it wants its corporate structure to be untouched: The branch has no separate legal personality, instead it is a depending part of the existing company. Because the company is now acting through its branch in a foreign legal environment, there are new laws to comply with.[16] The inner structure of the company, however, is still – and, in principle, solely – regulated by the company law of its home country. By staying in this familiar legal surrounding, expanding is usually less expensive too, because no significant corporate counselling is needed.[17] While all those things can be said about forming a branch in Tanzania, registering in Uganda and Kenya is a different story. The Ugandan Company Act states in Sec. 253 para. 2, that upon registration the provisions of this Act shall apply to the foreign company as they apply to local companies. In other words, in addition to the applicable company law back home, the company has to comply with all provisions of the Ugandan Company Act as well. Thus, if a company thinks about forming a branch in Uganda, it better hires some local corporate lawyers; because in order to meet the provisions of the Company Act, it most likely has to change its constitution.[18] Kenya goes even further. The Company Act often refers to a “local board of directors”. Therefore, although it doesn’t say so explicitly, the Act seems to suggest implementing such a body, consisting exclusively of Kenyan nationals.[19] Moreover, Sec. 975 para. 2 lit. b. states that at least 30 per cent of the foreign company’s shares – regardless of the company’s specific business – must be held by a Kenyan

14 See Sec. 974 et seq. Company Act Kenya (2015); Sec. 434 et seq. Company Act Tanzania (2002), Sec. 251 et seq. Company Act Uganda (2012). Since the Kenyan Act just entered into force this year, there is not much analysis of it available yet. For details on the old legal regime see *Jörg Kleis*, Legal aspects of doing business in Kenya, in: Law in Africa 18 (2015), 250 et seq.

15 Sec. 979 Company Act Kenya (2015), Sec. 434 para. 1 lit. d Company Act Tanzania (2002); Sec. 252 para. 1 lit. d Company Act Uganda (2012).

16 For example, those regarding taxation, concessions and labour which are usually deemed as most important; for more details see *Aspen Network of Development Entrepreneur* (note 7), 17 et seq.

17 See *Grundmann* (note 8), 487 et seq., 519 et seq. with further references.

18 For instance, Sec. 17 Company Act Uganda (2012) states that the companies’ memorandum of association shall “be respectively in accordance with the forms set out in Tables B, C, D and E in the Third Schedule to this Act or as near to them as circumstances permit”; according to Sec. 14 para. 2, a company may “adopt and incorporate into its articles the provisions of the code of corporate governance contained in Table F.”.

19 Sec. 975 para. 3 lit. d (ii) and Sec. 986 para. 1 lit. c; in this sense also *Hamilton Harrison & Matthews Attorneys*, Registration of a foreign company in Kenya, http://hhm.co.ke/wp-content/uploads/2015/09/HHM-NEWS-ALERT-02-SEPT-2015.pdf (accessed on September 21 2016).

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citizen by birth. Just picture that: Volkswagen would have to transfer almost one third of its shares – a blocking minority! – to Kenyan investors in order to operate in Kenya.[20] One doesn't have to be a rocket scientist to conclude that no major company would be willing to do that.[21]

II. Found a sub-company

The second option is to create a local company on the spot: Instead of just opening a depending branch, the company could actually add a new corporate body to its existing business structure. This new company is associated to its parent company, but since it has its own legal personality, it is fully regulated under the law of its host country. In order to exercise complete control, the new company is usually a sub-company, meaning that it has a single shareholder – the parent company back home.

To be able to follow that route, it is crucial that the desired location provides the legal framework to found such a one-person company. The good news is that this should be possible throughout East Africa by now, due to recent changes in Kenya and Tanzania.[22] But where there is light, there is also shadow: Although all Company Acts have hundreds of sections dedicated to regulate each and every detail, it is often unclear which of those sections apply to single-shareholder companies. In Kenya, for example, Sec. 32 states that all provisions of the Company Act apply to such companies "with the necessary modification"; in Tanzania Sec. 26A para. 5 authorises the Minister for Trade to decree "regulations and rules for carrying out the provisions" of one-man companies – yet, nothing has happened so far. Thus, just to name the most prominent case, it would be rather wise for such companies to hold annual general meetings, although this makes no sense whatsoever when there is only a single shareholder.[23] In addition to that, the regulations for company directors vary from country to country: Everywhere one-person companies are obligated to have at least one director, whereas only Kenya requires this director to be a natural person.[24] If such a natural person is named, each state has different age limitations.[25] And in Tanzania, to complete the confusing picture, the Company Act is nonspecific in regards to whether it is at all

20 Good for Volkswagen that it launched for Kenya decades ago.

21 No wonder Kenyan lawyers are rather shocked. According to *Hamilton Harrison & Matthews Attorneys* (note 19) the 30 per cent requirement is "of great concern as it is likely to discourage, and in fact prevent, foreign companies wishing to invest in Kenya".

22 See Sec. 11 Company Act Kenya (2015); Sec. 26A para. 1 Company Act Tanzania (2002, amended in 2012 by "The Business Laws Miscellaneous Amendments Act").

23 Critical for good reasons: *Gratian Mali*, One shareholder Company in Tanzania: General Overview and challenges, http://www.ardeanattorneys.co.tz/index.php/sidebar-right/item/221-one-shareholder-company-in-tanzania (accessed on September 21 2016).

24 See Sec. 129 Company Act Kenya (2015).

25 Kenya: Minimum 18 years of age, no maximum age (Sec. 131); Tanzania: Minimum 21, maximum 70 years of age (Sec. 194 para 1); Uganda: Minimum 18, maximum 70 years of age (Sec. 196).

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possible or, on the contrary, even mandatory that the single shareholder and director are the same person.[26] Despite the fact that this ambiguity is rather inconvenient, it can become a serious issue for a company, which is founded under Tanzanian law. Because according to Sec. 26A para. 4, the company's director can be punished with a fine of five million Tanzanian Shillings or even imprisonment (!) if the company fails to comply with the provisions for single-shareholder companies.[27]

III. Conclusion: Many walls, few bridges

Overall, the business environment in East Africa can be described as somewhat sceptical towards foreigners – to say the least. Taking the Kenyan and – to a smaller extent – the Ugandan Company Acts as examples, the trend is clearly towards keeping foreign enterprises out of the country. The purpose of that seems clear; it's simply to gain maximum control: While the option of forming a branch is *de facto* off the table due to harsh, partly unfulfillable regulations, only the option of founding of a sub-company remains.[28] In other words, by forcing foreign enterprises to act through subsidiaries, Kenya and Uganda not only regulate them via taxation, labour laws etc., but they also gain control of foreign businesses by *company law* too. From a national point of view this approach is not necessarily a bad move because it assures that the rigid and comprehensive Company Acts[29] get a wider scope of application. For foreign businesses though, this technique causes serious disadvantages as they have no other choice than to incorporate a new company under a legal framework they are not used to.[30]

This wouldn't be much of a problem if the rules for founding a single-membership company were largely consistent throughout the bloc. But as we have seen, there are quite substantial differences and unanswered questions. The natural consequence of these uncertainties is the increase of costs due to the need of proper legal consultation.[31] Moreover, it

26 See Sec. 26A and Sec. 186 Company Act Tanzania (2002); very pessimistic *Mali* (note 23): "The absence of regulations for one Shareholder Company makes it impossible to establish and operate such type of company in Tanzania.".

27 Critical for good reasons *Eve Hawa Sinare*, Amendments to the Companies Act have unintended consequences, *The Citizen* June 12 2013, http://www.thecitizen.co.tz/oped/Amendments-to-the-Companies-Act-have-unintended-consequences/1840568-1880206-ox283az/index.html (accessed on September 21 2016).

28 In this sense also *James Tugee*, Drastic Changes to Requirements for Registration of Foreign Companies in Kenya, http://www.jurist.org/dateline/2015/12/james-tugee-kenya-companies.php (accessed on September 21 2016).

29 The Kenyan Company Act, for instance, is with more than a thousand (!) pages the biggest piece of legislation ever to be passed in Kenya – at least so far.

30 For more details see *Grundmann* (note 8), 519 et seq. with further references.

31 See (for the roughly similar situation in Europe) the data collected by the *Gallup Organisation Hungary*, Europe Survey of the Observatory of European SMEs, 55 et seq., http://ec.europa.eu/public_opinion/flash/fl196_en.pdf (accessed on September 21 2016).

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must be pointed out that this observation was made by examining the respective national company laws, which only regulate the *expanding* of a business. The numerous obstacles that follow in order to actually *fully establish* it – such as obtaining a license, buying land or taxation; aspects which discriminate external investors heavily[32] – weren't even taken into account. So all in all, there are not many incentives for foreign enterprises – especially small-and-medium sized ones – to expand their business to, or even within East Africa. As a result, enormous growth potential lies idle.[33]

1. One size doesn't fit all

All these hurdles suddenly seem justified when seen in the light of their political goal, which is to protect local businesses from foreign rivals. And taking history into account, this strategy is to some extent understandable regarding Western or Asian companies. However, as the laws address *any* foreign company or investor, they don't distinguish between "real" outsiders and those located within the EAC. Not only companies from Europe, Asia or the US, but also competitors from East Africa are kept out. Bearing the idea of a common market in mind, this one-size-fits-all-approach is questionable. The Partner States explicitly "guarantee" the right to other Partner States nationals' to establish within their territories. Moreover, they committed themselves to "ensure that all restrictions on the right of establishment based on the nationality of companies, firms and self-employed persons of the Partner States are removed, and shall not introduce any new restrictions on the right of establishment in their territories".[34] As a matter of fact, from a European point of view such treatment is beyond question: The European Court left no doubt that the fundamental freedom of establishment applies to European companies just the same as to any European citizen. Discriminating companies from other Member States in favour of local ones – as it was done in Europe for decades – is prohibited; a company incorporated under Dutch law, for example, is free to open a branch or even transfer its seat to Germany as a whole.[35] Therefore, it is undisputed that any obstacle deriving from the law of the host country has to be justified by imperative reasons in line with the general interest and to be tested against the principle of proportionality[36]. According to this, if it was up to the European Court to rule over a national law such as the Kenyan Company Act – which requires all foreign

32 See again *Aspen Network of Development Entrepreneur* (note 7), 17 et seq.; for Kenya in particular see *Kleis* (note 14).

33 Refer again to the comparable data regarding Europe collected by the "Europe Survey of the Observatory of European SMEs" (note 30); that the situation in East Africa is similar – or most likely even worse – was pointed out to me in an interview with company law-expert Professor Angelo Mapunda.

34 Art. 13 para. 1 and 5 Common Market Protocol.

35 See ECJ landmark cases C-212/97 (1999), I-1459 – *Centros*; C-208/00 (2002), I-9919 – *Überseering*; C-167/01 (2003), I-10155 – *Inspire Art*.

36 See *Grundmann* (note 8), 503 et seq. with further references.

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companies to have at least 30 per cent local shareholders to open a branch –, the Court would most likely declare it illegal. Not because discriminating foreign companies in general is prohibited. But because the law sets up disproportional hurdles for establishing a business, and therefore violates the fundamental freedoms of those companies which are located in the EAC.

2. Don't pin your hopes on the East African Court of Justice

Having said this, the EAC is not a copy of the EU, but a unique African endeavour – and still a work in progress. So far, the East African Court has not sorted out the actual effect of the provisions stated in the Common Market Protocol.[37] Therefore, it's very much uncertain if the granted "guarantees" are direct applicable individual rights, similar to the fundamental freedoms under EU-Law. In fact, most academics understand them as mere tasks addressed to the Partner States, which each state is supposed to tackle on their own.[38] With this in mind, it is unlikely that the East African Court would rule in favour of a Kenyan, Tanzanian or Ugandan company which claims to be discriminated by the laws of a Partner State. For the time being, neighbouring companies have no other option than to accept that they are subject to discrimination just as any other overseas company. In other words, waiting for the East African Court to integrate company law, like it was the case in Europe, could take some time – or might never happen.

C. A promising solution: The East African Limited Company

Another approach could be more promising. Those problems that foreign businesses face throughout East Africa today would vanish within seconds if the formation of a sub-company was a standard procedure. This could be achieved by introducing a new corporate form to the national Company Acts: The *East African Limited Company*. In order to fulfil its task, that very company type would have to be available in every Partner State at identical legal conditions.[39] Unlike today, where founding a sub-company in Tanzania is a different story to founding one in Kenya, the establishment of an East African Limited Company

37 There are only three judgements in which the Court made some remarks on the issues of direct applicability and effect (1/2006, *Anyang vs. Kenya*; 1/2011, *East African Law Society vs. EAC Secretary General*; 9/2012, *East African for Trade Policy and Law vs. EAC Secretary General*), yet none of them actually decided on the nature of the provisions; critical for good reasons *Milej* (note 1), 591 et seq; *Oppong* (note 1), 97.

38 See *Milej* (note 1), 582 et seq; *Luwarn Dirar*, Rethinking and Theorizing Regional Integration in Southern Africa, in: Emory International Law Review 28 (2014), 153 et seq. speaks of a "consensus of non-enforcement".

39 Ideally, the East African Limited Company should be open to any company or investor, regardless of its nationality. However, taking the – to some extent legitimate – African scepticism towards Western activities into account, it should be considered to allow EAC-shareholders (companies, citizens) only.

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would follow the same steps. Thus, there would be no difference between expanding to Nairobi, Kampala or Dar es Salaam; the provisions would be identical in every case. Correspondingly, less legal consultation would lead to the decrease of costs; small- and medium-sized companies would have a real chance to expand their businesses in neighbouring countries at last. And since such an East African Limited Company would be still incorporated under the national law of its location, it would not be treated like a foreign, but rather like a local company – and there are numerous benefits that come with that.[40] Most of all, however, an East African Limited Company would make a huge statement in terms of integration. It could become a brand that is recognised for its transnational, unique East African approach. In times where many enterprises like to label themselves as regional players,[41] a fitting corporate form would fall on fertile ground.

I. Learning from Europe? Yes and no

This proposal is not as illusory as it may sound. In Europe, both practitioners and academics have been trying to convince legislators for decades to come up with such a legal entity.[42] And those voices were heard – just not completely. While a supranational public company was introduced in 2004 – the so called *Societas Europaea* (SE), which is largely accepted and considered as success story[43] –, a private counterpart still doesn't exist. The well-prepared and broadly discussed proposal from the European Commission for an SPE (*Societas Privata Europaea)*, which meant to provide supranational legal form for small- and medium-sized enterprises in Europe,[44] was rejected by the Member States. They were afraid of their national company types to come under fire; especially Germany feared that its unique system of workers' participation could be undermined.[45] With this in mind, the European Commission launched a less radical project in 2013, the so-called SUP (*Societas Unius Personae*). It is geared towards harmonising the regulations for single-shareholder

40 For example, in terms of taxation, land ownership etc.; see again *Aspen Network of Development Entrepreneur* (note 7), 17 et seq.; for Kenya in particular, see *Kleis* (note 14).

41 Naming just two prominent examples: *East African Breweries* (Kenya) and *East African Safari and Touring* (Kenya and Uganda).

42 See, among others, *Peter Hommelhoff/Dietmar Helms* (ed.), Neue Wege in die Europäische Privatgesellschaft, Köln 2001.

43 2,602 registrations have been reported as of September 21 2016 including companies like Airbus, Porsche, and SAP (detailed listings available at: http://ecdb.worker-participation.eu/show_factsheets.php?letter=A&status_id=3&title=Established%20SEs); see also *Krzysztof Oplustil/Christoph Teichmann*, The European Company – all Over Europe: A State-by-state Account of the Introduction of the European Company, Berlin 2004.

44 See COM (2008) 396/3 – Proposal for a Council Regulation on the Statute for a European private company, for further details on the academic discussion see *Heribert Hirte/Christoph Teichmann* (ed.), The European Private Company – Societas Privata Europaea (SPE), Berlin and Boston 2013.

45 For more details see *Peter Hommelhoff/Christoph Teichmann*, Die Wiederbelebung der SPE, in: GmbH-Rundschau 105 (2014), 177 et seq.

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companies via a SUP-Directive, and should therefore give the Member States a lot more space in terms of implementation.[46] While this considerate approach certainly increases the odds for the SUP to surface at all, it at the same time lacks many of the advantages of the promising former SPE-idea: Even if the SUP-Directive gets realised, it will not provide entrepreneurs with a uniform legal entity, but with one that – more or less – varies from Member State to Member State.[47]

II. *Time for reversal: The East African Limited Company as role model for the European Union*

For East Africa the European story bears many chances. For one thing, the bloc can rely on a huge amount of preliminary work that has been done by practitioners and academics all over the "old continent".[48] However, it is the very nature and history of the region itself that offers the most promising aspect: Unlike in Europe, where company law is heavily influenced by the varying traditions of civil and common law heritage, the Company Acts in East Africa come from the same English source. There are still numerous differences, indeed – but compared to those in Europe, resolving them should be a lot easier. Besides, the main difficulty for the EU has been the diverse approach from different Member States towards workers' participation, and this 'obstacle' is non-existent in East Africa – whether you like it or not.[49] Yet, one – and admittedly rather high – hurdle must be overcome: The Partner states would have to shift from only preaching the common market to actually *living* it. Encouraging, and thereby increasing foreign business activity, would naturally lead to more competition; local companies might fall by the wayside. Many governments fear these consequences, especially due to the economic dominance of Kenya.[50] But even if you add up all possible disadvantages, the opportunities prevail. Businesses could reach new

46 COM (2014) 0212 – Proposal for a Directive of the European Parliament and of the Council on single-member private limited liability companies, see also *Tim Drygala*, What's SUP?, in: Europäische Zeitschrift für Wirtschaftsrecht 25 (2014), 491 et seq. and *Stefanie Jung*, Societas Unius Personae (SUP) – The New Corporate Element in Company Groups, in: European Business Law Review 26 (2015), 645 et seq.

47 At this point of the process, the SUP is not meant to be an autonomous (supranational) legal entity, but simply a title: Limited liability companies with a single shareholder are referred to as SUP if they had been erected or converted according to the SUP-Directive. Since the SPU-Directive provides only a legal framework, national dissimilarities remain. Critical for good reasons *Peter Hommelhoff*, Die Societas Unius Personae: als Konzernbaustein momentan noch unbrauchbar, in: GmbH-Rundschau 105 (2014), 1065 et seq.

48 See first and foremost *Hirte/Teichmann* (note 44) and *Gregor Bachmann et al.* (ed.), Regulating the Closed Company, Berlin and Boston 2013.

49 For further details on the discussion see Gérard *Kester*, Trade Unions and Workplace Democracy in Africa, London and New York 2016, 43 et seq.

50 This situation is more conflict-ridden than it might sound: Nowadays most historians believe that the economic dominance of Kenya was the main reason for the "first" EAC to collapse in 1997, see *Mangachi* (note 2), 67 et seq.

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markets with little effort; they could maximise the number of prospective customers by spending their money on advertising and innovation – instead of wasting it on expensive legal counsel.

There is, no doubt, a lot of work to do; this paper presents nothing more than a slight impulse. But East Africa certainly has the intellectual infrastructure to get it done; especially when it learns the right lessons from the struggles in Europe. Maybe it's time for a role reversal, for yet another example of African innovative power. Let's go, East Africa, show us how it's done!

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