



2018/0113(COD)

26.7.2018

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## **DRAFT REPORT**

on the proposal for a directive of the European Parliament and of the Council amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law  
(COM(2018)0239 – C8-0166/2018 – 2018/0113(COD))

Committee on Legal Affairs

Rapporteur: Tadeusz Zwiefka

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law**

**(COM(2018)0239 – C8-0166/2018 – 2018/0113(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0239),
  - having regard to Article 294(2) and Article 50 (1) and points (b), (c), (f) and (g) of Article 50 (2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0166/2018),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Economic and Social Committee,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs (A8-0000/2018),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

#### **Proposal for a directive**

#### **Recital 3**

*Text proposed by the Commission*

(3) The Commission in its Communication A Digital Single Market Strategy for Europe<sup>30</sup> and in its Communication EU e-Government Action Plan 2016-2020: Accelerating the digital transformation of government<sup>31</sup> stressed the role of public administrations in helping **businesses** to easily set up

*Amendment*

(3) The Commission in its Communication A Digital Single Market Strategy for Europe<sup>30</sup> and in its Communication EU e-Government Action Plan 2016-2020: Accelerating the digital transformation of government<sup>31</sup> stressed the role of public administrations in helping **entrepreneurs** to easily set up

business, operate online and expand across borders. The EU e-Government Action Plan specifically recognised the importance of improving the use of digital tools when complying with company law related requirements. Furthermore, in the 2017 Tallinn declaration on eGovernment, Member States made a strong call to step up efforts for the provision of efficient, user-centric electronic procedures in the Union.

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<sup>30</sup> COM(2015) 192 final of 6 May 2015.

<sup>31</sup> COM(2016) 179 final of 19 April 2016.

business, operate online and expand across borders. The EU e-Government Action Plan specifically recognised the importance of improving the use of digital tools when complying with company law related requirements. Furthermore, in the 2017 Tallinn declaration on eGovernment, Member States made a strong call to step up efforts for the provision of efficient, user-centric electronic procedures in the Union.

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<sup>30</sup> COM(2015) 192 final of 6 May 2015.

<sup>31</sup> COM(2016) 179 final of 19 April 2016.

Or. en

## Amendment 2

### Proposal for a directive

#### Recital 7

##### *Text proposed by the Commission*

(7) Enabling the fully online registration of companies and branches and the fully online filing of documents and information would allow companies to use digital tools in their contacts with competent authorities of Member States. In order to enhance trust, Member States should ensure that secure electronic identification and the use of trust services is possible for national as well as cross-border users in accordance with Regulation (EU) No 910/2014 of the European Parliament and of the Council<sup>34</sup>. Furthermore, in order to enable cross-border electronic identification, Member States should set up electronic identification schemes which provide for authorised electronic identification means. Such national schemes would be used as a basis for the recognition of electronic identification means issued in another Member State. In order to ensure the high

##### *Amendment*

(7) Enabling the fully online registration of companies and branches and the fully online filing of documents and information would allow companies to use digital tools in their contacts with competent authorities of Member States. In order to enhance trust, Member States should ensure that secure electronic identification and the use of trust services is possible for national as well as cross-border users in accordance with Regulation (EU) No 910/2014 of the European Parliament and of the Council<sup>34</sup>. Furthermore, in order to enable cross-border electronic identification, Member States should set up electronic identification schemes which provide for authorised electronic identification means. Such national schemes would be used as a basis for the recognition of electronic identification means issued in another Member State. In order to ensure the high

level of trust in cross-border situations, only electronic identification means which comply with Article 6 of Regulation (EU) No 910/2014 should be recognised. **However, Member States may also recognise other identification means such as a scanned copy of a passport.** In any event, this Directive should only oblige Member States to enable online registration of companies and their branches and online filing by Union citizens through the recognition of their electronic identification means.

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<sup>34</sup> Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

level of trust in cross-border situations, only electronic identification means which comply with Article 6 of Regulation (EU) No 910/2014 should be recognised. In any event, this Directive should only oblige Member States to enable online registration of companies and their branches and online filing by Union citizens through the recognition of their electronic identification means.

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<sup>34</sup> Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

Or. en

### Amendment 3

#### Proposal for a directive Recital 9

##### *Text proposed by the Commission*

(9) As a first step in a company's lifecycle, it should be possible to establish and register companies fully online. However, Member States **should have the possibility to derogate** from this **requirement in case of** public limited liability companies due to the complexity of establishment and registration of such companies and in order to respect Member States' existing traditions of company law. In any event, Member States should lay down detailed rules of registration. It should be possible to carry out online registration with the submission of documents in electronic form.

##### *Amendment*

(9) As a first step in a company's lifecycle, it should be possible to establish and register companies fully online. However, Member States **should, by way of derogation** from this **requirement, be allowed to exempt** public limited liability companies due to the complexity of establishment and registration of such companies and in order to respect Member States' existing traditions of company law. In any event, Member States should lay down detailed rules of registration. It should be possible to carry out online registration with the submission of documents in electronic form.

## Amendment 4

### Proposal for a directive

#### Recital 11

##### *Text proposed by the Commission*

(11) In order to assist businesses, in particular **start-ups**, in setting-up their business, it should be possible to register a private limited liability company with the use of templates which are model instruments of constitution which should be available online. Such models may contain a pre-defined set of options in accordance with national law. The applicants should be able to choose between using this model or registering a company with bespoke instruments of constitution and Member States should have the option to provide templates also for other types of companies.

##### *Amendment*

(11) In order to assist businesses, in particular **micro, small and medium-size companies**, in setting-up their business, it should be possible to register a private limited liability company with the use of templates which are model instruments of constitution which should be available online. Such models may contain a pre-defined set of options in accordance with national law. The applicants should be able to choose between using this model or registering a company with bespoke instruments of constitution and Member States should have the option to provide templates also for other types of companies.

## Amendment 5

### Proposal for a directive

#### Recital 12

##### *Text proposed by the Commission*

(12) In order to respect Member States' existing traditions of company law, it is important to allow flexibility as regards the manner in which they ensure a fully online system of registration of companies and branches, including in relation to the role of notaries or lawyers in such a process. Matters concerning online registration of companies and branches which are not regulated in this Directive should be

##### *Amendment*

(12) In order to respect Member States' existing traditions of company law, it is important to allow flexibility as regards the manner in which they ensure a fully online system of registration of companies and branches **as well as the online filing of documents and information**, including in relation to the role of notaries or lawyers in such a process. Matters concerning online registration of companies and branches which are not regulated in this Directive



governed by national law.

should be governed by national law.

Or. en

## Amendment 6

### Proposal for a directive Recital 17

#### *Text proposed by the Commission*

(17) Similarly with regard to the online registration of companies, in order to reduce the costs and burdens on companies, it should also be possible throughout the companies' lifecycle to submit documents and information fully online to national registers. At the same time, Member States should have the possibility to allow companies to file documents and information by other means, including by paper. In addition, the disclosure of company information should be effected once the information is made publicly available in those registers, since they are now interconnected and provide a comprehensive point of reference for users. In order to avoid disruption to the existing means of disclosure, Member States should have the choice also to publish either all or some of the company information in a national gazette, whilst at the same time ensuring that the information is sent electronically by the register to that national gazette.

#### *Amendment*

(17) Similarly with regard to the online registration of companies, in order to reduce the costs and burdens on companies, it should also be possible throughout the companies' lifecycle to submit documents and information fully online to national registers. ***Any requirements as to the authenticity, accuracy and due legal form of any submitted document or information should be subject to national law and in compliance with Regulation (EU) No 910/2014 of the European Parliament and of the Council<sup>1</sup>.*** At the same time, Member States should have the possibility to allow companies to file documents and information by other means, including by paper. In addition, the disclosure of company information should be effected once the information is made publicly available in those registers, since they are now interconnected and provide a comprehensive point of reference for users. In order to avoid disruption to the existing means of disclosure, Member States should have the choice also to publish either all or some of the company information in a national gazette, whilst at the same time ensuring that the information is sent electronically by the register to that national gazette.

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<sup>1</sup> ***Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic***

*identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (EIDAS Regulation) (OJ L 257, 28.8.2014, p. 73).*

Or. en

## Amendment 7

### Proposal for a directive

#### Article 1 – paragraph 1 – point 4

Directive (EU) 2017/1132

Article 13a – paragraph 1 – point 3

*Text proposed by the Commission*

(3) "registration" means the formation of a company as a legal entity;

*Amendment*

(3) "registration" means ***the whole process of formation of a company by means of digital tools, from the identification of the applicant, the drawing up or submitting of the instrument of constitution, to the entry of the company in a business register as a legal entity, as provided for in national law; and as regards branches, means the process leading to disclosure of documents and information relating to a branch opened in a Member State.***

Or. en

## Amendment 8

### Proposal for a directive

#### Article 1 – paragraph 1 – point 4

Directive (EU) 2017/1132

Article 13a – paragraph 1 – point 4

*Text proposed by the Commission*

4. Without prejudice to paragraphs 1 to 3, Member States may take measures which could require a physical presence for the purposes of verifying the identity of

*Amendment*

4. Without prejudice to paragraphs 1 to 3, Member States may take measures which could require a physical presence ***of the applicant or representatives of the***

persons before any authority competent to deal with online registration or online filing, in cases of genuine suspicion of fraud based on reasonable grounds.

***applicant*** for the purposes of verifying the identity of persons before any authority competent to deal with online registration or online filing, in cases of genuine suspicion of fraud based on reasonable grounds. ***Member States shall ensure that the physical presence of an applicant or a representative of the applicant may only be required on a case by case basis and that any other steps of the procedure can be completed fully online.***

Or. en

## Amendment 9

### Proposal for a directive

#### Article 1 – paragraph 1 – point 4

Directive (EU) 2017/1132

Article 13c – title

*Text proposed by the Commission*

Fees for online registration and online filing

*Amendment*

Fees for online registration and online filing ***of documents and information***

Or. en

## Amendment 10

### Proposal for a directive

#### Article 1 – paragraph 1 – point 4

Directive (EU) 2017/1132

Article 13 d – paragraph 1

*Text proposed by the Commission*

Where the completion of a procedure laid down in this Chapter requires a payment, Member States shall ensure that the payment can be made by means of ***a*** payment service widely available in cross-border payment services.

*Amendment*

Where the completion of a procedure laid down in this Chapter requires a payment, Member States shall ensure that the payment can be made by means of ***an online*** payment service widely available in cross-border payment services.

Or. en

## Amendment 11

### Proposal for a directive

#### Article 1 – paragraph 1 – point 5

Directive (EU) 2017/1132

Article 13f – paragraph 1

#### *Text proposed by the Commission*

1. Member States shall ensure that the registration of companies may be carried out fully online without the necessity **for the applicants, or their representatives**, to appear in person before any competent authority or before any other person or body dealing with the application for registration, subject to the proviso laid down in Article 13b(4). However, Member States may decide not to provide fully online registration procedures for those types of companies listed in Annex I.

#### *Amendment*

1. Member States shall ensure that the registration of companies may be carried out fully online without the necessity, to appear in person before any competent authority or before any other person or body dealing with the application for registration, subject to the proviso laid down in Article 13b(4). However, Member States may decide not to provide fully online registration procedures for those types of companies listed in Annex I.

Or. en

## Amendment 12

### Proposal for a directive

#### Article 1 – paragraph 1 – point 5

Directive (EU) 2017/1132

Article 13g – title

#### *Text proposed by the Commission*

Templates for registration of companies

#### *Amendment*

Templates for **online** registration of companies

Or. en

## Amendment 13

### Proposal for a directive

#### Article 1 – paragraph 1 – point 5

Directive (EU) 2017/1132

Article 13h – paragraph 2

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*Text proposed by the Commission*

2. Member States shall make the necessary arrangements to ensure that their registers are able to provide, by means of the system referred to in Article 22, the information referred to in paragraph 1 of this Article and in respect of what period any disqualification is in force. This information shall be provided for the purpose of registration and Member States **may** also provide the grounds of disqualification.

*Amendment*

2. Member States shall make the necessary arrangements to ensure that their registers are able to provide, **without undue delay** by means of the system referred to in Article 22, the information referred to in paragraph 1 of this Article and in respect of what period any disqualification is in force. This information shall be provided for the purpose of registration and, **where applicable**, Member States **shall** also provide the grounds of disqualification.

Or. en

**Amendment 14**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 5**

Directive (EU) 2017/1132

Article 13i – title

*Text proposed by the Commission*

Online filing by companies

*Amendment*

Online filing **of documents and information** by companies

Or. en

**Amendment 15**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 5**

Directive (EU) 2017/1132

Article 13i – paragraph 1

*Text proposed by the Commission*

Member States shall ensure that companies are able to file online the documents and information, as referred to in Article 14, including any modification thereof, with

*Amendment*

Member States shall ensure that companies are able to file online the documents and information, as referred to in Article 14, including any modification thereof, with

the register within the time limit provided by the laws of the Member State where the company is to be registered. Member States shall ensure that such filing may be completed online in its entirety without the necessity for the applicant, or his representative to appear in person before any competent authority or before any other person or body dealing with the online filing, subject to the proviso laid down in Article 13b(4).

the register within the time limit provided by the laws of the Member State where the company is to be registered. Member States shall ensure that such filing may be completed online in its entirety without the necessity for the applicant, or his representative to appear in person before any competent authority or before any other person or body dealing with the online filing, subject to the proviso laid down in Article 13b(4). ***Member States may lay down rules to provide safeguards as regards the reliability and trustworthiness of documents and information to be filed online.***

Or. en

## **Amendment 16**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 9**

Directive (EU) 2017/1132

Article 19 – paragraph 1

#### *Text proposed by the Commission*

1. The fees charged for obtaining documents and information referred to in Article 14 through the system of interconnection of registers shall not exceed the administrative costs thereof.

#### *Amendment*

1. The fees charged for obtaining documents and information ***or copies thereof*** referred to in Article 14 through the system of interconnection of registers, ***whether by paper or electronic means,*** shall not exceed the administrative costs thereof.

Or. en

## **Amendment 17**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 9**

Directive (EU) 2017/1132

Article 19 – paragraph 2 – point e

*Text proposed by the Commission*

(e) the legal status of the company, such as when it is closed, struck off the register, wound up, dissolved, economically active or inactive as defined in national law and where available in the national registers;

*Amendment*

(e) the legal status of the company, such as when it is closed, struck off the register, wound up, dissolved, ***under the insolvency proceedings***, economically active or inactive as defined in national law and where available in the national registers;

Or. en

**Amendment 18**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 9**

Directive (EU) 2017/1132

Article 19 – paragraph 2 – point g

*Text proposed by the Commission*

(g) ***the number of employees of the company, where this is available in the company's financial statements as required by national law;***

*Amendment*

***deleted***

Or. en

**Amendment 19**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 13**

Directive (EU) 2017/1132

Article 28a – paragraph 1

*Text proposed by the Commission*

1. Member States shall ensure that the registration in a Member State of a branch of a company, which is governed by the law of another Member State, may be carried out fully online without the necessity ***for the applicant, or its representative***, to appear in person before

*Amendment*

1. Member States shall ensure that the registration in a Member State of a branch of a company, which is governed by the law of another Member State, may be carried out fully online without the necessity to appear in person before any competent authority or before any other

any competent authority or before any other person dealing with the application for registration, subject to the proviso laid down in Article 13b(4).

person dealing with the application for registration, subject to the proviso laid down in Article 13b(4).

Or. en

## **Amendment 20**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 13**

Directive (EU) 2017/1132

Article 28a – paragraph 3 – point b a (new)

*Text proposed by the Commission*

*Amendment*

***(ba) the requirements for the applicant to use trust services referred to in Regulation (EU) No 910/2014.”***

Or. en

## **Amendment 21**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 13**

Directive (EU) 2017/1132

Article 28a – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

***3a. The rules, referred to in paragraph 2, may also provide for the following, where appropriate:***

***(a) the procedures to ensure the legality of the object of the branch;***

***(b) the procedures to ensure the legality of the name of the branch;***

***(c) the procedures to ensure the legality of the documents and information submitted for the registration of the branch;***

***(d) the procedures to provide for the role of a notary or any other person or***



*body involved in the process of registration of a branch under applicable national law.”*

Or. en

## **Amendment 22**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 13**

Directive (EU) 2017/1132

Article 28b – title

*Text proposed by the Commission*

*Amendment*

Online filing for branches

Online filing *of documents and information* for branches

Or. en

## **Amendment 23**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 13**

Directive (EU) 2017/1132

Article 28b – paragraph 1

*Text proposed by the Commission*

*Amendment*

Member States shall ensure that documents and information, referred to in Article 30 or any modification thereof, may be filed online within the period provided by the laws of the Member State where the branch is established. Member States shall ensure that such filing may be completed online in its entirety without the necessity for the applicant or its representative to appear in person before any competent authority or before any other person dealing with the online filing, subject to the proviso laid down in Article 13b(4).

Member States shall ensure that documents and information, referred to in Article 30 or any modification thereof, may be filed online within the period provided by the laws of the Member State where the branch is established. Member States shall ensure that such filing may be completed online in its entirety without the necessity for the applicant or its representative to appear in person before any competent authority or before any other person dealing with the online filing, subject to the proviso laid down in Article 13b(4). ***Member States may lay down rules to provide safeguards as regards the reliability and trustworthiness of documents and***

*information to be filled online.*

Or. en

## **Amendment 24**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

***Notwithstanding the first subparagraph, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 16(5) and with point (g) of Article 19(2) by ....[OP please set the date = the last day of the month of 60 months after the date of entry into force] at the latest.***

***deleted***

Or. en

## EXPLANATORY STATEMENT

The European Parliament, in its 2017 resolution on the e-Government Action Plan called on the Commission to consider further ways to promote digital solutions for formalities throughout a company's lifecycle and underlined the importance of work on the interconnection of business registers.

In the EU, there are significant differences between Member States when it comes to the availability of online tools for companies in their contacts with public authorities in the area of company law. Member States provide e-government services at variable degrees: some are very advanced and provide easy-to-use, fully online solutions, while others do not offer online solutions in the field of company law such as the registration of the company as a legal entity.

Therefore, the Commission is putting forward this proposal, together with the Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions to adjust the legal landscape and give a comprehensive set of measures for fair, enabling and modern company law rules in the EU.

This proposal aims to complement the existing rules on EU company law that are codified in Directive (EU) 2017/1132. The initiative is fully coherent with and will build on existing digital elements of EU company law, in particular on the Business Registers Interconnection System (BRIS), which is based on legal obligations set out by Directive 2012/17/EU and the Commission Implementing Regulation (EU) 2015/884.

Overall your rapporteur appreciates the proposal and its main objectives - possibility to establish a company or a branch fully online, implementation of an 'only once' principle, usage of online forms, broadening of a free access to documents in the Business Registers Interconnection System (BRIS). He sees the potential of the proposed directive and appreciates the balanced approach between the easier and cheaper online registration and the anti-fraud protection presented by the EC.

Your rapporteur would like to underline that any requirements as to the authenticity of any submitted information or document shall be subject to national law and Member States may lay down rules to provide safeguards for the reliability and trustworthiness of the documents and information to be filled online. Your rapporteur suggests a more detailed definition of what registration means as the whole process of formation of a company via digital tools is not just a moment. Your rapporteur would like to stress in order to clear up any doubt that it is important that Member States shall ensure that physical presence may only be requested on a case-by-case basis and that any other steps of the procedure can be completed fully online. It is also important to stress that the Member State requesting the information on disqualified directors, if the answer confirms a sort of disqualification, should be given reasons for such a decision from the authorities of the requested Member State.