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A8-0422/ 001-040

AMENDMENTS 001-040

by the Committee on Legal Affairs

Report

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A8-0422/2018

Use of digital tools and processes in company law

Proposal for a directive (COM(2018)0239 – C8-0166/2018 – 2018/0113(COD))

Amendment 1

Proposal for a directive

Recital 2

Text proposed by the Commission

(2) The use of digital tools and processes to more easily, rapidly and cost-effectively initiate economic activity by setting up a company or by opening a branch of that company in another Member State is one of the prerequisites for the effective functioning of a competitive Single Market and for ensuring the competitiveness of companies.

Amendment

(2) The use of digital tools and processes to more easily, rapidly and ***time- and*** cost-effectively initiate economic activity by setting up a company or by opening a branch of that company in another Member State, ***and to provide comprehensive and accessible information on companies,*** is one of the prerequisites for the effective functioning, ***modernisation and administrative streamlining*** of a competitive Single Market and for ensuring the competitiveness ***and trustworthiness*** of companies.

Amendment 2

Proposal for a directive

Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) Ensuring a legal and administrative environment equal to the new social and economic challenges of globalisation and digitisation is essential, on the one hand, to provide the necessary safeguards against abuse and fraud and, on the other hand, to pursue objectives such as promotion of economic growth, creation of jobs and attracting investment to the European Union, all of which would bring economic and social benefits to society as a whole.

Amendment 3

**Proposal for a directive
Recital 2 b (new)**

Text proposed by the Commission

Amendment

(2b) There are currently significant differences between Union Member States when it comes to the availability of online tools for entrepreneurs and companies to be able to communicate with authorities on matters of company law. eGovernment services vary between Member States, some of them providing comprehensive and user-friendly services entirely available online, while others are unable to provide online solutions at certain major stages of a business lifecycle. For the purposes of registering companies or filing changes to documents and information with the register, for example, some Member States only allow this to be done in person and some allow it to be done either in person or online, while in other Member States it can only be done online.

Amendment 4

**Proposal for a directive
Recital 2 c (new)**

(2c) Furthermore, regarding access to company information, Union law stipulates that a minimum set of data has always to be provided free of charge. However, the scope of such information remains limited. Access to such information varies, with more information being made available free of charge in some Member States than in others, thus causing an imbalance in the Union.

Amendment 5

Proposal for a directive

Recital 3

Text proposed by the Commission

Amendment

(3) The Commission in its Communication A Digital Single Market Strategy for Europe³ and in its Communication EU e-Government Action Plan 2016-2020: Accelerating the digital transformation of government stressed the role of public administrations in helping **businesses** 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.

(3) In order to ensure that Union company law is fair, user-friendly and up to date, the Commission in its Communication A Digital Single Market Strategy for Europe³ and in its Communication EU e-Government Action Plan 2016-2020: Accelerating the digital transformation of government 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.

³ COM(2015) 192 final of 6 May 2015.

³ COM(2015) 192 final of 6 May 2015.

Amendment 6

Proposal for a directive Recital 5

Text proposed by the Commission

(5) In order to facilitate the registration of companies and their branches and to reduce the costs and administrative burdens associated with the registration process, in particular by micro, small and medium-sized enterprises ('SMEs') as defined in Commission Recommendation 2003/361/EC⁵, procedures should be put in place to enable registration to be completed **fully** online. Such costs and burdens derive not only from administrative fees charged for setting up a company, but also from other requirements which make the overall process longer to complete, in particular when the physical presence of the applicant or their representative is required. In addition, information on these procedures should be made available online and free of charge.

⁵ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

Amendment 7

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

Amendment

(5) In order to facilitate the registration of companies and their branches and to reduce the costs, **time** and administrative burdens associated with the registration process, in particular by micro, small and medium-sized enterprises ('SMEs') as defined in Commission Recommendation 2003/361/EC⁵, procedures should be put in place to enable registration to be completed online. ***This Directive, however, should not oblige companies to use online procedures.*** Such costs and burdens derive not only from administrative fees charged for setting up a company, but also from other requirements which make the overall process longer to complete, in particular when the physical presence of the applicant or their representative is required. In addition, information on these procedures should be made available online and free of charge.

⁵ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

Amendment

(7) Enabling the online registration of companies and branches and the online filing of documents and information would

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. 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.

⁷ 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).

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. 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. 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.

⁷ 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).

Amendment 8

Proposal for a directive Recital 8

Text proposed by the Commission

Amendment

(8) In order to facilitate online procedures for companies, Member States' registers should not charge for online registration or online submission of information over and above the actual administrative costs of providing the service. Furthermore, Member States should assist those seeking to establish a company or a branch by providing up-to-date, clear, concise and user-friendly information concerning the procedures and requirements to establish and operate limited liability companies and their branches. Concerning private limited liability companies, more detailed information should be made available to applicants and directors because Member States should also ensure the possibility of fully online registration for such companies.

(8) In order to facilitate online procedures for companies, Member States' registers should not charge for online registration or online submission of information over and above the actual administrative costs of providing the service. Furthermore, Member States should assist those seeking to establish a company or a branch by providing, ***without undue delay***, up-to-date, clear, concise and user-friendly information concerning the procedures and requirements to establish and operate limited liability companies and their branches. Concerning private limited liability companies, more detailed information should be made available to applicants and directors because Member States should also ensure the possibility of fully online registration for such companies.

Amendment 9

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 ***be allowed to exempt*** public limited liability companies ***from such a requirement*** 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 10

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 11

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 governed by national law.

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, ***and online filing of documents and information,*** which are not regulated in this Directive should be governed by national law.

Amendment 12

Proposal for a directive
Recital 13

Text proposed by the Commission

(13) Furthermore, in order to tackle fraud and company hijacking and to provide safeguards for the reliability and trustworthiness of documents and information contained within national registers, provisions concerning the online registration of companies and their branches should also include controls on the identity and legal capacity of persons seeking to establish a company or branch. However, the means and methods to achieve these controls should be left to Member States to develop and adopt. Those rules could include, amongst others, verification by means of video-conference or other online means that provide a real-time audio-visual connection. To that effect Member States should be able to require the involvement of notaries or lawyers as a part of the online registration process, however, such involvement should not prevent the completion of the registration procedure in its entirety online.

Amendment

(13) Furthermore, in order to tackle fraud, money-laundering and company hijacking and to provide safeguards for the reliability and trustworthiness of documents and information contained within national registers, provisions concerning the online registration of companies and their ***branches and the online filing of documents and information*** should also include ***legality*** controls on the identity and legal capacity of persons seeking to establish a company or branch ***or file a document or information online***. However, the means and methods to achieve these controls should be left to Member States to develop and adopt. Those rules could include, amongst others, verification by means of video-conference or other online means that provide a real-time audio-visual connection. To that effect Member States should be able to require the involvement of notaries or lawyers as a part of the online registration process ***and online filing process***, however, such involvement should not prevent the completion of the registration ***and filing*** procedure in its entirety online.

Amendment 13

Proposal for a directive
Recital 14

Text proposed by the Commission

(14) Member States should be allowed to take measures, in accordance with national law, ***in cases of*** genuine suspicion of fraud, which could require, not systematically but on a case-by-case basis, a physical presence of the applicant or their representative before any authority of a Member State where the company or

Amendment

(14) ***Without prejudice to obligations arising from the existing rules on beneficial owners, anti-money laundering, counterfeiting, terrorism financing and tax evasion, where such rules require due diligence checks, including a physical presence***, Member States should be allowed to take measures, in accordance

branch is to be registered. *Such genuine suspicion of fraud should be based on reasonable grounds, such as, on the basis of information available from the registers of beneficial owners, from criminal records or from indications of identity fraud or tax evasion.*

with national law, *that are justified by an overriding reason of public interest* in cases of suspicion of *fraud such as those regarding the applicants' identity or legal capacity*, which could require, not systematically but *exceptionally and* on a case-by-case basis, a physical presence of the applicant or their representative before any authority of a Member State *responsible for the procedure of registration under the national law of that Member State* where the company or branch is to be registered..

Amendment 14

Proposal for a directive Recital 15

Text proposed by the Commission

(15) In order to ensure the protection of all persons interacting with companies, Member States should be able to prevent fraudulent behaviour by refusing the appointment of a person as a director of a company or a branch in their own territory, who is currently disqualified from acting as a director in another Member State. Such requests for information, in relation to previous directorships, should be possible by means of the system of interconnection of registers and therefore Member States should make the necessary arrangements to ensure that the national registers are able to provide such information. The rules for the disqualification of directors and the confidentiality of the transmission should be governed by national law. To ensure compliance with applicable rules on protection of personal data, national registers should process any such data relating to disqualification of director in compliance with Regulation (EU) 2016/679 of the European Parliament and of the Council³⁵.

Amendment

(15) In order to ensure the protection of all persons interacting with companies, Member States should be able to prevent fraudulent behaviour by refusing the appointment of a person as a director of a company or a branch in their own territory, who is currently disqualified from acting as a director in another Member State. Such requests for information, in relation to previous directorships, should be possible by means of the system of interconnection of registers and therefore Member States should make the necessary arrangements to ensure that the national registers are able to provide *and share* such information, *thereby helping to combat unlawful activities and ensure security by means of transnational cooperation*. The rules for the disqualification of directors and the confidentiality of the transmission should be governed by national law. To ensure compliance with applicable rules on protection of personal data, national registers should process any such data relating to disqualification of director in compliance with Regulation (EU) 2016/679 of the European Parliament and

of the Council³⁵.

³⁵Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

³⁵Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

Amendment 15

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^{1a}.*** 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.

1^a 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).

Amendment 16

Proposal for a directive

Recital 19

Text proposed by the Commission

(19) In order to cut costs and reduce administrative burden for companies, Member States should apply the ‘once-only’ principle in the area of company law. Applying the once-only principle entails that companies are not asked to submit the same information to public authorities more than once. For example, companies should not have to submit the same information both to the national register and to the national gazette. Instead, the register should provide the information already submitted directly to the national gazette. Similarly, where a company is incorporated in one Member State and wants to register a branch in another Member State, it should be possible for the company to make use of the information or documents previously submitted to a register. Furthermore, where a company is incorporated in one Member State but has a branch in another Member State it should be possible for the company to submit certain changes to their company information only to the register where the company is registered, without the need to submit the same information to the register where the branch is registered. Instead,

Amendment

(19) In order to cut costs and reduce ***the length of the procedures*** and administrative burden for companies, Member States should apply the ‘once-only’ principle in the area of company law, ***which is firmly supported in the Union, as evidenced inter alia by the Regulation establishing a Single Digital Gateway^{1a}, the European Commission eGovernment Action Plan or the Tallinn Declaration on eGovernment.*** Applying the once-only principle entails that companies are not asked to submit the same information to public authorities more than once. For example, companies should not have to submit the same information both to the national register and to the national gazette. Instead, the register should provide the information already submitted directly to the national gazette. Similarly, where a company is incorporated in one Member State and wants to register a branch in another Member State, it should be possible for the company to make use of the information or documents previously submitted to a register. Furthermore, where a company is incorporated in one Member State but has a branch in another Member

information such as change of company name or change of registered office of the company should be ***exchanged*** electronically between the register where the company is registered and the register where the branch is registered using the system of interconnection of registers.

State it should be possible for the company to submit certain changes to their company information only to the register where the company is registered, without the need to submit the same information to the register where the branch is registered. Instead, information such as change of company name or change of registered office of the company should be ***transferred electronically, automatically and immediately***, between the register where the company is registered and the register where the branch is registered using the system of interconnection of registers.

1^a Regulation (EU) 2018/... of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012 (not yet published in the Official Journal).

Amendment 17

Proposal for a directive

Recital 21

Text proposed by the Commission

(21) In the interest of transparency and to promote trust in business transactions, including those with a cross-border nature within the Single Market, it is important that investors, stakeholders, business partners and authorities can easily access company information. To improve the accessibility of that information, more information should be available free of charge in all Member States. Such information should include the website of the company, where applicable and, the legal status of the company and its branches in another Member States, where available in national registers. It should

Amendment

(21) In the interest of transparency, ***protection of the interests of workers, creditors and minority shareholders*** and to promote trust in business transactions, including those with a cross-border nature within the Single Market, it is important that investors, stakeholders, business partners and authorities can easily access company information. To improve the accessibility of that information, more information should be available free of charge in all Member States. Such information should include the website of the company, where applicable and, the legal status of the company and its

also include information concerning the persons authorised to represent companies and the number of employees where this information is available.

branches in another Member States, where available in national registers. It should also include information concerning the persons authorised to represent companies and the number of employees where this information is available.

Amendment 18

Proposal for a directive

Recital 23

Text proposed by the Commission

(23) In order to help companies established in the Single Market to more easily expand their business activities cross-border, it should be possible for them to open and register branches in another Member State online. Therefore Member States should enable, in a similar manner to companies, the online registration of branches and the online filing of documents and information.

Amendment

(23) In order to help companies established in the Single Market to more easily expand their business activities cross-border, it should be possible for them to open and register branches in another Member State online. Therefore Member States should enable, in a similar manner to companies, the online registration of branches and the online filing of documents and information, ***thereby helping to cut costs, while reducing the administrative burden and the length of time taken by formalities relating to cross-border expansion.***

Amendment 19

Proposal for a directive

Recital 24

Text proposed by the Commission

(24) When registering a branch of a company registered in another Member State, Member States should also be able to verify certain information about the company through the interconnection of registers when a branch is registered in that Member State. Furthermore, where a branch is closed in one Member State, the register of that Member State should inform the Member State where the

Amendment

(24) When registering a branch of a company registered in another Member State, Member States should also be able to verify certain information about the company through the interconnection of registers when a branch is registered in that Member State. Furthermore, where a branch is closed in one Member State, the register of that Member State should inform the Member State where the

company is registered of this through the system of interconnection of registers and both registers should record this information.

company is registered of this ***automatically and immediately*** through the system of interconnection of registers and both registers should record this information.

Amendment 20

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 forming*** 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;***

Amendment 21

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive (EU) 2017/1132

Article 13a – paragraph 4

Text proposed by the Commission

(4) “template” means a model for the instrument of constitution of a company which is drawn up by Member ***States*** in compliance with national law and is used for the online registration of a company;

Amendment

(4) “template” means a model for the instrument of constitution of a company which is drawn up by ***each*** Member ***State*** in compliance with ***its*** national law and is used for the online registration of a company;

Amendment 22

Proposal for a directive
Article 1 – paragraph 1 – point 4
Directive (EU) 2017/1132
Article 13b

Text proposed by the Commission

Article 13b

Recognition of identification means for the purposes of online procedures

1. Member States shall ensure that the following electronic identification means to identify Union citizens may be used for the purpose of online registration and online filing:

(a) an electronic identification means issued under an electronic identification scheme approved by their own Member State;

(b) an electronic identification means issued in another Member State and recognised for the purpose of cross-border authentication in ***accordance with Article 6 of Regulation (EU) No 910/2014.***

2. Member States may ***also recognise other identification means than those referred to in paragraph 1.***

Amendment

Article 13b

Recognition of identification means for the purposes of online procedures

1. Member States shall ensure that the following electronic identification means to identify Union citizens may be used for the purpose of online registration and online filing:

(a) an electronic identification means issued under an electronic identification scheme approved by their own Member State;

(b) an electronic identification means issued in another Member State and recognised for the purpose of cross-border authentication

Member States may refuse the recognition of identification means, where the assurance levels of the electronic identification means do not comply with Article 6 (1) (b) and (c) of Regulation (EU) No 910/2014.

1a. Member States may develop and adopt complementary electronic controls of identity, legal capacity and legality. Such controls may include, amongst others, verification by means of video-conference or other online means that provide a real-time audio-visual connection.

2. Where justified by the overriding reason of public interest to prevent fraud as regards the identity of the applicants or their representatives, Member States may require the applicants or their representatives to appear in person before any competent authority, or before any other person or body dealing with, making or assisting in making the application for

registration or filing, for procedural steps for which a physical presence is necessary. Member States shall ensure that physical presence may only be required on a case by case basis and that any other steps of the procedure can be completed online.

3. *Where a Member State recognises identification means referred to in paragraph 2 for the purpose of completing online registration and online filing, that Member State shall also recognise the same type of identification means issued by another Member State.*

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

3. *For the purposes of paragraph 1, Member States shall publish a list of the means of electronic identification which they recognise.*

Amendment 23

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive (EU) 2017/1132

Article 13b a (new)

Text proposed by the Commission

Amendment

Article 13b a

General provisions on online registration of companies and branches, and online filling of information and documents

1. *Member States shall designate, in accordance with their legal systems and legal traditions, the authorities or public officers or body responsible for dealing with the registration of companies and branches and the filing of documents and information in the register.*

2. *This Directive shall be without prejudice to the procedures and*

requirements laid down by national law, including those relating to legal procedures for drawing up instruments of constitution, provided that online registration of a company as referred to in Article 13 f and online registration of a branch as referred to in Article 28 a are possible.

3. The requirements under applicable national law as to the authenticity, accuracy and appropriate legal form of submitted documents or information shall remain unaffected provided that online registration as referred to in Article 13 f and Article 28 a and online filing as referred to in Article 13 i and Article 28 b are possible.

Amendment 24

Proposal for a directive
Article 1 – paragraph 1 – point 4
Directive (EU) 2017/1132
Article 13c

Text proposed by the Commission

Article 13c

Fees for online registration and online filing

1. Member States shall ensure that the rules on fees applicable to the procedures referred to in this Chapter are transparent and are applied in a non-discriminatory manner.
2. Any fees charged by the registers, referred to in Article 16, for the online registration of, or the online filing by, a company or a branch shall not exceed the administrative costs of providing the service.

Amendment

Article 13c

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

1. Member States shall ensure that the rules on fees applicable to the procedures referred to in this Chapter are transparent and are applied in a non-discriminatory manner.
2. Any fees charged by the registers, referred to in Article 16, for the online registration of, or the online filing ***of documents and/or information*** by, a company or a branch shall not exceed the administrative costs of providing the service.

Amendment 25

Proposal for a directive
Article 1 – paragraph 1 – point 4
Directive (EU) 2017/1132
Article 13d

Text proposed by the Commission

Article 13d

Payments

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

Article 13d

Payments

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 *that permit identification of the payer, provided by a financial institution or payment provider established in a Member State.*

Amendment 26

Proposal for a directive
Article 1 – paragraph 1 – point 4
Directive (EU) 2017/1132
Article 13e – paragraph 1 – point b

Text proposed by the Commission

(b) requirements relating to the use of templates, *including information on national laws which govern the use and contents of such templates;*

Amendment

(b) requirements relating to the use of templates *for online registration of companies;*

Amendment 27

Proposal for a directive
Article 1 – paragraph 1 – point 5
Directive (EU) 2017/1132
Article 13f

Text proposed by the Commission

Article 13f

Online registration of companies

Amendment

Article 13f

Online registration of companies

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.

2. Member States shall lay down detailed rules for the online registration of companies, including rules on the use of templates, as referred to in Article 13g and the documents and information required for registering a company. As part of these rules Member States shall ensure that the online registration may be carried out by submitting information or documents in the electronic form, including electronic copies of the documents and information referred to in Article 16a(4).

3. The rules, referred to in paragraph 2, shall at least provide for the following:

- (a) the procedures to ensure the legal capacity of the applicant and their authority to represent the company;
- (b) the means to verify the identity of the person or persons registering the company or their representatives;
- (c) the requirements for the applicant to use trust services referred to in Regulation (EU) No 910/2014.

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(2). However, Member States may decide not to provide fully online registration procedures for those types of companies listed in Annex I.

2. Member States shall lay down detailed rules for the online registration of companies, including rules on the use of templates, as referred to in Article 13g and the documents and information required for registering a company. As part of these rules Member States shall ensure that the online registration may be carried out by submitting information or documents in the electronic form, including electronic copies of the documents and information referred to in Article 16a(4).

3. The rules, referred to in paragraph 2, shall at least provide for the following:

- (a) the procedures to ensure the legal capacity of the applicant and their authority to represent the company;
- (b) the means to verify the identity of the person or persons registering the company or their representatives;
- (c) the requirements for the applicant to use trust services referred to in Regulation (EU) No 910/2014.

(ca) the procedures to verify the appointment of directors and that take into account the disqualification of directors by competent authorities of other Member States;

(cb) the procedures to verify the legality of the object of the company in so far as such checks are provided under national law;

(cd) the procedure to verify the legality of the name of the company in so far as

4. The rules, referred to in paragraph 2, may also provide for the following:

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

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

(c) *the procedures to ensure the legality of the instruments of constitution, including verifying the correct use of templates*;

(d) *the procedures to verify the appointment of directors taking into account the disqualification of directors by competent authorities of other Member States*;

(e) *the procedures to provide for the role of a notary or any other person or body mandated by the Member State to submit an application for registration* ;

(f) *the circumstances in which online registration may be excluded where the share capital of a company is to be paid by way of contributions in kind.*

5. Member States shall not make the online registration of a company conditional on obtaining any licence or authorisation before the company is registered, unless where it is indispensable for the proper control of certain activities laid down in national law.

6. Member States shall ensure that where the payment of share capital is required as part of the procedure to register a company, that this payment may be made online, in accordance with Article 13d, to a bank account of the bank operating in the Union. In addition, Member States shall ensure that proof of such payments may also be provided online.

such checks are provided under national law;

4. The rules, referred to in paragraph 2, may also provide for the following:

(a) the procedures to **verify** the legality of *the instruments of constitution, including verifying the correct use of templates*;

(b) the procedures to **provide for the role of a notary or any other person or body mandated by the Member State to submit an application for registration**;

(c) *the circumstances in which online registration may be excluded where the share capital of company is to be paid by way of contributions in kind*;

5. Member States shall not make the online registration of a company conditional on obtaining any licence or authorisation before the company is registered, unless where it is indispensable for the proper control of certain activities laid down in national law.

6. Member States shall ensure that where the payment of share capital is required as part of the procedure to register a company, that this payment may be made online, in accordance with Article 13d, to a bank account of the bank operating in the Union. In addition, Member States shall ensure that proof of such payments may also be provided online.

7. Member States shall ensure that the online registration is completed within a period of five working days from the later of the following:

- (a) the receipt of all required documents and information by a competent authority or, where applicable, by a person or a body mandated under national law to submit the application for the registration of a company;
- (b) the payment of a registration fee, the payment in cash for share capital or, where a payment for the share capital is to be provided by way of a contribution in kind, as provided for under national law.

Member States shall ensure that the applicant is immediately notified of the reasons for any delay, where, in duly justified exceptional circumstances, it would not be possible to comply with this time limit.

7. ***Where the applicant is a natural person and uses the template provided for in Article 13 g,*** Member States shall ensure that the online registration is completed within a period of five working days from the later of the following:

- (a) the receipt of all required documents and information by a competent authority or, where applicable, by a person or a body mandated under national law to submit the application for the registration of a company;
- (b) the payment of a registration fee, the payment in cash for share capital or, where a payment for the share capital is to be provided by way of a contribution in kind, as provided for under national law.

In other cases, Member States shall ensure that the online registration of the company is completed within 10 working days.

Member States shall ensure that the applicant is immediately notified of the reasons for any delay, where, in duly justified exceptional circumstances, it would not be possible to comply with this time limit.

7a. Where justified by the overriding reason of public interest of ensuring compliance with rules on the legal capacity of the applicants or on them giving authorisation to represent the company as referred to in point (a) of paragraph 3, Member States may take measures which could require a physical presence before any authority competent under the national law to deal with, making or assisting in making, the application for online registration or online filing. Member States shall ensure that in such cases the physical presence of the applicants may only be required on a case-by-case basis and that any further steps of the procedure can still be completed online.

Amendment 28

Proposal for a directive

Article 1 – paragraph 1 – point 5

Directive (EU) 2017/1132

Article 13g

Text proposed by the Commission

Article 13g

Templates for registration of companies

1. Member States shall make templates available on registration portals or websites that are part of the Single Digital Gateway for the types of companies listed in Annex IIA. Member States may also make templates available online for the registration of those types of companies ***listed in Annex II other than those listed in Annex IIA.***

2. Member States shall ensure that the templates, referred to in paragraph 1 of this Article, may be used by applicants as part of the online registration procedure, referred to in Article 13f. ***Where those templates are used by the applicant in compliance with the rules referred to in point (c) of Article 13f(4), where applicable, the requirement to have the company instruments of constitution drawn up and certified in due legal form as laid down in Article 10 shall be deemed to be fulfilled.***

3. Member States shall at least make the templates available in an official Union

4. The content of the templates shall be governed by national law.

Amendment

Article 13g

Templates for registration of companies

1. Member States shall make templates available on registration portals or websites that are part of the Single Digital Gateway for the types of companies listed in Annex IIA. Member States may also make templates available online for the registration of those types of companies.

2. Member States shall ensure that the templates, referred to in paragraph 1 of this Article, may be used by applicants as part of the online registration procedure, referred to in Article 13f ***and in compliance with the provisions thereof.***

3. Member States shall at least make the templates available in an official Union ***language broadly understood by the largest possible number of cross-border users.***

4. The content of the templates shall be governed by national law.

Amendment 29

Proposal for a directive

Article 1 – paragraph 1 – point 5

Directive (EU) 2017/1132

Article 13h

Text proposed by the Commission

Article 13h

Disqualified directors

1. Where Member States lay down rules relating to the disqualification of directors, referred to in point (d) of Article 13f(4), the register where the company is to be registered may, through the system of interconnection of registers referred to in Article 22, request confirmation from the registers of other Member States as to whether or not the person who is to be appointed as director of the company is currently disqualified from acting as director in those other Member States. For the purpose of this Article, directors shall include all of the persons referred to in Article 14(d).

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.

3. Member States may refuse the appointment of a person as a director of a company where this person is currently disqualified from acting as a director in another Member State.

4. Paragraphs 1, 2 and 3 shall apply *mutatis mutandis* where a company files information about the appointment of a new director in the register referred to in Article 16.

Amendment

Article 13h

Disqualified directors

1. Where Member States lay down rules relating to the disqualification of directors, referred to in point (d) of Article 13f(4), the register where the company is to be registered may, through the system of interconnection of registers referred to in Article 22, request confirmation from the registers of other Member States as to whether or not the person who is to be appointed as director of the company is currently disqualified from acting as director in those other Member States. For the purpose of this Article, directors shall include all of the persons referred to in Article 14(d).

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 a person is confirmed to be disqualified***, Member States may also provide the grounds of disqualification.

3. Member States may refuse, ***based on the grounds of disqualification***, the appointment of a person as a director of a company where this person is currently disqualified from acting as a director in another Member State.

4. Paragraphs 1, 2 and 3 shall apply *mutatis mutandis* where a company files information about the appointment of a new director in the register referred to in Article 16.

Amendment 30

Proposal for a directive

Article 1 – paragraph 1 – point 5

Directive (EU) 2017/1132

Article 13i

Text proposed by the Commission

Article 13i

Online filing by companies

1. 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).

Member States shall ensure that the origin and integrity of the documents filed online may be verified electronically.

2. Member States may require that certain companies or that all companies file certain or all of the documents and information referred to in paragraph 1 online.”;

Amendment

Article 13i

Online filing *of documents and information* by companies

1. 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 ***making or assisting in making*** the online filing, subject to the proviso laid down in Article 13b (2) ***and Article 13f (4)***

Member States shall lay down rules to provide safeguards as regards the reliability and trustworthiness of documents and information to be filed online, provided that online filing is possible. Article 13f (3) and point (b) of Article 13f (4) apply mutatis mutandis.

Member States shall ensure that the origin and integrity of the documents filed online may be verified electronically.

2. Member States may require that certain companies or that all companies file certain or all of the documents and information referred to in paragraph 1 online.;

Amendment 31

Proposal for a directive

Article 1 – paragraph 1 – point 6

Directive (EU) 2017/1132

Article 16 – paragraph 2 – subparagraph 2

Text proposed by the Commission

All documents and information referred to in Article 14, irrespective of the means through which they are filed, shall be kept in the file in the register or entered directly into it in electronic form. Member States shall ensure that all such documents and information which are filed by paper means are converted by the register to electronic form.

Amendment

All documents and information referred to in Article 14, irrespective of the means through which they are filed, shall be kept in the file in the register or entered directly into it in electronic form. Member States shall ensure that all such documents and information which are filed by paper means are converted by the register to electronic form **as quickly as possible**.

Amendment 32

Proposal for a directive

Article 1 – paragraph 1 – point 9

Directive (EU) 2017/1132

Article 19

Text proposed by the Commission

Article 19

Fees chargeable for documents and information

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.
2. Member States shall ensure that the following information is available free of charge through the system of interconnection of registers:
 - (a) the name or names and legal form of the company;
 - (b) the registered office of the company

Amendment

Article 19

Fees chargeable for documents and information

1. The fees charged for obtaining documents and information **or copies thereof** referred to in Article 14 through the system of interconnection of registers shall not exceed the administrative costs thereof.
2. Member States shall ensure that the following information is available free of charge through the system of interconnection of registers:
 - (a) the name or names and legal form of the company;
 - (b) the registered office of the company

and the Member State where it is registered;

- (c) the registration number of the company and its EUID;
- (d) details of the company web-site, where applicable;
- (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;
- (f) the object of the company, where it is recorded in the national register;
- (g) the number of employees of the company, where this is available in the company's financial statements as required by national law;
- (h) the name of any persons currently authorised by the company to represent it in dealing with third parties and in legal proceedings or to take part in the administration, supervision or control of the company, as referred to in Article 14(d);
- (i) information on any branches opened by the company in another Member State including the name, registration number, EUID and the Member State where the branch is registered.

Member States may make further information and documents available free of charge.";

Amendment 33

Proposal for a directive

Article 1 – paragraph 1 – point 10 – point a

Directive (EU) 2017/1132

Article 22 – paragraph 4 – subparagraph 1a

and the Member State where it is registered;

- (c) the registration number of the company and its EUID;
- (d) details of the company web-site, where applicable;
- (e) the legal status of the company, such as when it is closed, struck off the register, wound up, dissolved, ***the subject of insolvency proceedings***, economically active or inactive as defined in national law and where available in the national registers;
- (f) the object of the company, where it is recorded in the national register;
- (g) the number of employees of the company, where this is available in the company's financial statements as required by national ***and Union*** law;
- (h) the name of any persons currently authorised by the company to represent it in dealing with third parties and in legal proceedings or to take part in the administration, supervision or control of the company, as referred to in Article 14(d);
- (i) information on any branches opened by the company in another Member State including the name, registration number, EUID and the Member State where the branch is registered.

Member States may make further information and documents available free of charge ***when extracted by electronic means***.";

Text proposed by the Commission

The Commission may also establish **optional** access points to the system of interconnection of registers. Such access points will consist of systems developed and operated by the Commission or other Union institutions, bodies, offices or agencies in order to perform their administrative functions or to comply with provisions of Union law. The Commission shall notify the Member States without undue delay of the establishment of such access points and of any significant changes to their operation.

Amendment 34

Proposal for a directive

Article 1 – paragraph 1 – point 10 – point b

Directive (EU) 2017/1132

Article 22 – paragraph 5

Text proposed by the Commission

5. Access to information from the system of interconnection of registers shall be ensured through the portal and through the **optional** access points established by the Member States and by the Commission.

Amendment 35

Proposal for a directive

Article 1 – paragraph 1 – point 13

Directive (EU) 2017/1132

Article 28a – paragraph 3

Text proposed by the Commission

3. The rules, referred to in paragraph 2, shall at least provide for the following:

- (a) the procedure to ensure the legal capacity of the applicant and their authority to represent the company;
- (b) the means to verify the identity of the person or persons registering the branch or

Amendment

The Commission may also establish access points to the system of interconnection of registers. Such access points will consist of systems developed and operated by the Commission or other Union institutions, bodies, offices or agencies in order to perform their administrative functions or to comply with provisions of Union law. The Commission shall notify the Member States without undue delay of the establishment of such access points and of any significant changes to their operation.

Amendment

5. Access to information from the system of interconnection of registers shall be ensured through the portal and through the access points established by the Member States and by the Commission.

Amendment

3. The rules, referred to in paragraph 2, shall at least provide for the following:

- (a) the procedure to ensure the legal capacity of the applicant and their authority to represent the company;
- (b) the means to verify the identity of the person or persons registering the branch or

their representatives.

their representatives.

(ba) a requirement for the applicant to use trust services referred to in Regulation (EU) No 910/2014.

Amendment 36

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 procedures:

(a) to verify the legality of the object of the branch;

(b) to verify the legality of the name of the branch;

(c) to verify the legality of the documents and information submitted for the registration of the branch;

(d) to provide for the role of a notary or any other person or body involved in the process of registration of the branch under the applicable national provisions.

Amendment 37

Proposal for a directive

Article 1 – paragraph 1 – point 13

Directive (EU) 2017/1132

Article 28b

Text proposed by the Commission

Amendment

Article 28b

Article 28b

Online filing for branches

Online filing ***of documents and information*** for branches

Member States shall ensure that documents and information, referred to in Article 30

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).

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 (2) **and Article 13f (8)**.

Member States shall lay down rules to provide safeguards as regards the reliability and trustworthiness of documents and information to be filed online provided that online filing is possible. Article 13f(3) and point (b) of Article 13f(4) apply mutatis mutandis

Amendment 38

Proposal for a directive

Article 2 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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.

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 **36** months after the date of entry into force] at the latest.

Amendment 39

Proposal for a directive

Article 3 – paragraph 2 – point a

Text proposed by the Commission

(a) the **need and** feasibility of providing for fully online registration of the types of

Amendment

(a) the feasibility of providing for fully online registration of the types of

companies listed in Annex I;

companies listed in Annex I;

Amendment 40

Proposal for a directive

Article 3 – paragraph 2 – point b

Text proposed by the Commission

(b) the ***need and*** feasibility of providing templates by Member States for all types of limited liability companies and the need and feasibility of providing a harmonised template across the Union to be used by all Member States for the types of companies listed in Annex IIA;

Amendment

(b) the feasibility of providing templates by Member States for all types of limited liability companies and the need and feasibility of providing a harmonised template across the Union to be used by all Member States for the types of companies listed in Annex IIA;