

Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	2018/0113(COD) Procedure completed
Use of digital tools and processes in company law Amending Directive (EU) 2017/1132 2015/0283(COD) See also 2018/0114(COD)	
Subject 3.45.01 Company law	

Key players			
European Parliament	Committee responsible  Legal Affairs	Rapporteur  ZWIEFKA Tadeusz	Appointed 09/07/2018
		Shadow rapporteur  GUTELAND Jytte  ZŁOTOWSKI Kosma  ROHDE Jens  HAUTALA Heidi	
	Committee for opinion  Internal Market and Consumer Protection	Rapporteur for opinion The committee decided not to give an opinion.	Appointed
Council of the European Union	Council configuration Employment, Social Policy, Health and Consumer Affairs3698	Meeting	Date 13/06/2019
European Commission	Commission DG Justice and Consumers	Commissioner JOUROVÁ Věra	
European Economic and Social Committee			

Key events			
25/04/2018	Legislative proposal published	COM(2018)0239	Summary
28/05/2018	Committee referral announced in Parliament, 1st reading		
	Vote in committee, 1st reading		

20/11/2018			
04/12/2018	Committee report tabled for plenary, 1st reading	A8-0422/2018	Summary
06/12/2018	Committee decision to open interinstitutional negotiations with report adopted in committee		
10/12/2018	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71)		
12/12/2018	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 71)		
04/03/2019	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	PE638.447 GEDA/A/(2019)002692	
17/04/2019	Debate in Parliament		
18/04/2019	Results of vote in Parliament		
18/04/2019	Decision by Parliament, 1st reading	T8-0428/2019	Summary
13/06/2019	Act adopted by Council after Parliament's 1st reading		
20/06/2019	Final act signed		
20/06/2019	End of procedure in Parliament		
11/07/2019	Final act published in Official Journal		

Technical information

Procedure reference	2018/0113(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Amending Directive (EU) 2017/1132 2015/0283(COD) See also 2018/0114(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 050-p1; Treaty on the Functioning of the EU TFEU 050-p2
Other legal basis	Rules of Procedure EP 159
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Procedure completed
Committee dossier	JURI/8/12962

Documentation gateway

Legislative proposal	COM(2018)0239	25/04/2018	EC	Summary
Document attached to the procedure	SWD(2018)0141	26/04/2018	EC	
Document attached to the procedure	SWD(2018)0142	26/04/2018	EC	
Committee draft report	PE625.405	26/07/2018	EP	

For information	N8-0092/2018 OJ C 324 13.09.2018, p. 0013	26/07/2018	EDPS	
Amendments tabled in committee	PE627.805	17/09/2018	EP	
Economic and Social Committee: opinion, report	CES1917/2018	17/10/2018	ESC	
Committee report tabled for plenary, 1st reading/single reading	A8-0422/2018	04/12/2018	EP	Summary
Coreper letter confirming interinstitutional agreement	GEDA/A/(2019)002692	14/02/2019	CSL	
Text adopted by Parliament, 1st reading/single reading	T8-0428/2019	18/04/2019	EP	Summary
Draft final act	00025/2019/LEX	20/06/2019	CSL	
Commission response to text adopted in plenary	SP(2019)440	08/08/2019	EC	

Final act

[Directive 2019/1151](#)
[OJ L 186 11.07.2019, p. 0080](#) Summary

Use of digital tools and processes in company law

PURPOSE: to propose new company law rules to provide a wider range of digital solutions to companies within the Single Market.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: companies increasingly use digital tools in their business and they also need to interact with public authorities.

Currently the EU company law ([Directive \(EU\) 2017/1132 of the European Parliament and of the Council](#)) includes certain elements of digitalisation such as the obligation for Member States to make available online information about limited liability companies registered in central, commercial and companies registers ("registers"). However, these requirements are limited and lack precision, leading to a very diverse implementation at national level.

In addition, certain digital processes, for instance online company registration, are not covered at all by EU law and only a number of Member States address them at national level.

The lack of rules for online registration, filing and publication or the divergence of such rules in the Member States create unnecessary costs and burdens to entrepreneurs who wish to set up a new business or to expand their business by registering subsidiaries or branches or fulfil specific requirements online.

The [eGovernment action plan 2016-2020](#) specifically recognised the importance of improving the use of digital tools to meet company law requirements. The [proposed Regulation](#) which establishes the Single Digital Gateway foresees general rules for online provision of information, procedures and assistance services relevant for the functioning of the internal market.

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.

IMPACT ASSESSMENT: three main issues in relation to the use of digital tools in company law were examined:

- online registration (creation of a company as legal entity) and filing of documents to the business register: the preferred option would provide for rules on the online registration of company and branch and online filing of company documents in all Member States;
- multiple submission of the same information by companies: the preferred option seeks simplification by introducing rules requiring Member States to ensure that, when the register receives certain data from the company (e.g. change of company name, change of registered office or latest annual accounts), it then sends it to the register in another Member State where the company has a branch (as opposed to the company doing that);
- online access to company information held in business registers: the preferred option proposes to expand the set of company data to be provided free of charge by all business registers, while Member States could still charge fees for other information.

CONTENT: this proposal is aimed to complement the existing rules on EU company law that are codified in Directive (EU) 2017/1132.

Specifically, the proposal:

- ensures the mandatory recognition of e-IDAS compliant electronic identification means of Union citizens issued in another Member State and allows at the same time Member States to recognise other identification means. As a safeguard to avoid fraud, the provision allows Member States to require the physical presence of relevant persons before a competent authority but only in case of genuine

- suspicion based on reasonable grounds;
- requires Member States to ensure that rules on fees for the registration and filing of documents and information online are transparent and applied in a non-discriminatory manner; fees charged by registers should not exceed the administrative costs of providing the service; payments for the completion of online procedures could be made by means of a payment service widely available in cross-border payment services;
- ensures that those that want to set-up and operate companies and branches cross-border have easy access to all relevant information about registration of and filing by companies and branches;
- introduces the possibility to register companies online without the necessity for the applicant, or his representative, to appear in person before any competent authority or before any other person or body. Member States may opt-out from this obligation in relation to public limited liability companies given the complexity of establishment and registration of such companies; a general maximum time limit of five working days is established for the completion of the process for the registration of companies online;
- provides a legal framework for Member States to request information from other Member States concerning disqualified directors. Member States may refuse the appointment of a person as a director of a company or branch who is currently disqualified from acting as a director in another Member State;
- requires Member States to ensure that fully online solutions in case of submitting the necessary information to the register throughout the lifecycle of the company, similarly to the online registration of companies;;
- introduces an obligation for Member States to ensure that an applicant can obtain electronic extracts authenticated by means of trust services from the registers;
- allows, by applying the "once and for all" principle, companies to avoid having to present the same information several times to different authorities during the life cycle of a company;
- introduces online registration and online filing for branches, in the same way as for companies;
- requires Member States to inform each other, via the system of interconnection of business registers, about branch closures registered in a Member State other than the one where the company is registered.

BUDGETARY IMPLICATIONS: the proposal is expected to have certain budgetary implications at least on some of the Member States who may need to adapt their IT systems in order to support the new provisions. However, those setting up costs would be recovered in the medium and long term through saving time and resources in Member States' administration. There is no impact on the EU budget.

Use of digital tools and processes in company law

The Committee on Legal Affairs adopted the report by Tadeusz ZWIEFKA (EPP, PL) 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.

The committee recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the Commission's proposal as follows.

Purpose: 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), the proposal shall put in place procedures to enable registration to be completed online.

Members suggested a more detailed definition of what registration should mean, i.e., as the whole process of formation of a company via 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.

Members clarified the general provisions on online registration of companies and branches and online filing of documents and information.

Submission of documents and information: 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 on electronic identification and trust services for electronic transactions in the internal market.

Recognition identification means for the purposes of online procedures: Member States may refuse the recognition of identification means, where the assurance levels of the electronic identification means do not comply with Regulation (EU) No 910/2014. They 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.

Physical presence: 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.

However, Members clarified that 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.

Online registration of companies: Members said that the registration procedures shall also include the:

- procedures to verify the appointment of directors and that take into account the disqualification of directors by competent authorities of other Member States;
- procedures to verify the legality of the object of the company in so far as such checks are provided under national law;
- procedure to verify the legality of the name of the company in so far as such checks are provided under national law;
- procedures to verify the legality of the instruments of constitution, including verifying the correct use of templates;
- 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;
- circumstances in which online registration may be excluded where the share capital of company is to be paid by way of contributions

in kind.

Members also stressed that any 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.

Use of digital tools and processes in company law

The European Parliament adopted by 522 votes to 54, with 6 abstentions, a 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.

The European Parliaments position adopted at first reading under the ordinary legislative procedure amended the Commission proposal as follows:

Objective

In order to facilitate the formation of companies and the registration of branches and to reduce the costs, time and administrative burdens associated with those processes, in particular by micro, small and medium-sized enterprises (SMEs), the proposed Directive shall put in place procedures to enable the formation of companies and registration of branches to be completed fully online. Member States should however be able to decide to make some or all online procedures mandatory.

Formation means the whole process of establishing a company in accordance with national law, including the drawing up of the company's instrument of constitution and all the necessary steps for the entry of the company in the register.

Registration of a branch means a process leading to disclosure of documents and information relating to a branch newly opened in a Member State.

Recognition of identification means for the purposes of online procedures

Member States may refuse to recognise electronic identification means where the assurance levels of those electronic identification means do not comply with Regulation (EU) No 910/2014.

Where justified by reason of the public interest in preventing identity misuse or alteration, Member States may for the purposes of verifying an applicant's identity take measures which could require the physical presence of that applicant before any authority or person or body mandated under national law to deal with any aspect of the online procedures, including the drawing up of the instrument of constitution of a company. Member States shall ensure that the physical presence of an applicant may only be required on a case-by-case basis where there are reasons to suspect identity falsification, and that any other steps of the procedure can be completed online.

All identification means recognised by Member States shall be made publicly available.

Information requirements

Member States shall ensure that concise and user-friendly information, provided free of charge and at least in a language broadly understood by the largest possible number of cross-border users, is made available on registration portals or websites that are accessible by means of the Single Digital Gateway to assist in the formation of companies and the registration of branches

Online formation, online filing and disclosure

The registration procedures shall provide for rules referred to in paragraph 2 shall at least provide for the following:

- the procedures to ensure that the applicants have the necessary legal capacity and have authority to represent the company;
- the means to verify the identity of the applicants;
- the requirements for the applicants to use trust services referred to in Regulation (EU) No 910/2014;
- the procedures to verify the legality of the object of the company insofar as such checks are provided for under national law;
- the procedures to verify the legality of the name of the company insofar as such checks are provided for under national law;
- the procedures to verify the appointment of directors.

They may also provide for the consequences of the dismissal of a director by the competent authority of a Member State.

Member States shall ensure that the online formation is completed within five working days where a company is formed exclusively by natural persons who use the templates referred to in the Directive, or within ten working days in other cases.

Where it is not possible to complete the procedure within the deadlines, Member States shall ensure that the applicant is notified of the reasons for the delay.

Disqualified directors

Member States shall ensure that they have rules on disqualification of directors. Those rules shall include providing for the possibility to take into account any disqualification that is in force, or information relevant for disqualification, in another Member State. Member States shall ensure that they are able to reply to a request from another Member State for information relevant for the disqualification of directors under the law of the Member State replying to the request.

The personal data of persons referred to in this Article shall be processed in accordance with Regulation (EU) 2016/679 (GDPR) and national law.

Use of digital tools and processes in company law

PURPOSE: to revise EU rules in the field of company law in order to adapt them to the digital age.

LEGISLATIVE ACT: Directive (EU) 2019/1151 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.

CONTENT: this Directive amending [Directive \(EU\) 2017/1132](#) is intended to facilitate and promote the use of online solutions in a company's contacts with public authorities throughout its lifecycle.

The Directive establishes procedures for companies to register limited liability companies, set up branches and file documents relating to companies and their branches in the business register entirely online. This Directive shall not oblige companies to use such procedures. Member States shall, however, be able to decide to make some or all online procedures mandatory.

Recognition of identification means for the purposes of online procedures

Member States shall ensure that electronic means of identification issued under an electronic identification scheme approved by the applicant's Member State or those issued in another Member State and recognised for the purpose of cross-border authentication in accordance with Regulation (EU) No 910/2014 can be used by applicants who are Union citizens in online procedures.

All identification means recognised by Member States shall be made publicly available.

Prevention of abuse

The Directive sets out the necessary safeguards to combat fraud and abuse that could occur in online procedures, including the control of the identity and legal capacity of persons setting up the company and the possibility of requiring the physical presence of the applicant before any competent authority where there are grounds to suspect that identity has been falsified.

Fees for online procedures

Member States shall ensure that the rules on fees applicable to the online procedures are transparent and are applied in a non-discriminatory manner. Any fees for online procedures charged by the registers shall not exceed the recovery of the costs of providing such services.

Where the completion of a procedure requires a payment, Member States shall ensure that that payment can be made by means of a widely available online payment service that can be used for cross-border payments, that permits identification of the person that made the payment and is provided by a financial institution or payment service provider established in a Member State.

Online filing of companies

Member States shall have standard models for the online filing of companies available on portals or websites for company registration, which are accessible through the single digital portal.

National standard forms and information on national obligations shall be available online in a language that is generally understood by as many users from other Member States as possible. The once only principle, according to which a company should only submit the same information to public authorities once, shall apply.

Member States shall ensure that the online formation is completed within five working days where a company is formed exclusively by natural persons who use the templates, or within ten working days in other cases.

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

Disclosure in the register

In each Member State, a file shall be opened in a central, commercial or companies register, for each of the companies registered therein. Member States shall ensure that companies have a European unique identifier (EUID) allowing them to be unequivocally identified in communications between registers through the system of interconnection of registers.

Documents provided by companies shall be stored and exchanged by national registers in a machine-readable and searchable format. In addition, further information on companies shall be made available free of charge to all interested parties in the business register.

Disqualified directors

Member States shall ensure that they have rules on disqualification of directors. Those rules shall include providing for the possibility to take into account any disqualification that is in force, or information relevant for disqualification, in another Member State. Member States shall ensure that they are able to reply to a request from another Member State for information relevant for the disqualification of directors under the law of the Member State replying to the request.

The personal data of persons referred to in this Article shall be processed in accordance with Regulation (EU) 2016/679 (GDPR) and national law.

ENTRY INTO FORCE: 31.7.2019.

TRANSPOSITION: no later than 1.8.2021 (1.8.2023 for certain provisions).