

Use of digital tools and processes in company law

2018/0113(COD) - 04/12/2018 - Committee report tabled for plenary, 1st reading/single reading

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:

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- 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.