

Use of digital tools and processes in company law

2018/0113(COD) - 18/04/2019 - Text adopted by Parliament, 1st reading/single reading

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 Parliament's 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.