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#### COVER NOTE

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| From:            | Secretary-General of the European Commission,<br>signed by Mr Jordi AYET PUIGARNAU, Director                                                                                                                                                                                                                                                                                                                                                                                |
| date of receipt: | 25 April 2018                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| To:              | Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of<br>the European Union                                                                                                                                                                                                                                                                                                                                                                                      |
| No. Cion doc.:   | SWD(2018) 142 final                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Subject:         | COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY<br>OF THE IMPACT ASSESSMENT Accompanying the document Proposal<br>for a Directive of the European Parliament and of the Council amending<br>Directive (EU) 2017/1132 as regards the use of digital tools and processes<br>in company law and Proposal for a Directive of the European Parliament<br>and of the Council amending Directive (EU) 2017/1132 as regards cross-<br>border conversions, mergers and divisions |

Delegations will find attached document SWD(2018) 142 final.

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Encl.: SWD(2018) 142 final



EUROPEAN  
COMMISSION

Brussels, 25.4.2018  
SWD(2018) 142 final

**COMMISSION STAFF WORKING DOCUMENT**  
**EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT**

*Accompanying the document*

**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**

**and**

**Proposal for a Directive of the European Parliament and of the Council amending  
Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions**

{COM(2018) 239 final} - {COM(2018) 241 final} - {SWD(2018) 141 final}

| Executive Summary Sheet                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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| Impact assessment on EU Company Law package: making the best of digital solutions and providing efficient rules for cross-border operations whilst respecting national social and labour law prerogatives                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| A. Need for action                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Why? What is the problem being addressed?</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <p>National rules on the use of digital tools (e.g. for registration and filing to the business register) either differ from country to country or do not exist and current EU legislation provides for only very limited use of such tools. In particular, there are no provisions on registering companies online. This inability to use relevant digital tools is a barrier to companies exercising their right to freedom of establishment. Similarly, in the absence of a reliable EU legal framework for cross-border divisions and conversions, and as a result of inefficiencies in the current EU rules for cross-border mergers, companies have difficulty in accessing markets in other Member States and often need to find expensive alternatives to direct procedures. This can deter them, particularly if they are SMEs, from doing cross-border business. Relevant stakeholders (employees, creditors, minority shareholders and other third parties) are faced with uncertainty as to their rights and protections in cross-border situations. The divergent national conflict-of-law rules contribute to this situation.</p>                                                                                                                                                                                                                                                                                                                            |
| <b>What is this initiative expected to achieve?</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <p>The objective is to develop the Single Market, deepening it and making it fairer and more predictable, by increasing the responsible use by companies of the opportunities the Single Market offers. The initiative is expected to stimulate jobs, growth and investment, with a particularly positive impact on SMEs. It is also expected to support the creation of the digital single market by improving the use of digital technologies throughout a company's life-cycle. It is expected to provide more legal certainty for companies and lead to cost reductions, while offering effective protection for employees, creditors, minority shareholders and third parties. Overall, it is expected to provide a balanced framework where the use of the freedom of establishment enshrined in the EU Treaty goes hand in hand with protecting national social and labour law prerogatives, in line with the European Pillar of social rights. The initiative will complement other EU initiatives such as the Single Digital Gateway.</p>                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>What is the value added of action at the EU level?</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <p>There is clear added value in addressing these problems at EU level. The current problems are mainly caused by divergent national rules, a lack of appropriate rules or the need to modernise the current EU rules. Member States acting individually cannot satisfactorily remove the barriers to the freedom of establishment, because national rules and procedures would need to be compatible with each other in order to work in a cross-border situation. Similarly, Member States acting alone cannot establish safeguards for stakeholders in cross-border situations. The Court of Justice has repeatedly recognised that not all differences in national rules can be solved by jurisprudence, but may need to be dealt with by future legislation or conventions (C-81/87 para. 21 to 23, C-208/00 para. 69, C-210/06 para. 108).</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| B. Solutions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <p>A number of policy options were considered for improving use of digital tools and processes, cross-border mergers, divisions and conversions and for resolving legal conflicts. For each of these policy areas, preferred options were chosen. The preferred options for improving the use of digital tools and processes would introduce harmonised rules on online registration of companies and branches and filing company documents, as well as increased transparency of company-related information in business registers. For cross-border operations, the preferred options for employee information, consultation and participation would i) introduce targeted amendments to existing cross-border mergers rules, ii) also apply these to cross-border divisions and conversions, and iii) provide for specific measures for cross-border divisions and conversions as a result of the perceived higher risks for employees inherent in such operations. The preferred options would also introduce harmonised rules to protect creditors and minority shareholders in all cross-border operations. The preferred option for cross-border conversions would introduce rules and procedures requiring Member States to assess on a case-by-case basis whether the cross-border conversion in question constitutes an artificial arrangement designed to obtain undue tax advantages or unduly prejudice the rights of employees, minority shareholders or</p> |

employees. For conflict-of-laws, the preferred option would harmonise the relevant rules, in particular the connecting factor based on the place of incorporation of the company. Overall, the preferred options complement each other in contributing to the initiative's policy objectives. This means that the maximum impact would be achieved if the package were composed of all the five policy areas. However, the policy areas are self-standing and the package could be composed of only some of these.

#### **Who supports which option?**

Based on the outcome of stakeholder consultations, harmonised rules related to digital tools and processes are strongly supported by the majority of Member States and businesses, while trade unions do not consider them as a priority and notaries are against. Harmonised rules for cross-border conversions are supported by all stakeholders, in particular all those who replied to the 2017 public consultation. Cross-border divisions are supported by Member States, businesses, notaries, but not by trade unions. The need to revise the Cross-border Mergers Directive is acknowledged by all respondents, except notaries, although respondents consider it a lower priority. With regard to conflict-of-laws, Member States and businesses which replied to the 2017 consultation support the proposed measures, while trade unions and notaries do not see the need for EU action.

### **C. Impacts of the preferred option**

#### **What are the benefits of the preferred option (if any, otherwise main ones)?**

The initiative would allow companies to fully register, file and amend their data in business registers online. For new companies registered in the EU, the savings from introducing online registration are estimated to be between €42-84 million. Companies would also be able to file certain information only once; stakeholders would have easier access to company information in business registers. New rules on cross-border divisions and conversions are expected to save between €12 000 and €37 000 per operation for divisions and €12 000 and €19 000 per operation for conversions, although the exact cost reductions will depend on the final procedural rules adopted and on the related compliance costs. A positive social impact is expected to result from the protection of rights related to employee participation and from improved information for employees in cross-border operations. Creditors and minority shareholders would benefit from harmonised protection and thus legal certainty. The conflict-of-law rules would improve legal certainty and thus bring economic benefits.

#### **What are the costs of the preferred option (if any, otherwise main ones)?**

The initiative would require Member States to enact rules and build or adapt systems which would allow companies to register online. However, experience from countries that have already digitised their registration and filing procedures shows that the costs related to such developments are quickly recovered and the functioning of public administration is rendered more efficient. Although the role of notaries as such is not impacted, it may be that in some Member States the way in which notarial services are provided would need to be adapted in line with the preferred options and legislation already in force (e.g. the e-IDAS Regulation). Increased cross-border operations could result in a net reduction in the number of companies in some Member States and a net increase in others. This might have a negative impact on taxation in some Member States, but this should be mitigated by the introduction of safeguards against the risks of social and tax abuse.

#### **How will businesses, SMEs and micro-enterprises be affected?**

SMEs, and especially small and micro-enterprises, would be particularly positively impacted by these proposed measures, as they are the ones with the greatest need for new cross-border operations rules. They cannot afford expensive, indirect or sequential cross-border operations. The same applies to the proposed measures to improve the use of digital tools, which are mostly needed by smaller companies to cut costs and stay competitive. The legal certainty provided by conflict-of-law rules would also benefit these companies.

#### **Will there be significant impacts on national budgets and administrations?**

The biggest challenge would be in building or adapting infrastructures to allow for the use of digital tools and processes in company law. However, as explained under 'costs of the preferred option', this is not expected to have significant negative impacts on national budgets and administrations due to economies of scale.

#### **Will there be other significant impacts?**

The package would have a positive impact on competition and competitiveness through improved business opportunities in the Single Market. Introducing harmonised rules for using digital tools and cross-border operations would make it easier and more cost-effective to set up companies domestically and cross-border, and to establish operations in other Member States. Efficiency gains for companies could have a positive impact on consumers in terms of price and offer. Companies could better adapt to market realities (e.g. volatile business

opportunities), leading to increased competition. The use of digital tools should stimulate entrepreneurship and innovation, as it would offer more opportunities to set up innovative start-ups. With regard to cross-border operations by companies, the package would provide employees with improved protection across the Single Market compared to the situation today.

#### **D. Follow up**

##### **When will the policy be reviewed?**

The policy should be reviewed 5 years after the adoption or transposition of the relevant rules.