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## INFORMATION NOTE

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From: General Secretariat of the Council  
To: Permanent Representatives Committee/Council

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Subject: 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  
- Outcome of the European Parliament's first reading  
(Strasbourg, 15 to 18 April 2019)

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### I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure<sup>1</sup>, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

In this context, the rapporteur, Tadeusz ZWIEFKA (EPP, PL), presented a compromise amendment (amendment number 41) to the proposal for a Directive on behalf of the Committee on Legal Affairs. This amendment had been agreed during the informal contacts referred to above.

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<sup>1</sup> OJ C 145, 30.6.2007, p. 5.

## II. VOTE

When it voted on 18 April 2019, the plenary adopted the compromise amendment (amendment number 41) to the proposal for a Directive. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto<sup>2</sup>.

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

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<sup>2</sup> The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

## **Use of digital tools and processes in company law \*\*\*I**

**European Parliament legislative resolution of 18 April 2019 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 (COM(2018)0239 – C8-0166/2018 – 2018/0113(COD))**

### **(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0239),
  - having regard to Article 294(2) and Article 50 (1) and points (b), (c), (f) and (g) of Article 50 (2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0166/2018),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Economic and Social Committee of 17 October 2018<sup>1</sup>,
  - having regard to the provisional agreement approved by the committee responsible under Rule 69f(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 14 February 2019 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs (A8-0422/2018),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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<sup>1</sup> OJ C 62, 15.2.2019, p. 24.

**P8\_TC1-COD(2018)0113**

**Position of the European Parliament adopted at first reading on 18 April 2019 with a view to the adoption of Directive (EU) 2019/... 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**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 50(1) and points (b), (c), (f) and (g) of Article 50(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>4</sup>,

Acting in accordance with the ordinary legislative procedure<sup>5</sup>,

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<sup>4</sup> OJ C 62, 15.2.2019, p. 24.

<sup>5</sup> Position of the European Parliament of 18 April 2019.

Whereas:

- (1) Directive (EU) 2017/1132 of the European Parliament and of the Council<sup>6</sup> lays down inter alia rules on disclosure and the interconnection of central, commercial and companies registers of Member States.
- (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 internal market and for ensuring the competitiveness *and trustworthiness* of companies.

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<sup>6</sup> *Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ L 169, 30.6.2017, p. 46).*

- (3) *Ensuring that a legal and administrative environment equal to the new social and economic challenges of globalisation and digitalisation exists is essential, on the one hand, in order to provide the necessary safeguards against abuse and fraud and, on the other, in order to pursue objectives such as promotion of economic growth, creation of jobs and attracting investment to the Union, all of which would bring economic and social benefits to society as a whole.*
- (4) *There are currently significant differences between Member States when it comes to the availability of online tools enabling entrepreneurs and companies to communicate with authorities on matters of company law. eGovernment services vary between Member States. Some Member States provide comprehensive and user-friendly services entirely online, while others are unable to provide online solutions at certain major stages of a company's lifecycle. For example, some Member States only allow the formation of companies, or the filing of changes to documents and information with the register, to be done in person, some allow those actions to be done either in person or online, and in other Member States they can only be done online.*

- (5) *Furthermore, regarding access to company information, Union law stipulates that a minimum set of data always has 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.*
- (6) The Commission, in its Communication ‘A Digital Single Market Strategy for Europe’ 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 start their activities, 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 ‘Tallinn declaration on eGovernment’ of 6 October 2017, Member States made a strong call to step up efforts for the provision of efficient, user-centric electronic procedures in the Union.

- (7) In June 2017, the interconnection of Member States' central, commercial and companies registers became operational thereby greatly facilitating cross-border access to company information in the Union and allowing registers in Member States to communicate with each other electronically in relation to certain cross-border operations which affect companies.
- (8) 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') as defined in Commission Recommendation 2003/361/EC<sup>7</sup>, procedures should be put in place to enable the *formation of companies and* registration of *branches* to be completed fully online. ***This Directive should not oblige companies to use such procedures. Member States should however be able to decide to make some or all online procedures mandatory. The current*** costs and burdens associated with formation and registration procedures derive not only from administrative fees charged for *forming* a company or registering a branch, but also from other requirements which make the overall process longer to complete, in particular when the physical presence of the applicant ■ is required. In addition, information on such procedures should be made available online and free of charge.

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<sup>7</sup> 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).



- (9) Regulation (EU) **2018/1724 of the European Parliament and of the Council**<sup>8</sup> which establishes the Single Digital Gateway provides for general rules for online provision of information, procedures and assistance services relevant for the functioning of the internal market. This Directive establishes specific rules relating to the **formation** of limited liability companies, to the registration of branches, and to the filing of documents and information by companies and branches (‘online procedures’), which are not covered by that Regulation. In particular, Member States should provide **specific** information about online procedures provided for in this Directive **and models of instruments of constitution (‘templates’)** on the websites accessible by means of the Single Digital Gateway.

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<sup>8</sup> **Regulation (EU) 2018/1724 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 (OJ L 295, 21.11.2018, p. 1).**

- (10) Enabling *formation of companies*, registration of ■ branches and filing of documents and information to be done fully online 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<sup>9</sup>. 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 that there is a 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 formation of companies, registration of branches and online filing of documents and information by *applicants who are* Union citizens, through the recognition of their electronic identification means. ***Member States should decide on the way in which the identification means that they recognise, including those not falling under Regulation (EU) No 910/2014, are made publicly available.***

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<sup>9</sup> 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).

- (11) *Member States should remain free to decide which person or persons are to be considered under national law as applicants with regard to online procedures, provided that that does not limit the scope and the objective of this Directive.*
- (12) In order to facilitate online procedures for companies, Member States' registers should *ensure that the rules on fees applicable to the online procedures provided for in this Directive are transparent and applied in a non-discriminatory manner. However, the requirement of transparency of rules on fees should be without prejudice to contractual freedom, where applicable, between applicants and persons who assist them in any part of the online procedures, including the freedom to negotiate an appropriate price for such services.*

- (13) *Fees charged by the registers for online procedures should be calculated on the basis of the costs of the services in question. Such fees could also cover, inter alia, the costs of minor services performed without charge. In calculating their amount, Member States should be entitled to take account of all the costs related to carrying out the online procedures, including the proportion of the overheads which can be attributed thereto. Furthermore, Member States should be allowed to impose flat-rate charges and fix the amount of such charges for an indefinite period, provided that they check at regular intervals that such charges continue not to exceed the average cost of the services in question. Any fees for online procedures charged by the register in the Member States should not exceed the recovery cost of providing such services. Moreover, where the completion of the procedure requires a payment, it should be possible that the payment can be made by means of widely available cross-border payment services, such as credit cards and bank transfers.*
- (14) Member States should assist persons seeking to form a company or register a branch by providing *certain information through the Single Digital Gateway and, where applicable, on the e-Justice Portal, in a concise and user-friendly way*, concerning the procedures and requirements *on the formation of* limited liability companies, registration of branches *and filing of documents and information, rules relating to the disqualification of directors and an outline of the powers and responsibilities of the administrative, management and supervisory bodies of* companies.

- (15) It should be possible to **form** companies fully online. However, Member States should be allowed to **limit online formation to certain types** of limited liability companies, **as specified in this Directive**, due to the complexity of the **formation of other types of companies in national law**. ■ In any event, Member States should lay down detailed rules for online **formation**. It should be possible to carry out online **formation** with the submission of documents or information in electronic form, **without prejudice to Member States' material and procedural requirements, including those relating to legal procedures for drawing up instruments of constitution, and to the authenticity, accuracy, reliability, trustworthiness and appropriate legal form of documents or information that are submitted. However, those material and procedural requirements should not make online procedures, in particular those for the online formation of a company and online registration of a branch, impossible. Where obtaining electronic copies of documents satisfying the requirements of Member States is not technically possible, by way of exception, the documents in paper form could be required.**

- (16) *Where all formalities required for the online formation of a company are complied with, including the requirement for all documents and information to be correctly provided by the company, the online formation before any authorities or any persons or bodies mandated under national law to deal with any aspect of online procedures, should be fast. However, in cases where there are doubts about the fulfilment of necessary formalities, including concerning the identity of an applicant, the legality of the name of the company, the disqualification of a director or the compliance of any other information or document with legal requirements, or in cases of suspicion of fraud or abuse, the online formation might take longer and the deadline for the authorities should not commence until such formalities are complied with. In any event, where it is not possible to complete the procedure within the deadlines, Member States should ensure that the applicant is notified of the reasons for any delay.*
- (17) In order to ensure the timely online formation of a company or online registration of a branch, Member States should not make that **formation** or **registration** conditional on obtaining any licence or authorisation before **that formation** or **registration** can be completed, unless **national law** so provides for the purpose of **ensuring** that there is a proper oversight of certain activities. After formation or registration, national law should govern the situations in which companies or branches are not allowed to carry out certain activities without obtaining a licence or authorisation.

- (18) In order to assist businesses, in particular, **SMEs** in setting-up, it should be possible to form a private limited liability company with the use of templates, which should be available online. **Member States should ensure that such templates can be used for online formations, and should remain free to determine what their legal value is.** Such templates could contain a pre-defined set of options in accordance with national law. The applicants should be able to choose between using templates or forming a company with bespoke instruments of constitution, and Member States should have the option of providing templates also for other types of companies.
- (19) In order to respect Member States' existing traditions regarding company law, it is important to allow flexibility as regards the manner in which they provide a fully online system for **formation** of companies, **registration of branches and filing of documents and information**, including in relation to the role of notaries or lawyers **in any part of such online procedures**. Matters concerning online procedures which are not regulated in this Directive should continue to be governed by national law.

- (20) 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 online *procedures provided for in this Directive* should also include controls on the identity and legal capacity of persons seeking to form a company or register a branch *or to file documents or information. Those controls could be a part of the legality check required by some Member States. The* means and methods for carrying out those controls should be left to Member States to develop and adopt. ■ To that effect, Member States should be able to require the involvement of notaries or lawyers *in any* part of the online *procedures. However*, such involvement should not prevent the completion of the ■ procedure in its entirety online.



- (21) *Where justified by reason of the public interest in preventing identity misuse or alteration, or in ensuring that the rules on legal capacity and on applicants' authority to represent a company are complied with, Member States should be allowed to take measures, in accordance with national law, which could require the physical presence of the applicant before any authority or person or body mandated under national law to deal with any aspect of online procedures, of the Member State in which the company is to be formed or a branch is to be registered. However, such physical presence should not be required systematically, but only on a case-by-case basis where there are reasons to suspect identity falsification, or non-compliance with the rules on legal capacity and on applicants' authority to represent a company. Such suspicion should be based on information available to the authorities or persons or bodies mandated under national law to perform such kinds of controls. In the event that physical presence is required, Member States should ensure that any other steps of the procedure can be completed online. The concept of legal capacity should be understood to include the capacity to act.*

(22) *Member States should be allowed also to enable their competent authorities, persons or bodies to verify, by complementary electronic controls of identity, legal capacity and legality, whether all the conditions required for the formation of companies are met. Such controls could include, inter alia, video-conferences or other online means that provide a real-time audio-visual connection.*

- (23) In order to ensure that all persons interacting with companies are protected, Member States should be able to prevent fraudulent *or other abusive* behaviour by refusing the appointment of a person as a director of a company, *taking into account not only the former conduct of that person* in their own territory, *but, where so provided under national law, also information provided by other Member States. Member States should, therefore, be allowed to request information from other Member States. The reply could either consist of information on a disqualification in force or other information which is relevant for disqualification in the Member State that received the request.* Such requests for information ■ should be possible by means of the system of interconnection of registers. *In that regard, Member States should be free to choose how to best collect this information, such as by gathering the relevant information from any registers or other places where it is stored in accordance with their national law or by creating dedicated registers or dedicated sections in business registers. Where further information, such as on the period and grounds of disqualification, is needed, Member States should be allowed to provide it through all available systems of exchange of information, in accordance with national law. However, this Directive should not create an obligation to request such information in every case. Moreover, being allowed to take into account information on disqualification in another Member State should not oblige Member States to recognise disqualifications in force in other Member States.*

**(24) *To ensure that all persons interacting with companies or branches are protected and that fraudulent or other abusive behaviour is prevented, it is important that competent authorities in Member States are able to verify whether the person to be appointed as a director is not prohibited from performing the duties of a director. To that end, competent authorities should also know whether the given person is recorded in any of the registers relevant for disqualification of directors in other Member States by means of the system of interconnection of business registers. The registers, the authorities or persons or bodies mandated under national law to deal with any aspect of online procedures should not store such personal data longer than is necessary to assess the eligibility of the person to be appointed as a director. However, such entities might need to store such information for a longer period of time for the purpose of a possible review of a negative decision. In any case, the retention period should not exceed the period laid down in national rules for retention of any personal data related to the formation of a company or the registration of a branch or related filing of documents and information.***

- (25) The obligations provided for in this Directive relating to the online *formation of companies and registration of branches* should be without prejudice to any other, non-company law related, formalities that a company has to fulfil to start activity in accordance with Union and national law.
- (26) As with online *formation of companies and registration of branches*, 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 be free to allow ■ documents and information *to be filed* by other means, including paper means. In addition, the disclosure of company information should be effected once that information is made publicly available in those national registers, since they are now interconnected and provide a comprehensive point of reference for users. In order to avoid disruption to existing means of disclosure, Member States should have the choice also of publishing either all or some 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. ***This Directive should not affect national rules relating to the legal value of the register and the role of a national gazette.***

(27) In order to facilitate the way in which the information stored by national registers can be searched for and exchanged with other systems, Member States should ensure that ***after the relevant transposition period has expired***, all documents and information provided to any authority or person or body mandated under national law to deal with any aspect of the online procedures, as part of the online procedures provided for in this Directive, can be stored by the registers in a machine-readable and searchable format or as structured data. That means ***that the file format should be structured in such a way that software applications can easily identify, recognise and extract specific data and their internal structure. The requirement to ensure that the format of documents and information is searchable should not encompass scanned signatures or other data which are not suitable for machine-readability.*** As this could require changes to the existing information systems of Member States, there should be a longer transposition period for this requirement.

- (28) In order to cut costs and reduce administrative burden *and the length of procedures* for companies, Member States should apply the ‘once-only’ principle in the area of company law, *which is established in the Union, as evidenced, inter alia, by Regulation (EU) 2018/1724, 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 formed 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 documents or information previously submitted to a register. Furthermore, where a company is formed 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, information such as a 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.

- (29) In order to ensure that consistent and up-to-date information is available about companies in the Union and to further increase transparency, it should be possible to use the interconnection of registers to exchange information about any type of company registered in the Member States' registers in accordance with national law. Member States should have the option of making electronic copies of the documents and information of those other types of companies available also through that system of interconnection of registers.
- (30) 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 internal 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 **■** status of a company and ***information on*** its branches in ***other*** Member States, ***as well as*** information concerning the persons ***who, either as a body or as members of any such body, are authorised to represent the company. Furthermore, the price of obtaining a copy of all or part of the documents and information disclosed by the company, whether by paper or electronic means, should not exceed the administrative cost thereof, including the costs of development and maintenance of registers, provided that the price is not disproportionate with regard to the*** information sought.



- (31) It is currently possible for Member States to establish optional access points in relation to the system of interconnection of registers. However, it is not possible for the Commission to connect other stakeholders to the system of interconnection of registers. In order for other stakeholders to benefit from the interconnection of registers and ensure that their systems retain accurate, up-to-date and reliable information on companies, the Commission should be authorised to establish additional access points. Such access points should refer to 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.
- (32) In order to help companies established in the internal market to expand their business activities cross-border more easily, it should be possible for them to open and register branches in another Member State online. Member States should, therefore, make possible, 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.*

- (33) 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. 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 such closure through the system of interconnection of registers and both registers should record this information.
- (34) To ensure consistency with Union and national law, it is necessary to delete the provision relating to the Contact Committee which has ceased to exist, and to update the types of companies set out in Annexes I and II to Directive (EU) 2017/1132.

- (35) In order to accommodate future changes in the laws of Member States and to Union legislation concerning company types, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to update the list of the types of companies contained in Annexes I, II and IIA to Directive (EU) 2017/1132. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making<sup>10</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (36) The provisions of this Directive, including the obligations for registration of companies, do not affect national law relating to tax measures of Member States, or their territorial and administrative subdivisions.

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<sup>10</sup> OJ L 123, 12.5.2016, p. 1.

- (37) *The power of Member States to reject applications for the formation of companies and registration of branches in the event of fraud or abuse, and Member States' investigation and enforcement actions, including by the police or other competent authorities, should not be affected by this Directive. Other obligations under Union and national law, including those arising from anti-money laundering, counter terrorist financing and beneficial ownership rules, should also remain unaffected.* This Directive does not affect the provisions of Directive (EU) 2015/849 of the European Parliament and of the Council<sup>11</sup> addressing risks of money laundering and terrorist financing, in particular the obligations related to carrying out the appropriate customer due diligence measures on a risk-sensitive basis and to identifying and registering the beneficial owner of any newly created entity in the Member State of its incorporation.
- (38) This Directive should be applied in compliance with Union data protection law and the protection of privacy and personal data as enshrined in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union. Any processing of the personal data of natural persons under this Directive is to be undertaken in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>12</sup>.
- (39) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>13</sup> and delivered an opinion on **26 July** 2018.

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<sup>11</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

<sup>12</sup> Regulation (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).

<sup>13</sup> **Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).**

- (40) Since the objective of this Directive, namely, to provide more digital solutions for companies in the internal market, cannot be sufficiently achieved by the Member States, but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.
- (41) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents<sup>14</sup>, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

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<sup>14</sup> OJ C 369, 17.12.2011, p. 14.

- (42) *Given the complexity of the changes required to be made to national systems in order to comply with the provisions of this Directive, and the substantial differences currently existing among Member States with regard to the use of digital tools and processes in the area of company law, it is appropriate to provide that Member States that encounter particular difficulties in transposing certain provisions of this Directive can notify the Commission of their need to benefit from an extension of up to one year of the relevant implementation period. Member States should state their objective reasons for applying for such an extension.*
- (43) The Commission should carry out an evaluation of this Directive. Pursuant to paragraph 22 of the Interinstitutional Agreement of 13 April 2016 on Better Law-Making, that evaluation should be based on the five criteria of efficiency, effectiveness, relevance, coherence and EU value added and should provide the basis for impact assessments of possible further measures. *Member States should help to carry out that evaluation by providing to the Commission the data that is available to them on how online formation of companies is working in practice, for example data on the number of online formations, the number of cases in which templates were used, or where physical presence was required and the average duration and costs of online formations.*

- (44) Information should be collected in order to assess the performance of this Directive against the objective it pursues and in order to carry out an evaluation in accordance with paragraph 22 of the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
- (45) Directive (EU) 2017/1132 should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1  
Amendments to Directive (EU) 2017/1132

Directive (EU) 2017/1132 is amended as follows:

(1) in Article 1, the following indent is inserted after the second indent:

"- the rules on online *formation* of companies, *on online registration of* branches *and on online filing of documents and information by companies and branches*,";

(2) in Title I, the title of Chapter III is replaced by the following:

"Online *procedures (formation, registration and filing)*, disclosure and registers";

(3) Article 13 is replaced by the following:

"Article 13

Scope

The coordination measures prescribed by this Section *and by Section 1A* shall apply to the laws, regulations and administrative provisions of the Member States relating to the types of companies listed in Annex II, and, where specified, to the types of companies listed in Annexes I and IIA.";



(4) the following Articles are inserted:

"Article 13a

Definitions

For the purposes of this Chapter:

- (1) "electronic identification means" means an electronic identification means as defined in point (2) of Article 3 of Regulation (EU) No 910/2014 of the European Parliament and of the Council ■\*;
- (2) "electronic identification scheme" means an electronic identification scheme as defined in point (4) of Article 3 of Regulation (EU) No 910/2014;
- (3) ***"electronic means" means electronic equipment used for the processing, including digital compression, and the storage of data, and through which information is initially sent and received at its destination; that information being entirely transmitted, conveyed and received in a manner to be determined by Member States;***

- (4) **"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;*
- (5) **"registration of a branch"** means a process leading to disclosure of documents and information relating to a branch newly opened in a Member State;
- (6) "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 *formation* of a company *in accordance with Article 13g*.

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## Article 13b

Recognition of identification means for the purposes of online procedures

1. Member States shall ensure that the following electronic identification means ***can be used by applicants who are*** Union citizens ***in the online procedures referred to in this Chapter***:
  - (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 ***refuse to recognise*** electronic identification means ***where the assurance levels of those electronic*** identification means ***do not comply with the conditions set out in Article 6(1) of Regulation (EU) No 910/2014***.
3. ***All*** identification means ***recognised by Member States shall be made publicly available***.

4. *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 referred to in this Chapter, 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.*

#### *Article 13c*

##### *General provisions on online procedures*

1. *This Directive shall be without prejudice to national laws that, in accordance with Member States' legal systems and legal traditions, designate any authority or person or body mandated under national law to deal with any aspects of online formation of companies, online registration of branches and online filing of documents and information.*

2. *This Directive shall also be without prejudice to the procedures and requirements laid down by national law, including those relating to legal procedures for the drawing up of instruments of constitution, provided that online formation of a company, as referred to in Article 13g, and online registration of a branch, as referred to in Article 28a, as well as online filing of documents and information, as referred to in Articles 13j and 28b, is possible.*
  
3. *The requirements under applicable national law concerning the authenticity, accuracy, reliability, trustworthiness and the appropriate legal form of documents or information that are submitted shall remain unaffected by this Directive, provided that online formation, as referred to in Article 13g, and online registration of a branch, as referred to in Article 28a, as well as online filing, as referred to in Articles 13j and 28b, is possible.*

## Article 13d

### Fees for online *procedures*

1. Member States shall ensure that the rules on fees applicable to the online procedures referred to in this Chapter are transparent and are applied in a non-discriminatory manner.
2. Any fees *for online procedures* charged by the registers referred to in Article 16 shall not exceed the *recovery of* the costs of providing *such services*.

## Article 13e

### Payments

Where the completion of a procedure laid down in this Chapter 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*.

## Article 13f

### 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. The information shall cover at least the following:*

- (a) rules on the formation of companies, including online procedures referred to in Articles 13g and 13j, and requirements relating to the use of templates and to other formation documents, identification of persons, the use of languages and to applicable fees;*
- (b) rules on the registration of branches, including online procedures referred to in Articles 28a and 28b, and requirements relating to registration documents, identification of persons and the use of languages;*

(c) *an outline of the applicable rules on becoming a member of the administrative body, the management body or the supervisory body of a company, including of the rules on disqualification of directors, and on the authorities or bodies responsible for keeping information about disqualified directors;*

■

(d) *an outline of* the powers and responsibilities of the administrative body, the *management* body and the supervisory *body* of a company ■, including the authority to represent a company ■ in dealings with third parties.

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\* 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).";

(5) in Title I, Chapter III, the following Section is inserted:

"Section 1A

Online *formation*, online filing and disclosure



## Article 13g

### Online *formation* of companies

1. Member States shall ensure that the *online formation* of companies may be carried out fully online without the necessity for the applicants ■ to appear in person before any ■ authority or ■ person or body *mandated under national law to deal with any aspect of the online formation of companies, including drawing up the instrument of constitution of a company*, subject to the *provisions* laid down in Article 13b(4) and paragraph (8) of this Article.

However, Member States may decide not to provide for ■ *online formation* procedures for types of companies *other than those* listed in Annex *IIA*.

2. Member States shall lay down detailed rules for the *online formation* of companies, including rules on the use of templates as referred to in Article 13h, and on the documents and information required for the *formation* of a company. As part of those rules, Member States shall ensure that such *online formation* may be carried out by submitting documents or information in 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 that the **applicants** have the necessary legal capacity and have authority to represent the company;
  - (b) the means to verify the identity of the **applicants in accordance with Article 13b**;
  - (c) the requirements for the **applicants** to use trust services referred to in Regulation (EU) No 910/2014;
  - (d) the procedures to **verify** the legality of the object of the company **insofar as such checks are provided for under national law**;
  - (e) **the procedures to verify** the legality of the name of the company **insofar as such checks are provided for under national law**;
  - (f) **the procedures to verify the appointment of directors.**

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

■

- (a) the procedures to ensure the legality of the company instruments of constitution, including verifying the correct use of templates;
- (b) the *consequences of the* disqualification of a director by *the* competent *authority in any* Member State;
- (c) the ■ role of a notary or any other person or body mandated under national law to deal with *any aspect of the online formation of a company*;
- (d) *the exclusion of online* formation *in cases* where the share capital of *the* company is paid by way of contributions in kind.

5. Member States shall not make the online *formation* of a company conditional on obtaining a licence or authorisation before the company is registered, unless such a condition is indispensable for the proper oversight 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 **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.
7. 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 Article 13h, or within ten working days in other cases**, from the later of the following:
  - (a) the date of the **completion of all formalities required for the online formation, including** the receipt of all documents and information, **which comply with national law, by an** authority or **■** a person or body mandated under national law to **deal with any aspect of the formation of** a company;

- (b) the date of the payment of a registration fee, the payment in cash for share capital, or the payment for the share capital by way of a contribution in kind, as provided for under national law.

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

8. *Where justified by reason of the public interest in ensuring compliance with the rules on legal capacity and on the authority of applicants to represent a company, any authority or person or body mandated under national law to deal with any aspect of the online formation of a company, including the drawing up of the instrument of constitution, may request the physical presence of the applicant. Member States shall ensure that, in such cases, the physical presence of an applicant may only be required on a case-by-case basis where there are reasons to suspect non-compliance with the rules referred to in point (a) of paragraph 3. Member States shall ensure that any other steps of the procedure can nonetheless be completed online.*

## Article 13h

### Templates for *online formation* of companies

1. Member States shall make templates available, for the types of companies listed in Annex IIA, on registration portals or websites that are accessible by means of the Single Digital Gateway. Member States may also make templates available online for the *formation* of *other* 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 *formation* procedure referred to in Article 13g. Where those templates are used by *applicants* in compliance with the rules referred to in point (a) of Article 13g(4), ■ the requirement to have the company instruments of constitution drawn up and certified in due legal form where preventive administrative or judicial control is not provided for, as laid down in Article 10, shall be deemed to have been fulfilled.

*This Directive shall not affect any requirement under national law to have the drawing up of instruments of constitution done in due legal form, as long as the online formation referred to in Article 13g is possible.*

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. *The availability of templates in languages other than the official language or languages of the Member State concerned shall be for information purposes only, unless that Member State decides that it is also possible to form a company with templates in such other languages.*
4. The content of the templates shall be governed by national law.

## Article 13i

### Disqualified directors

1. **█** 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.* For the purpose of this Article, directors shall *at least* include **█** the persons referred to in *point (i) of* Article 14(d).
2. *Member States may require that persons applying to become directors declare whether they are aware of any circumstances which could lead to a disqualification in the Member State concerned.*

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

3. *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.*



4. *In order to reply to a request referred to in paragraph 3 of this Article, Member States shall at least make the necessary arrangements to ensure that they are able to provide without delay information on whether a given person is disqualified or is recorded in any of their registers that contain information relevant for disqualification of directors, by means of the system referred to in Article 22. Member States may also exchange further information, such as on the period and grounds of disqualification. Such exchange shall be governed by national laws.*
5. *The Commission shall lay down detailed arrangements and technical details for the exchange of the information referred to in paragraph 4 of this Article, by means of the implementing act referred to in Article 24.*
6. Paragraphs 1 to 5 of this Article shall apply *mutatis mutandis* where a company files information **concerning** the appointment of a new director in the register referred to in Article 16.

7. *The personal data of persons referred to in this Article shall be processed in accordance with Regulation (EU) 2016/679 and national law, in order to enable the authority or the person or body mandated under national law to assess necessary information relating to the disqualification of a person as a director, with a view to preventing fraudulent or other abusive behaviour and ensuring that all persons interacting with companies or branches are protected.*

*Member States shall ensure that the registers referred to in Article 16, authorities or persons or bodies mandated under national law to deal with any aspect of online procedures do not store personal data transmitted for the purposes of this Article any longer than is necessary, and in any event no longer than any personal data related to the formation of a company, the registration of a branch or a filing by a company or branch is stored.*

Article 13j

Online filing *of company documents and information*

1. Member States shall ensure that ■ documents and information referred to in Article 14, including any modification thereof, *can be filed online* with the register within the time limit provided by the laws of the Member State where the company is ■ registered. Member States shall ensure that such filing can be completed online in its entirety without the necessity for an *applicant* to appear in person before any ■ authority or ■ person or body *mandated under national law to deal* with the online filing, subject to the *provisions* laid down in Article 13b(4) *and, where applicable, Article 13g(8)*.
2. Member States shall ensure that the origin and integrity of the documents filed online may be verified electronically.
3. 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.

4. *Article 13g (2) to (5) shall apply mutatis mutandis to online filing of documents and information.*
5. *Member States may continue to allow forms of filing other than those referred to in paragraph 1, including by electronic or by paper means, by companies, by notaries or by any other persons or bodies mandated under national law to deal with such forms of filing.”;*

(6) Article 16 is replaced by the following:

"Article 16

Disclosure in the register

1. In each Member State, a file shall be opened in a central, commercial or companies register ('the register'), for each of the companies registered therein.

Member States shall ensure that companies have a **European** unique identifier (**'EUID'**), referred to in point (8) of the Annex to Commission Implementing Regulation (EU) 2015/884<sup>15</sup>, allowing them to be unequivocally identified in communications between registers through the system of interconnection of registers established in accordance with Article 22 ('the system of interconnection of registers'). That unique identifier shall comprise, at least, elements making it possible to identify the Member State of the register, the domestic register of origin and the company number in that register and, where appropriate, features to avoid identification errors.

2. All documents and information that are required to be disclosed pursuant to Article 14 shall be kept in the file referred to in paragraph 1 of this Article, or entered directly in the register, and the subject matter of the entries in the register shall be recorded in the file.

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<sup>15</sup> **Commission Implementing Regulation (EU) 2015/884 of 8 June 2015 establishing technical specifications and procedures required for the system of interconnection of registers established by Directive 2009/101/EC of the European Parliament and of the Council (OJ L 144, 10.6.2015, p. 1).**

All documents and information referred to in Article 14, irrespective of the means by 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 documents and information that are filed by paper means are converted by the register to electronic form *as quickly as possible*.

Member States shall ensure that documents and information referred to in Article 14 that have been filed by paper means, before 31 December 2006, are converted into electronic form by the register upon receipt of an application for disclosure by electronic means.

3. Member States shall ensure that the disclosure of the documents and information referred to in Article 14 *is* effected by making them publicly available in the register. In addition, Member States may also require that some or all of those documents and information are published in a national gazette designated for that purpose, *or by equally effective means. Those means shall entail at least the use of a system whereby the documents or information published can be accessed in chronological order through a central electronic platform*. In such cases, the register shall ensure that those documents and information are sent electronically by the register to the national gazette *or to a central electronic platform*.

4. *Member States shall take the necessary measures to avoid any discrepancy between what is in the register and in the file.*

*Member States that require the publication of documents and information in a national gazette or on a central electronic platform shall take the necessary measures to avoid any discrepancy between what is disclosed in accordance with paragraph 3 and what is published in the gazette or on the platform.*

*In cases of any discrepancies under this Article, the documents and information made available in the register shall prevail.*

5. The documents and information referred to in Article 14 may be relied on by the company as against third parties only after they have been disclosed in accordance with paragraph 3 of this Article, unless the company proves that the third parties had knowledge thereof.

However, with regard to transactions taking place before the sixteenth day following the disclosure, the documents and information shall not be relied on as against third parties who prove that it was impossible for them to have had knowledge thereof.

*Third parties may always rely on any documents and information in respect of which the disclosure formalities have not yet been completed, save where non-disclosure causes such documents or information to have no effect.*

6. Member States shall ensure that all documents and information ■ submitted as part of the ■ formation of a company, the registration of a branch, or *a* filing by a company or a branch, is stored by the registers in a machine-readable and searchable format or as structured data.";

(7) the following Article is inserted:

"Article 16a

Access to disclosed information

1. Member States shall ensure that copies of all or any part of the documents and information, referred to in Article 14, may be obtained from the register on application, and that such an application may be submitted to the register by either paper or electronic means.



However, Member States may decide that certain types or parts of the documents and information, which were filed by paper means on or before 31 December 2006, cannot be obtained by electronic means where a specified period has elapsed between the date of filing and the date of the application. Such a specified period shall not be less than 10 years.

2. The price of obtaining a copy of all or any part of the documents and information referred to in Article 14, whether by paper or electronic means, shall not exceed the administrative costs thereof, *including the costs of development and maintenance of registers*.
3. Electronic *and paper* copies supplied to an applicant shall be certified as ‘true copies’ unless the applicant dispenses with such certification.
4. Member States shall ensure that electronic *copies and* extracts of the documents and information provided by the register have been authenticated by means of trust services referred to in Regulation (EU) No 910/2014, in order to guarantee that the electronic copies or extracts have been provided by the register and that their content is a true copy of the document held by the register or that it is consistent with the information contained therein.";

(8) *in Article 17, paragraph 1 is replaced by the following:*

*"1. Member States shall ensure that up-to-date information is made available explaining the provisions of national law pursuant to which third parties may rely on information and each type of document referred to in Article 14, in accordance with Article 16(3), (4) and (5).";*

(9) Article 18 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. Electronic copies of the documents and information referred to in Article 14 shall also be made publicly available through the system of interconnection of registers. Member States may also make available documents and information referred to in Article 14 for types of companies other than those listed in Annex II.";

(b) in paragraph 3, point (a) is replaced by the following:

"(a) the documents and information referred to in Article 14, including for types of companies other than those listed in Annex II, where such documents are made available by Member States;"

(10) Article 19 is replaced by the following:

"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, ***including the costs of development and maintenance of registers.***
2. Member States shall ensure that ***at least*** the following information ***and documents*** ***are*** 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 website, where *such details are recorded in the national register*;
- (e) *the 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 *recorded* in the national registers;
- (f) the object of the company, where it is recorded in the national register;

■

- (g) the *particulars* of any persons *who either as a body or as members of any such body are* currently authorised by the company to represent it in dealing with third parties and in legal proceedings *and information as to whether the persons authorised to represent the company may do so alone or are required to act jointly*;
- (h) 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.

3. *The exchange of any information through the system of interconnection of registers shall be free of charge for the registers.*

4. Member States may *decide that the information referred to in points (d) and (f) is to be made available free of charge only for the authorities of other Member States.*";

(11) *Article 20(3) is deleted;*

(12) Article 22 is amended as follows:

(a) in paragraph 4, the following subparagraph is added:

"The Commission may also establish optional access points to the system of interconnection of registers. Such access points shall 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.";

(b) paragraph 5 is replaced by the following:

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

(13) Article 24 is amended as follows:

(a) point (d) is replaced by the following:

"(d) the technical specification defining the methods of exchange of information between the register of the company and the register of the branch as referred to in Article 20, Article 28a (4) and (6) and Articles 28c, 30a and 34;"

**(b) *point (e) is replaced by the following:***

***"(e) the detailed list of data to be transmitted for the purpose of exchange of information between the registers, as referred to in Articles 20, 28a, 28c, 30a, 34 and 130;"***

(c) point (n) is replaced by the following:

"(n) the procedure and technical requirements for the connection of the optional access points to the platform as referred to in Article 22;"

(d) the following point (o) is added:

"(o) the detailed *arrangements for and* technical *details* of the exchange between registers of the information referred to in Article 13i."

(e) *at the end of the Article, the following paragraph is added:*

*“The Commission shall adopt the implementing acts pursuant to points (d), (e), (n) and (o) by ... [ 18 months after the date of entry into force].”;*

(14) in Title I, Chapter III, Section 2, the title is replaced by the following:

"Registration and disclosure rules applicable to branches of companies from other Member States";

■

(15) in Title I, Chapter III, Section 2, the following Articles are inserted:

"Article 28a

Online registration of branches

1. Member States shall ensure that the registration in a Member State of a branch of a company that is governed by the law of another Member State may be fully carried out online without the necessity for the *applicants* to appear in person before any ■ authority or ■ any person *or body mandated under national law to deal with any aspect of* the application for registration of branches, subject to Article 13b(4) *and mutatis mutandis to Article 13g(8)*.



2. Member States shall lay down detailed rules for the online registration of branches, including rules on the documents and information required to be submitted to a competent authority. As part of those rules Member States shall ensure that online registration may be carried out by submitting information or documents in electronic form, including electronic copies of the documents and information referred to in Article 16a(4), or by making use of the information or documents previously submitted to a register.
3. The rules, referred to in paragraph 2, shall at least provide for the following:
  - (a) the procedure to ensure that the *applicants* have the necessary legal capacity and that they have authority to represent the company;
  - (b) the means for verifying the identity of the person or persons registering the branch or their representatives;
  - (c) *the requirements for the applicants to use the trust services referred to in Regulation (EU) No 910/2014.*

4. *The rules referred to in paragraph 2 may also provide for procedures to do the following:*
- (a) verify the legality of the object of the branch;*
  - (b) verify the legality of the name of the branch;*
  - (c) verify the legality of the documents and information submitted for the registration of the branch;*
  - (d) 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.*
5. Member States may verify the information about the company by means of the system of interconnection of registers when registering a branch of a company established in another Member State.

Member States shall not make the online registration of a branch conditional on obtaining any licence or authorisation before the branch is registered, unless such a condition is indispensable for the proper oversight of certain activities laid down in national law.

6. Member States shall ***ensure that*** the online registration of a branch ***is completed*** within ***10*** working days of the ***completion of all formalities, including the*** receipt of all the necessary documents and information ***which comply with national law*** by ***an*** authority or **■** a person or body mandated under national law to ***deal with any aspect of*** the registration ***of a branch***.

***Where it is not possible to register a branch within the deadlines referred to in this paragraph, Member States shall ensure that the applicant is notified of the reasons for the delay.***

7. Following the registration of a branch of a company established under the laws of another Member State, the register of the Member State in which that branch is registered shall notify the Member State where the company is registered that the branch has been registered by means of the system of interconnection of registers. The Member State, where the company is registered, shall acknowledge receipt of such notification and shall record the information in their register without delay.

## Article 28b

### Online filing of documents and information for branches

1. 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 *applicants* to appear in person before any authority or person or body mandated under national law to deal with the online filing, subject to the *provisions* laid down in Article 13b(4) *and mutatis mutandis in Article 13g(8)*.
2. *Article 28a (2) to (5) shall apply mutatis mutandis to online filing for branches.*
3. *Member States may require that certain or all documents and information referred to in paragraph 1 are only filed online.*

## Article 28c

### Closure of branches

Member States shall ensure that upon receipt of the documents and information referred to in point (h) of Article 30(1), the register of a Member State in which a branch of a company is registered informs, by means of the system of interconnection of registers, the register of a Member State where the company is registered that its branch has been closed ***and struck off the register***. The register of the Member State of the company shall acknowledge receipt of such notification also by means of that system and ■ shall record ***the*** information ■ without delay.";

(16) the following Article is inserted:

"Article 30a

Changes to documents and information of the company

1. The Member State where a company is registered shall notify, by means of the system of interconnection of registers, without delay, the Member State where a branch of the company is registered, in the event that a change has been filed with regard to any of the following:
  - (a) the company's name;
  - (b) the company's registered office;
  - (c) the company's registration number in the register;
  - (d) the company's legal form;
  - (e) the documents and information referred to in points (d) and (f) of Article 14.

Upon receipt of the notification referred to in the first subparagraph of this paragraph, the register in which the branch is registered shall, by means of the system of interconnection of registers, acknowledge receipt of such notification and shall ensure that the documents and information referred to in Article 30(1) are updated without delay.";

(17) in Article 31, the following paragraph is added:

"Member States may provide that the mandatory disclosure of accounting documents referred to in point (g) of Article 30(1) may be considered fulfilled by the disclosure in the register of the Member State in which the company is registered in accordance with point (f) of Article 14.";

(18) Article 43 is deleted;

(19) Article 161 is replaced by the following:

"Article 161  
Data protection

The processing of any personal data carried out in the context of this Directive shall be subject to Regulation (EU) 2016/679.";

(20) the following Article is inserted:

"Article 162a

Amendments to the Annexes

Member States shall inform the Commission without delay of any changes to the types of limited liability companies provided for in their national law which would affect the contents of Annexes I, II and IIA.

Where a Member State informs the Commission pursuant to the first paragraph of this Article, the Commission shall be empowered to adapt the list of the types of the companies contained in Annexes I, II and IIA in line with the information referred to in the first paragraph of this Article, by means of delegated acts in accordance with Article 163.”;

(21) Article 163 is replaced by the following:



"Article 163

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 25(3) and Article 162a shall be conferred on the Commission for an indeterminate period of time from ... [date of entry into force of this directive].
3. The delegation of power referred to in Article 25(3) and Article 162a may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 25(3) or Article 162a shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.";

(22) in Annex I, the twenty-seventh indent is replaced by the following:

"— Sweden:

publikt aktiebolag;"

(23) in Annex II, the twenty-seventh indent is replaced by the following:

"— Sweden:

privat aktiebolag

publikt aktiebolag;"

(24) Annex IIA, as set out in the Annex to this Directive, is inserted.

## Article 2

### Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... [***2 years after the entry into force of this amending Directive***]. They shall immediately communicate to the Commission the text of those provisions.

2. Notwithstanding *paragraph 1 of this Article*, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with point (5) of Article 1 of this Directive, as regards Article *13i* and Article *13j(2) of Directive (EU) 2017/1132, and point (6) of Article 1 of this Directive, as regards Article 16(6) of Directive (EU) 2017/1132*, by ... [*4 years after the date of entry into force of this amending Directive*].
3. *By way of derogation from paragraph 1, Member States which encounter particular difficulties in transposing this Directive shall be entitled to benefit from an extension of the period provided for in paragraph 1 of up to one year. They shall provide objective reasons for the need for such extension. Member States shall notify the Commission of their intention to avail of such an extension by ... [18 months after the date of entry into force of this amending Directive]*.
4. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
5. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

### Article 3

#### Reporting, review *and data collection*

1. The Commission shall, no later than ... [*5 years after the date of entry into force of this amending Directive*], *or if any Member State makes use of the derogation provided for in Article 2(3) no later than ... [6 years after the date of entry into force of this amending Directive]*, carry out an evaluation of the provisions introduced by this Directive into Directive (EU) 2017/1132 and present a report on the findings to the European Parliament, *to the Council and to the European Economic and Social Committee, except as regards the provisions referred to in Article 2(2) for which the evaluation and report shall be carried out no later than ... [7 years after the date of entry into force of this amending Directive]*.

Member States shall provide the Commission with the information necessary for the preparation of the *reports*, namely by providing data on the number of online registrations and related costs.

2. The report of the Commission shall evaluate, inter alia, the following:
- (a) the **■** feasibility of providing for fully online registration of the types of companies *other than those* listed in Annex *IIA*;
  - (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*;
  - (c) *the practical experience with the application of the rules on disqualification of directors referred to in Article 13i*;
  - (d) the methods of online filing and online access, including the use of application programming interfaces;
  - (e) the need for and feasibility of making more information available free of charge than that required in Article 19(2) and ensuring unencumbered access to such information;

- (f) the need for and feasibility of further application of the once-only principle.
3. The report shall be accompanied, if appropriate, by proposals for amendment of Directive (EU) 2017/1132.
4. With a view to providing a reliable evaluation of the provisions introduced by this Directive into Directive (EU) 2017/1132, Member States shall collect data on how online formation is working in practice. Normally, this information should comprise the number of online formations, the number of cases in which templates were used or where physical presence was required and the average duration and costs of online formations. They shall notify this information to the Commission twice, not later than two years after the date of transposition.

#### Article 4

#### Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 5  
Addressees

This Directive is addressed to the Member States.

Done at ...,

*For the European Parliament*

*The President*

*For the Council*

*The President*



## ANNEX

### “ANNEX II A

#### TYPES OF COMPANIES REFERRED TO IN ARTICLES 13, 13f, 13g, 13h, and 162a

— **Belgium:**

société privée à responsabilité limitée/besloten vennootschap met beperkte aansprakelijkheid,

société privée à responsabilité limitée unipersonnelle/Eenpersoons besloten vennootschap met beperkte aansprakelijkheid;

— **Bulgaria:**

дружество с ограничена отговорност,

еднолично дружество с ограничена отговорност;

— **Czech Republic:**

společnost s ručením omezeným;

— **Denmark:**

Anpartsselskab;

— **Germany:**

Gesellschaft mit beschränkter Haftung;

— **Estonia:**

osüühing;

— **Ireland:**

private company limited by shares or by guarantee/cuideachta phríobháideach faoi theorainn scaireanna nó ráthaíochta,

designated activity company/cuideachta ghníomhaíochta ainmnithe;

— **Greece:**

εταιρεία περιορισμένης ευθύνης,

ιδιωτική κεφαλαιουχική εταιρεία;

— **Spain:**

sociedad de responsabilidad limitada;

— **France:**

société à responsabilité limitée,

entreprise unipersonnelle à responsabilité limitée,

société par actions simplifiée,

société par actions simplifiée unipersonnelle;

— **Croatia:**

društvo s ograničenom odgovornošću,

jednostavno društvo s ograničenom odgovornošću;

— **Italy:**

società a responsabilità limitata,

società a responsabilità limitata semplificata;

— **Cyprus:**

ιδιωτική εταιρεία περιορισμένης ευθύνης με μετοχές ή/και με εγγύηση;

— **Latvia:**

sabiedrība ar ierobežotu atbildību;

— **Lithuania:**

uždaroji akcinė bendrovė;

— ***Luxembourg:***

société à responsabilité limitée;

— ***Hungary:***

korlátolt felelősségű társaság;

— ***Malta:***

private limited liability company/kumpannija privata;

— ***Netherlands:***

besloten vennootschap met beperkte aansprakelijkheid;

— ***Austria:***

Gesellschaft mit beschränkter Haftung;

— ***Poland:***

spółka z ograniczoną odpowiedzialnością;

— ***Portugal:***

sociedade por quotas;

— ***Romania:***

societate cu răspundere limitată;

— ***Slovenia:***

družba z omejeno odgovornostjo;

— ***Slovakia:***

spoločnosť s ručením obmedzeným;

— ***Finland:***

yksityinen osakeyhtiö/privat aktiebolag;

— *Sweden:*

privat aktiebolag;

— *United Kingdom:*

private limited by shares or guarantee. ”

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