



Brussels, 8 February 2019
(OR. en)

6095/19

**Interinstitutional File:
2018/0113(COD)**

**DRS 9
CODEC 301
IA 36**

NOTE

From:	Presidency
To:	Permanent Representatives Committee
No. prev. doc.:	5725/19 + ADD 1
No. Cion doc.:	8560/18 + ADD1 + ADD2 + ADD3
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 <i>- Analysis of the final compromise text with a view to agreement</i>

I. INTRODUCTION

1. On 25 April 2018, the Commission adopted the "Company Law package", which consists of two proposals for Directives amending Directive (EU) 2017/1132: a Directive on the use of digital tools and processes in company law and a Directive on cross-border conversions, mergers and divisions. The package aims to facilitate the use of digital technologies throughout a company's lifecycle and cross-border conversions, mergers and divisions.

2. The "digital tools" proposal aims to provide an online procedure for forming limited liabilities companies. Under the new rules, in all Member States, companies will be able to form, register new branches or file documents to the business register online. When templates are used, the process will be even more expeditious. Member States shall also ensure that they have rules on disqualification of directors and a related exchange of information. Provisions on the disclosure in the register and access to this information are also provided for, as well as rules on fees that shall not exceed the administrative costs of the registers, while some information should be provided free of charge. In addition, this proposal will allow companies to reuse certain information that has already been submitted to the register for the subsequent registration of a branch ("once-only principle"). A number of safeguards are foreseen in the compromise proposal in order to avoid identity falsification, in particular, physical presence of the applicants may be required under certain circumstances.

II. STATE OF PLAY

3. The Working Party on Company Law examined the proposal at eleven occasions during the Bulgarian, Austrian and Romanian Presidencies. The Presidency was granted a negotiating mandate by this Committee on 5 December 2018 on the basis of the Annex to doc. 14828/18.
4. The European Parliament's confirmed the JURI report (A8-0422/2018) in Plenary on 6 December 2018. The Rapporteur Mr ZWIEFKA (EPP/PL) was granted a mandate to start negotiations with the Council on this basis.
5. The first trilogue took place on 17 January 2019.
6. An agreement *ad referendum* between the co-legislators was reached at the second trilogue on 4 February 2019. This Committee was informed on 8 February 2019. The full compromise text was circulated to delegations on 8 February 2019 and the final compromise solution reached during the Trilogue was discussed in the Working Party Company Law (Attachés) on 11 February 2019.
7. The compromise text agreed with the European Parliament is presented in the Annex to this Note. It represents an overall balanced compromise package with a view to a rapid agreement on this important file. It is supported by the Commission.

III. CONCLUSION

The Permanent Representatives Committee is invited to give its approval to the compromise text set out in the Annex to this Note and to mandate the Presidency to inform the European Parliament that, should Parliament adopt the text of the proposal in the exact form as set out in the Annex - subject to legal-linguistic revision - at a forthcoming plenary meeting, the Council would adopt the proposed Directive thus amended.

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

(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 Committee¹,

After consulting the European Data Protection Supervisor,

Acting in accordance with the ordinary legislative procedure,

¹ OJ C , ,, , p. ..

Whereas:

- (1) Directive (EU) 2017/1132 of the European Parliament and of the Council² lays down *inter alia* the rules of disclosure and for 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 Single Market and for ensuring the competitiveness and trustworthiness of companies.
- (2a) Ensuring a legal and administrative environment equal to the new social and economic challenges of globalisation and digitalisation is essential, on the one hand, to provide the necessary safeguards against abuse and fraud and, on the other hand, in order to pursue objectives such as promotion of economic growth, creation of jobs and attracting investment to the European Union, all of which would bring economic and social benefits to society as a whole.
- (2b) There are currently significant differences between Union Member States when it comes to the availability of online tools for entrepreneurs and companies to be able to communicate with authorities on matters of company law. eGovernment services vary between Member States, some of them providing comprehensive and user-friendly services entirely available online, while others are unable to provide online solutions at certain major stages of a business lifecycle. For the purposes of forming companies or filing changes to documents and information with the register, for example, some Member States only allow this to be done in person and some allow it to be done either in person or online, while in other Member States it can only be done online.

² 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).

- (2c) Furthermore, regarding access to company information, Union law stipulates that a minimum set of data has always 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.
- (3) 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 entrepreneurs to easily set up business, 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 2017 Tallinn declaration on eGovernment, Member States made a strong call to step up efforts for the provision of efficient, user-centric electronic procedures in the Union.
- (4) In June 2017, the interconnection of Member States' central, commercial and companies registers became operational which greatly facilitates cross-border access to company information in the Union and allows registers in Member States to communicate with each other electronically in relation to certain cross-border operations which affect companies.

- (5) In order to facilitate the formation of companies and the registration of their branches and to reduce the costs, time and administrative burdens associated with the registration process, in particular by micro, small and medium-sized enterprises ('SMEs') as defined in Commission Recommendation 2003/361/EC , procedures should be put in place to enable formation of companies and registration of branches to be completed fully online. This Directive should not oblige companies to use such procedures, however, Member States may decide to make some or all online procedures mandatory. The current costs and burdens derive not only from administrative fees charged for forming a company, 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 these procedures should be made available online and free of charge.
- (6) Regulation (EU) No 2018/1724 which establishes the Single Digital Gateway foresees general rules for online provision of information, procedures and assistance services relevant for the functioning of the internal market. This Directive establishes specific rules related to the formation of and filings by limited liability companies, which are not covered by that Regulation. In particular, Member States should provide specific information about procedures set out in this Directive and models of instruments of constitution (templates) on the websites accessible by means of the Single Digital.

(7) Enabling the fully online formation of companies and registration of branches and the fully online filing of documents and information 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 . 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 the 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 registration of companies and their branches and online filing by applicants who are Union citizens through the recognition of their electronic identification means.

Member States should determine the way in which the identification means which they recognise, including those not falling under Regulation (EU) No 910/2014, are made public.

(7a) The powers of Member States to refuse the formation of companies and registration of branches in cases of fraud or abuse, and the investigation and enforcement actions by the Member States, including by police or other competent authorities, should not be affected by this Directive.

Other obligations, including those arising from anti-money laundering, counter terrorist financing and beneficial ownership rules, should also remain unaffected

(7b) Member States should remain free to determine the person or persons considered under national law as applicants with regard to the online formation of companies, registration of branches or filing without limiting the scope and the objective of this directive.

- (8) In order to facilitate online procedures for companies, Member States' registers should ensure that the rules on fees applicable to the online procedures regulated 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 the applicants and those who assist them in any part of the online formation or filing procedure, including the freedom to negotiate an appropriate price for such services.
- (8a) Registration fees of companies should be calculated on the basis of the costs of the services in question. They may, among others, also cover 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 the effecting of registration, including the proportion of the overheads which may be attributed thereto. Furthermore, Member States may impose flat-rate charges and fix their amount for an indefinite period, provided that it checks at regular intervals that they continue not to exceed the average cost of the registrations at issue. 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.
- (8b) Furthermore, Member States should assist those seeking to establish a company or 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 and filing for limited liability companies and their branches, rules related to disqualification of directors and an outline of the powers and responsibilities of bodies of companies.

- (9) As a first step in a company's lifecycle, it should be possible to form companies fully online. However, Member States should have the possibility to limit the online formation to certain types of private limited liability companies, as specified in this Directive, due to the complexity of formation of other types of companies in national laws.
- In any event, Member States should lay down detailed rules of formation. It should be possible to carry out online formation with the submission of documents in electronic form, without prejudice to the Member States' material incorporation requirements and procedural requirements laid down by national law, including those relating to legal procedures for drawing up instruments of constitution, the authenticity, accuracy, reliability, trustworthiness and appropriate legal form of submitted documents or information. However, those material requirements or procedural requirements should not make online procedures, in particular online formation of a company and online registration of a branch, impossible. In cases where obtaining electronic copies of documents satisfying the requirements of Member States would not technically be possible, exceptionally, the paper documents could be required.

- (10) In cases where all formalities were complied with, including all documents and information were correctly provided by the company, the formation of companies before any authorities or any persons or bodies mandated under national law to deal with any aspect of the online procedures, should be fast. However, in cases where there are doubts about the fulfilment of necessary formalities, including 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 registration may take longer and the deadline for the authorities should not commence until these formalities were 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. In order to ensure the timely registration of a company, Member States should not make the online formation of a company or registration of a branch conditional on obtaining any licence or authorisation before the formation of company or registration of a branch may be completed unless where it is laid down in national law for ensuring the proper control of certain activities. After registration, national law should govern the situations where companies may not carry out certain activities without obtaining a licence or authorisation.
- (11) In order to assist businesses, in particular, micro, small and medium size companies in, in setting-up their business, it should be possible to register a private limited liability company with the use of templates which are model instruments of constitution which should be available online. Member States should ensure that these models may be used for online formations, and should remain free to determine their legal value. Such models may contain a pre-defined set of options in accordance with national law. The applicants should be able to choose between using this model or registering a company with bespoke instruments of constitution, and Member States should have the option to provide templates also for other types of companies.

- (12) In order to respect Member States' existing traditions of company law, it is important to allow flexibility as regards the manner in which they ensure a fully online system of formation of companies, registration of branches and filing of documents and information, including in relation to the role of notaries or lawyers in such a process in any part of the online procedures. Matters concerning online formation of companies and registration of branches as well as online filing of documents and information which are not regulated in this Directive should be governed by national law.
- (13) 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 the online formation of companies, the registration of their branches and the online filing of documents and information should also include controls on the identity and legal capacity of persons seeking to establish a company or branch or to file documents or information. These controls may be a part of the legality check required by some Member States. The means and methods to achieve these 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.

- (14) Where justified by reasons of public interest to prevent identity misuse or alteration, or of ensuring compliance with the rules of legal capacity and the authority of applicants to represent a company, Member States should be allowed to take measures, in accordance with national law, which could require physical presence of the applicant before any authority of a Member State or any person or body mandated under national law to deal with online formation or online filing where the company is to be formed and a branch is to be registered. However, such physical presence should not systematically be required, but on a case-by-case basis, and only where there are reasons to suspect identity falsification, or non-compliance with the rules on legal capacity and the authority of applicants to represent a company. Such suspicion should be based on information available to the authorities or persons or bodies mandated under national laws to perform such controls. In case 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 include the capacity to act.
- (14a) Member States may also 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, which may include, amongst others, video-conferences or other online means that provide a real-time audio-visual connection.

- (15) In order to ensure the protection of all persons interacting with companies, 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 behaviour of that person in their own territory, but under circumstances laid down in national law, also information provided by other Member States. Therefore, Member States should have the possibility to request information from other Member States. The reply may either consist in information on a disqualification in force or other information which is relevant for disqualification in a responding Member State. Such requests for information should be possible by means of the system of interconnection of registers. In this 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 according to their national rules 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 may provide it through all available systems of exchange of information, in accordance with national laws. However, this directive should not create an obligation to request such information in every case. Moreover, the possibility to take into account information on disqualification in another Member State should not oblige Member States to recognise disqualifications from other Member States.

- (15a) To ensure protection of all persons interacting with companies or branches and preventing fraudulent or other abusive behaviour, 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 to perform the duties of a director. To this 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 competent authorities or persons or bodies mandated under national law should not store such personal data longer than necessary to assess the eligibility of the person to be appointed as a director. However, these entities may need to store such information for a longer period of time in view of the 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 formation of a company or a branch or related filing.
- (16) The obligations related to online formation of companies and registration of branches should be without prejudice to any other, non-company law related, formalities which a company has to fulfil to start operations in accordance with EU and national law.

- (17) Similarly with regard to the 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 have the possibility to allow documents and information to be filed by other means, including by paper. In addition, the disclosure of company information should be effected once the information is made publicly available in those registers, since they are now interconnected and provide a comprehensive point of reference for users. In order to avoid disruption to the existing means of disclosure, Member States should have the choice also to publish either all or some of the 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 the national gazette.
- (18) In order to facilitate the way in which the information stored by the 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 a competent authority as part of the formation or registration of or the filing by a company or a branch be stored by the registers in a machine-readable and searchable format or as structured data. This means that the file format should be structured in a way that software applications can easily identify, recognise and extract specific data and their internal structure. The requirement of a searchable format should not encompass scanned signatures or other data which is not suitable for machine-readability. As this may require changes to the existing information systems of Member States, there should be a longer transposition period for this requirement:

- (19) In order to cut costs and reduce the length of the procedures and administrative burden for companies, Member States should apply the ‘once-only’ principle in the area of company law, which is firmly supported in the Union, as evidenced inter alia by the Regulation establishing a Single Digital Gateway³, 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 incorporated 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 information or documents previously submitted to a register. Furthermore, where a company is incorporated 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 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.
- (20) In order to ensure 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 to make electronic copies of the documents and information of those other types of companies available also through this system.

³ 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. 1–38)

- (21) 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 Single 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 the company and information on its branches in other Member States, as well as information concerning the persons who, either as a body or members of such body, are currently authorised to represent the company. Furthermore, the price of obtaining a copy of all or any 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 costs are not disproportionate with regard to the information sought.
- (22) Member States have the possibility to establish optional access points in relation to the system of interconnection of registers. However, currently 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.

- (23) In order to help companies established in the Single Market to more easily expand their business activities cross-border, it should be possible for them to open and register branches in another Member State online. Therefore Member States should enable, 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.
- (24) 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 when a branch is registered in that Member State. 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 this through the system of interconnection of registers and both registers should record this information.
- (25) 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.

- (26) 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 of 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-Making⁴. 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.
- (27) The provisions of this Directive do not affect the legal or administrative provisions, including the obligations for registration of companies, of national laws relating to tax measures of Member States, or their territorial and administrative subdivisions.
- (28) This Directive does not affect the provisions of Directive (EU) 2015/849 of the European Parliament and of the Council⁵ 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.
- (29) 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.

⁴ OJ L 123, 12.5.2016, p.1.

⁵ 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).

- (30) 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 Council⁶ and delivered an opinion on 26 July 2018
- (31) Since the objective of this Directive, namely, to provide more digital solutions for companies in the Single 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 those objectives.
- (32) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents⁷, 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.
- (32a) Given the complexity of the changes required to national systems in order to comply with the provisions of this Directive, and the substantial differences currently existing among Member States with respect to the use of digital tools and processes in this context, it is appropriate to provide that Member States encountering particular difficulties in transposing certain provisions of this Directive should be able to notify the Commission of their need to benefit from an extension of up to one year of the relevant implementation period. Member States should indicate their objective reasons for making such notification.

⁶ 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).

⁷ OJ C 369, 17.12.2011, p. 14.

- (33) The Commission should carry out an evaluation of this Directive. Pursuant to paragraph 22 of the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016 , 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 carrying out this evaluation by providing to the Commission data that is available to them on how online formation is working in practice, for example 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.
- (34) Information should be collected in order to assess the performance of the legislation against the objectives it pursues and in order to inform an evaluation of the legislation in accordance with paragraph 22 of the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016.
- (35) 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 their branches and on online filing 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 in 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 13a to 13e are inserted:

"Article 13a
Definitions

For the purposes of this Chapter:

- (1) "electronic identification means" means an identification means as defined in point (2) of Article 3 of Regulation (EU) No 910/2014 of the European Parliament and of the Council⁸;
- (2) "electronic identification scheme" means an identification scheme as defined in point (4) of Article 3 of Regulation (EU) No 910/2014;
- (2a) "electronic means" means electronic equipment for the processing (including digital compression) and storage of data through which the information is initially sent and received at its destination being entirely transmitted, conveyed and received in a manner to be determined by Member States.
- (3) "formation" means the whole process of establishing a company in accordance with national law, including the drawing up of the instrument of constitution and all the necessary steps for the entry of a company in the register.
- (3a) "registration of a branch" means the process leading to disclosure of documents and information relating to a branch newly opened in a Member State;
- (4) "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 according to Article 13f.

⁸ 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)

Article 13b

Recognition of identification means for the purposes of online procedures

1. Member States shall ensure that the following electronic identification means may 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.

Member States may refuse the recognition of identification means, where assurance levels of the electronic identification means do not comply with 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 reasons of public interest to prevent identity misuse or alteration, Member States may take measures which could require a physical presence for the purposes of verifying the identity of an applicant before any authority or any person or body mandated under national law to deal with any aspect of the online procedures referred to in this Chapter, including drawing up the instrument of constitution of a company. Member States shall ensure that physical presence 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 13 ba

General provisions on online procedures

1. This Directive shall be without prejudice to national laws which, in accordance with their legal systems and legal traditions, designate authorities, or any person or body mandated under national law to deal with any aspects of online formation and online filing as well as with online registration of branches.
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 drawing up instruments of constitution, provided that online formation of a company, as referred to in Article 13 f, and online registration of a branch, as referred to in Article 28 a, as well as online filing, as referred to in Articles 13 i and 28 b, remains possible.
3. The requirements under applicable national law as to the authenticity, accuracy, reliability, trustworthiness and appropriate legal form of submitted documents or information shall remain unaffected provided that online formation, as referred to in Article 13 f, and online registration of a branch, as referred to in Article 28 a, as well as online filing, as referred to in Articles 13 i and 28 b, remains possible.

Article 13c

Fees for online procedures

1. Member States shall ensure that the rules on fees applicable to the 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 costs of providing such services.

Article 13d

Payments

Where the completion of a procedure laid down in this Chapter requires a payment, Member States shall ensure that the payment can be made by means of an online payment service widely available in cross-border payment services that permit identification of the payer, provided by a financial institution or payment service provider established in a Member State.

Article 13e
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 part of the Single Digital Gateway to help to form companies. The information shall cover at least the following:

- (a) rules on formation of companies, including online procedures referred to in Articles 13f and 13i, and requirements relating to the use of templates and to other formation documents, identification of persons, the use of languages and applicable fees;
- (b) rules on 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 rules on becoming a member of the administrative body, the management body and the supervisory body of a company, including on disqualification of directors and on the authorities or bodies responsible for keeping the 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 representation towards third parties."

- (5) in Chapter III of Title I, the following Section 1a is inserted:

"Section 1A

ONLINE FORMATION, ONLINE FILING AND DISCLOSURE

Article 13f

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 any 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 online formation procedures for other types of companies 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 13g and the documents and information required for forming a company. As part of these rules Member States shall ensure that the online formation 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).

3. The rules, referred to in paragraph 2, shall at least provide for the following:
 - (a) the procedures to ensure the legal capacity of the applicants and their 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;
 - (cb) the procedures to verify the legality of the object of the company in so far as such checks are provided under national law;
 - (cc) the procedure to verify the legality of the name of the company in so far as such checks are provided under national law;
 - (d) 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 instruments of constitution, including verifying the correct use of templates;
 - (b) the consequences of a disqualification of directors by the competent authority in any Member State;
 - (e) the role of a notary or any other person or body mandated by the Member State in any part of the online formation process;
 - (c) the exclusion of online registration in cases where the share capital of the company is to be paid by way of contributions in kind.

5. Member States shall not make the online formation of a company conditional on obtaining any licence or authorisation before the company is registered, unless where it is indispensable for the proper control 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, this payment may be made online, in accordance with Article 13d, to a bank account of the bank operating in the Union. In addition, Member States shall ensure that proof of such payments may also be provided online.
7. In cases where the company is to be formed exclusively by natural persons and these persons use the templates referred to in Article 13g, Member States shall ensure that the online formation is completed within five working days, in other cases within ten working days, from the later of the following:
 - (a) completion of all formalities, including the receipt of all required documents and information which comply with national law by an authority or by a person or body mandated under national law to deal with any aspect of the formation of a company;
 - (b) the payment of a registration fee, the payment in cash for share capital or, where a payment for the share capital is to be provided 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 any delay.

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

Article 13g

Templates for online formation of companies

1. Member States shall make templates available on registration portals or websites that are part of the Single Digital Gateway for the types of companies listed in Annex IIA. 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 13f. Where those templates are used by the applicants in compliance with the rules referred to in point (a) of Article 13f(4), the requirement to have the company instruments of constitution drawn up and certified in due legal form in absence of preventive administrative or judicial control, as laid down in Article 10, shall be deemed to be fulfilled.
Where Member States require by virtue of national law the due legal form for drawing up the instruments of constitution, this Directive does not affect this requirement as long as the online formation referred to in Article 13f remains 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 the Member State decides that it is possible to form a company with templates in another Union language.
4. The content of the templates shall be governed by national law.

Article 13h
Disqualified directors

1. Member States shall ensure that they have rules on disqualification of directors. These rules shall include the possibility to take into account the disqualification 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 that Member State. Member States may refuse the appointment of a person as a director of a company where this 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 responding Member State.
4. In order to reply to a request referred to in paragraph 3, 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, containing 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. This exchange shall be governed by national laws.
5. The modalities and technical details of exchanging the information referred to in paragraph 4 shall be laid down in the implementing act referred to in Article 24.
6. Paragraphs 1 to 5 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 competent authority or a person or body mandated under national law to assess necessary information related to the disqualification of the person as a director with the view to preventing fraudulent or other abusive behaviour and ensuring protection of all persons interacting with companies or branches.

Member States shall ensure that the registers referred to in Article 16, competent authorities or persons or bodies mandated under national law do not store the personal data transmitted for the purpose of this Article any longer than 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.

Article 13i

Online filing of company documents and information

1. Member States shall ensure that documents and information, as 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 may be completed online in its entirety 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 the online filing, subject to the provisions laid down in Article 13b(4) and, where applicable, Article 13f(8).
 - 1a. Member States shall ensure that the origin and integrity of the documents filed online may be verified electronically.
2. 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.
3. Paragraphs 2, 3, 4 and 5 of Article 13f apply *mutatis mutandis* to online filing.

4. Member States may continue to allow other forms of filing than those referred to in paragraph 1, including by electronic means or on paper, by companies, by notaries or by any other persons or bodies mandated by the Member State to perform such filings.”;

(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) No 2015/884⁹, 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.

⁹ 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)

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

All documents and information referred to in Article 14, irrespective of the means through 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 such documents and information which 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 documents and information are published in a national gazette designated for that purpose or by equally effective means, which shall entail at least the use of a system whereby the 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 the central electronic platform.

- 3a. 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 publishing 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.

4. The documents and information may be relied on by the company as against third parties only after they have been disclosed in accordance with paragraph 3, 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 them to have no effect.

5. Member States shall ensure that all documents and information as part of the registration of or a filing by a company or a branch shall be stored by the registers in a machine-readable and searchable format or as structured data.";

- (7) the following Article 16a 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 those applications 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, shall not be obtainable 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 cost 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.";

(7a) 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), (3a) and (4).";

(8) 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;"

(9) 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 web-site, where such details are recorded in the national register;
 - (e) the status of the company, such as when it is closed, struck off 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;
 - (h) the particulars of any persons, who either as a body or members of any such body, are currently authorised by the company to represent it in dealing with third parties and in legal proceedings and whether the persons authorised to represent the company may do so alone or are required to act jointly,
 - (i) 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.

- 2a. The exchange of any information through the system of interconnection of registers shall be free of charge for the registers. Article 20 (3) is deleted.
- 3a. Member States may decide that the information referred to in points (d) and (f) are available free of charge only for the authorities of other Member States.

(10) Article 22 is amended as follows:

- (a) the following subparagraph is added to paragraph 4:

"The Commission may also establish optional access points to the system of interconnection of registers. Such access points will 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 ensured through the portal and through the optional access points established by the Member States and by the Commission.";

(11) 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, paragraphs (4) and (6) of Article 28a, Article 28c, Article 30a and Article 34;"

(aa) 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; "

(b) 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;"

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

"(o) the modalities and technical details of the exchange between registers of the information referred to in Article 13h.";

(ca) at the end of the Article, the following sentence is added:

“The Commission shall adopt the implementing acts pursuant to points (d), (e), (n) and (o) by [*OP please set the date = the last day of the month of 18 months after the date of entry into force*] at the latest.”

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

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

(13) in Section 2 of Chapter III of Title I, the following Articles 28a, 28b and 28c are inserted:

"Article 28a

Online registration of branches

Member States shall ensure that the registration in a Member State of a branch of a company, which is governed by the law of another Member State, may be carried out fully 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, subject to the provisions laid down in Article 13b(4) and *mutatis mutandis* in Article 13f(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 the legal capacity of the applicants and their authority to represent the company;
 - (b) the means to verify the identity of the person or persons registering the branch or their representatives;
 - (c) the requirements for the applicants to use trust services referred to in Regulation (EU) No 910/2014.

- 3a. The rules referred to in paragraph 2 may also provide for the following procedures:
- (a) to verify the legality of the object of the branch;
 - (b) to verify the legality of the name of the branch;
 - (c) to verify the legality of the documents and information submitted for the registration of the branch;
 - (d) to 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.
4. 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 where it is indispensable to the proper control of certain activities laid down in national law.
5. Member States shall ensure that the online registration of a branch is completed within 10 working days from the completion of all formalities, including the receipt of all the necessary documents and information which comply with national law by an authority or by 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 any delay.
6. 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 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 competent authority or before any other person dealing with the online filing, subject to the provisions laid down in Article 13b(4) and *mutatis mutandis* in Article 13f(8).
2. Paragraphs 2, 3, 3a and 4 of Article 28a 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 filed only 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 shall, by means of the system of interconnection of registers, inform the register of a Member State where the company is registered that its branch has been closed and stricken 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.";

(14) the following Article 30a 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, where a change has been filed with respect of 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 paragraph 1 of this Article, the register where 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.";

(15) the following subparagraph is added to Article 31:

"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.";

(16) Article 43 is deleted.

(17) 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.";

(18) the following Article 162a 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.

In such a case the Commission shall be empowered to adapt the list of the types of the companies contained in Annexes I, II and IIA according to the information referred to in paragraph 1 of this Article, by means of delegated acts in accordance with Article 163.”;

(19) 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.

A delegated act adopted pursuant to Article 25(3) and Article 162a shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and 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."

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

"— Sweden:

publikt aktiebolag";

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

"— Sweden:

privat aktiebolag

publikt aktiebolag";

(22) Annex IIA 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 [*OJ please insert the date = the last day of the month of 24 months after the date of entry into force*] at the latest. They shall forthwith communicate to the Commission the text of those provisions.
2. Notwithstanding the first paragraph, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 13h, Article 13i(1a) and Article 16(5) [*OJ please insert the date = the last day of the month of 48 months after the date of entry into force*] at the latest.
3. By derogation from the provisions of the first paragraph, Member States which encounter particular difficulties in transposing this Directive shall be entitled to benefit from an extension of up to one year of the period provided for in that paragraph. 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 at the latest by 6 months before the end of the transposition period.

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 *[OJ please insert date: 5 years after the date of entry into force]*, or if any Member State makes use of the derogation provided for in Article 2(3) no later than *[OJ please insert date: 6 years after the date of entry into force]*, carry out an evaluation of this Directive and present a report on the findings to the European Parliament, to the Council and to the European Economic and Social Committee, except for the provisions referred to in Article 2(2) for which such evaluation and report shall be made no later than *[OJ please insert date: 7 years after the date of entry into force]*.
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, amongst others, 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;
 - (ba) the practical experience with the application of the rules on disqualification of directors referred to in Article 13h;

- (c) the methods of online filing and online access, including the use of application programming interfaces;
 - (d) the need and feasibility of making more information available free of charge than laid down in Article 19 (2) and ensuring unencumbered access to such access;
 - (e) the need 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 Directive, 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 Brussels,

For the European Parliament

The President

For the Council

The President

The following Annex is inserted after Annex II of Directive (EU) 2017/1132:

ANNEX IIA

TYPES OF COMPANIES REFERRED TO IN ARTICLES 13, 13e, 13g, 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:***

osaühing;

— ***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
