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WORKING PAPER

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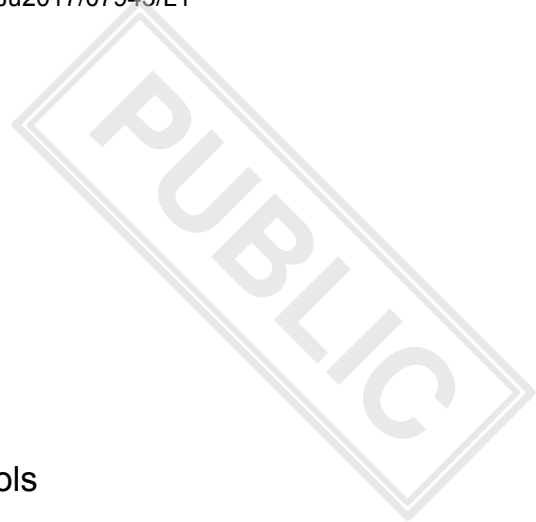
WORKING DOCUMENT

From:	Swedish delegation
To:	Working Party on Company Law Package
N° Cion doc.:	8560/18 + ADD 1 + ADD 2 + ADD 3
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 - Comments from Swedish delegation

Delegations will find in the Annex the comments from the Swedish delegation



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Division for Real Estate and Company Law
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Company Law Package – Digital tools

Please find below some non-exhaustive comments on behalf of the Swedish delegation. We appreciate the opportunity to give written comments.

Formation

Sweden is concerned about the inclusion of formation.

A limited liability company is formed when the foundation document is signed. However, the company does not become a legal person until the registration authority has registered the company. Within six months from signing the foundation document the board (i.e. not necessary the founder) shall apply for registration of the company.

The compromise text gives the impression that the formation is no longer a private issue among the founders, but rather that the company is being formed by the registration authority directly on the authority's website (cf. the five-day period in Article 13f para 7; "the online formation is completed...").

SE believes that the change from "registration" to "formation" throughout the proposal implies a substantive harmonization that is not called for in this context. For the individual entrepreneur it is essential that the registration authority provides digital templates and forms, that all contacts with the authority can be made via the web and that the processing time is kept down. The question of at what time the company should be considered formed should remain an issue for national law. Therefore, the final stage of the process of the registration authority should be referred to as registration.

A proper review

The main rule of five days in Articles 13f para 7 and 28a para 5 should be supplemented with a provision that clearly allows Member States to conduct the necessary reviews according to national law, such as the verification of the applicant's identity, minimizing the risk of registration of a criminal front man and review of the company name. A registered company name is granted exclusive rights. Such provision would also allow Member States to be able to, in exceptional situations such as major IT-accidents, exceed the five-day deadline.

Draft proposal:

Article 13f.8

In cases of genuine suspicion, Member States may lay down in national law that the registration period referred to in paragraph 7 does not commence until verification of the identity of an applicant is ensured and anti-abuse measures are taken. Where Member States require by national law that the competent authority ensures the legality of the name of the company before the registration of the company is completed, Member States may also lay down that the registration period, in duly justified circumstances, does not commence until the procedure to ensure the legality is concluded.