

CCBE comments on the Proposal for a Directive amending Directive 2017/1132 as regards the use of digital tools and processes in company law

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The Council of Bars and Law Societies of Europe (CCBE) represents the bars and law societies of 45 countries, and through them more than 1 million European lawyers. The CCBE regularly responds on behalf of its members on policy issues which affect European citizens and impact on lawyers' practice.

On 25 April 2018, the European Commission presented its proposal for a [Directive amending Directive \(EU\) 2017/1132 as regards the use of digital tools and process in company law](#). This proposal is part of the Commission's 'Company Law package', which also presented a proposal for a Directive on cross-border conversions, mergers and divisions.

The proposal was accompanied by a press release and a [Staff Working Document](#) on the results of the Impact Assessment. The CCBE was invited by the Commission to participate in various stakeholders' meetings in 2017 where the CCBE was representing the views of the legal profession.

The CCBE welcomes the Commission's proposal which aims to make the procedure of establishing a company more flexible across the European Union, and more generally to promote the use of digital technologies throughout the company's life-cycle, so that companies and lawyers can fully benefit from the use of digital tools in a business environment becoming more and more digitally oriented.

With this paper the CCBE wishes to share its observations in relation to the proposed Directive with the purpose of clarifying the text and making the digital process more efficient in practice.

As a preliminary remark, some members of the Company law committee have expressed their concern about the compatibility in practice of the proposal on the use of digital tools in company law with the anti-money laundering directives and in particular about how lawyers would be able to comply with their obligations under the anti-money laundering directives without frustrating the purpose of the proposed Directive on the use of digital tools.

The CCBE has also identified the following provisions of the proposed Directive where it believes some changes should be made to the legislative text or where it has a query about the method proposed. The CCBE would welcome the opportunity to discuss these provisions.

Article 13b.1(b): Article 6 of Regulation No 910/2014 requires a Member State to recognise an electronic identification means when an electronic identification means and authentication is required to access a service provided by a "public sector body" online in another Member State. We believe that some company registers may not be a "public sector body" and that therefore Article 6 may not apply. If this is correct, we wonder whether Member States should be required to ensure that an electronic identification means that would be recognised if the register were a public sector body should also be included.

Article 13e: We suggest it should be made clear that Member States have an obligation to update the information made available promptly if it is changed.

Article 13h: Paragraph 2 imposes an obligation on Member States to ensure that their registries can provide information on the disqualification of directors through the system of interconnection. We believe that not all Member State registries already hold information on the disqualification of directors and that Member States will need to put arrangements in place to meet this requirement, if the Member States provide in the national legislation for a disqualification procedure for directors. The paragraphs do not say how quickly a Member State is required to provide information on disqualification. We believe that the grounds on which a director may be disqualified varies from one Member State to another. It would be helpful to allow a Member State to request confirmation as to the grounds of disqualification and an obligation for the Member State to provide this information when requested if that information is kept by the Member State receiving the request. Of course, the principle of minimisation of the personal data transmitted in terms of the volume of the content should be respected. We think it should be clear that information provided on director disqualification by one registry to another should be kept confidential if it is confidential in the Member State that answers the request. Paragraph 3 of the proposal gives the possibility to Member States to deny a person to be appointed as a director if (s)he has been disqualified in another Member State. Some members of the committee have raised the question of whether this provision is compatible with EU law and have expressed the opinion that this possibility should be granted only if the reasons for the disqualification are equivalent in the Member States concerned to avoid any such incompatibility.

Article 16: Paragraph 2 does not state how quickly a Member State must convert a document or information into electronic form when an application for disclosure is received by electronic means. We are not sure how this obligation fits with Article 16a paragraph 1 which allows Member States to decide in some cases that documents and information filed by paper means shall not be obtainable by electronic means. Paragraph 3 of Article 16 does not say how quickly a register must send documents and information to the national gazette. It is not clear if a Member State that requires some documents and information to be published in a national gazette may still charge a fee for such publication.

Article 162a: We are not sure whether the obligation on Member States is to inform the Commission of any type of limited liability company that exists under their law or whether Member States have a choice to decide which types of limited liability company to inform the Commission about. If it is the former, we think the wording needs to be clarified.