

**Analysis of the proposed Directive on “the use of digital tools and processes in company law”**  
**Briefing paper series on the Company Law Package**  
Sig Vitols, WZB and ETUI ([svitols@etui.org](mailto:svitols@etui.org))  
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***What problem is the proposed Directive addressing?***

- The Commission claims that only 17 Member States (MS) provide for a fully online procedure for registering companies
- This costs companies time and money (e.g. fully online registration could save €42 – €84 million per year)
- Other aspects of communication with company registers are also not fully digitalized

***What is in the proposed Directive (main provisions)?***

- All MS **must provide for the fully online registration** of certain types of companies (i.e. without any face-to-face meetings) (listed in Annex II)
- All MS **must recognize e-IDAS compliant electronic identification** of EU citizens issued in other MS
- All MS **must provide online templates for the registration** of certain types of companies (Annex IIa)
- All MS must register companies **within five working days** of the relevant submission
- A legal framework is defined for MS to **request information on disqualified directors** from other MS
- All MS must provide for the **fully online submission of other documents by companies** to registries “across the company lifecycle”
- **“Once only” principle** – i.e. companies only have to submit a specific document one time to one authority
- Expansion of types of **information that registries must provide free of charge**
- Extension of **the interconnection of European registers**
- All MS must also provide for the **online registration and document filings** of branches

***What are the shortcomings and what could be done to fix them?***

- At the most general level, the concern is that the Directive would bypass the “gatekeeper” role that third parties (such as notaries and courts) have in deterring fraud through fake or hidden identities and fraudulent document submission. The cost of business fraud in the EU is many magnitudes higher than the projected cost savings for online registration/filing. **The Directive could seek a “high road” alternative where third party (i.e. notary, court or government agency) verification could be judiciously used to save time and money for businesses while at the same time minimizing the possibility of fraud.**
- The scope of companies covered by online registration (in Annex II) is quite broad, including company forms where fraud is easier, and should be narrowed.
- The Directive would allow online registration (without a face-to-face component) for both natural and legal persons. Since it is more difficult to establish ultimate identity for legal persons, **online registration could be restricted to natural persons.**
- All forms of e-IDAS compliant electronic identification developed in all MS are recognized as valid. The Directive **could require recognition of identification only at the highest security level** as defined by the Electronic Identification Regulation (Nr. 910/2014). Furthermore, the Directive could require **recognition through a video conference** in addition to electronic identification.

- The Directive is not clear on who must be identified electronically during registration or thereafter (e.g. with a change in Directors). The Directive could require that **all Directors and Owners be electronically identified** as part of registration and with changes in board membership and ownership.
- The issue of recognition of documents from other countries is not covered. In Germany a “certificate of authenticity” is required for cross-border recognition of documents required for registration, etc. **The Directive could define requirements for this “certificate of authenticity” for online registration/filings.**
- The Directive only allows MS to require face-to-face (physical presence) for registration only if there is “genuine suspicion based on reasonable grounds”. The Directive **could expand the grounds upon which physical presence is required**, e.g. when the country of residence of the applicant does not provide a public registry of disqualified directors.
- The “legal framework” for requesting information on disqualified directors is weak. The Directive could **require that all MS keep central registers of disqualified directors**, which both the public and other registers would have access to. The Directive could waive the “maximum 5 days” requirement for online registration if the MS from which the proposed director comes from does not have such a public register of disqualified directors.
- The list of information directories are required to provide free of charge is expanded only slightly. For example, registries must provide information on the number of employees only when this is required in financial statements by national law. The list of **free information provided by registries should be expanded** to require employee numbers in all cases as well as certain basic documents, such as annual reports and agreements on worker information, consultation and participation agreements (note however that the operation of many registries have been outsourced to private companies, who are likely to resist completely open and free information). **Requirements for the timely updating of data, for searchability, and for access through the European interconnected registries, could be strengthened.**