EUROCHAMBRES

Position Paper

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EUROCHAMBRES position on the proposal for a Directive on the Use of Digital Tools and Processes in Company Law [2018/0113 (COD)]

EUROCHAMBRES welcomes the endeavours of the European Union to make the European company law more efficient, better functioning and future-proof. We support the "digital by default" principle being applied in company law as a measure that makes the establishment of a company easier and public registers more reliable. Therefore, we would have appreciated if this effort to update Directive (EU) 2017/1132 had been slightly more ambitious in order to finally abolish redundant paper requirements and make European company law truly future-proof. Such issues are in particular the following:

- The main asset of an electronic register is that it is more telling, user-friendly and up-to-date. The publication of newly created companies in a **printed official gazette** (Art 16 lit 3), as is still required in many Member States, has definitely become **redundant** and should – considering that this is a major cost component for young entrepreneurs – be abolished.
- Electronic authentication allows the registration of companies from any trustworthy access point. Those Member States, that still foresee the **mandatory identification by involvement of notaries** in the process of setting up a company, should therefore be encouraged to review alternative processes.
- Likewise, **Art 19 lit 2(g)** obliges Member States to provide in the registers the number of people employed in every company. As this information has to be checked annually in the financial statements of companies, this would require substantial means to keep registers regularly updated with limited additional value for users. This provision should thus be removed.
- In the same article, the proposed directive obliges Member States to provide certain information "free of charge". As a matter of fact, in many Member States the **"user pays" principle** applies to most data provided by the business register. Administrating a business register and providing correct data is never free of costs for the register. If this information is to be provided "free of charge", this means that someone other than the user of the data will have to carry the cost. Usually that would be all registered entrepreneurs through their fees instead of the user entrepreneur. Due consideration should be given to the principle of fairness of changing this model and if this should be decided on EU-level.
- Although the business register is a public register, making personal data, such as the names of authorized persons and their personal data easily available for automated use, namely free and in machine-readable format, may have unintended consequences for the **privacy of entrepreneurs, administrators and managers**. This is even more the case regarding recent technical developments in Big Data analytics and Artificial Intelligence. The privacy of these persons does not

seem to be sufficiently taken into consideration in the current proposal, especially in the light of the recent General Data Protection Regulation (EU) 2016/679.

- Member States should be encouraged to use the occasion of setting up an electronic infrastructure for the registration of companies to **extend its availability to further legal entities**, especially associations and foundations.
- While we welcome the improvements envisaged in the current proposal, we maintain our long-term objective which is that one day **all companies**, including public limited companies – which may now still be exempted according to Art 13f lit 1 and Annex I - can be **founded fully electronically** in all Member States.

Besides these substantial improvements, we encourage the European legislator to rectify the following legal and technical ambiguities in the proposal that might lead to considerable problems in the application of the proposed directive:

- According to Art 13a lit 3 of the proposal the "registration" is defined as "the formation of a company as a legal entity". However, at least in some European jurisdictions, the **legal incorporation** or constitutive act establishing a company is the moment the constitutive document gets signed by the founders, whereas the registration has the effect to make this event known to the public. The proposal should therefore take into consideration the national laws regulating the establishment of a company and the diverging legal effects attributed to the "registration".
- Furthermore, the proposal doesn't provide a clear and certain definition of the concept of "**additional access point**", introduced in Art 22a paragraph 4, creating room for interpretive doubts. As a matter of fact, the option to establish such access points already exists in the BRIS directive, where - not at least due to the ambiguity of the wording - no such point has yet been established.
- While the proposal includes some provisions on recognition and identification in Article 13b, it does not set **minimum standards** or obligations on how to verify identities. Such standards would enhance the reliability of registers cross-border and would better be defined now than after all Member States have implemented individual procedures and IT solutions.
- We support the requirement to complete the online registration within five working days, as stated in Art 13f lit 7. However, it should also be stated that the information and documents provided should be **checked for authenticity** and legal compliance by the competent authority within this delay. This seems appropriate to keep the register clear from false information and in order to maintain the quality of the public registers.
- While we welcome the idea to provide **templates** (Art 13g), we suggest to underline that these can only cope with simple standard company registrations and cannot replace legal counselling. Furthermore and with respect to subsidiarity, it might be appropriate to point out that templates in other than the official Member State's language may serve for information, but are not necessarily accepted in the registration process.
- With respect to the different laws on the **disqualification of directors** (Art 13h), the proposal could be improved by obliging Member States to communicate the reasons for disqualification in their respective jurisdictions in a more transparent way. Besides this, it might be necessary to allow Member States to request a declaration by the director that no such reason for disqualification exists, until the reasons for disqualification of directors have been harmonised across the EU.

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