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#### **NOTE**

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. prev. doc.:	14828/18 + COR 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 <b>- Preparation for the trilogue</b>

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#### **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 registering limited liabilities companies. Under the new rules, in all Member States, companies will be able to register, set up 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, fraud and other forms of abuse, in particular, physical presence of the applicants may be required under certain circumstances.

## II. STATE OF PLAY

2. The Working Party on Company Law examined the proposal at nine 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.
3. 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.
4. The first trilogue took place on 17 January 2019. This Committee was debriefed on 23 January 2019.
5. On the basis of the fruitful discussions at the Working Party meeting (Attachés) on 28 January 2019, the Presidency submits to the Permanent Representatives Committee compromise suggestions revising the mandate granted to the Presidency. They are presented in the last column of the Addendum to this note. They would serve as a basis for further negotiations with the European Parliament, aiming at exploring the possibilities for a rapid first-reading agreement. The latest elements of the compromise suggestions are explained under Section III.

### III. MAIN ISSUES/ LATEST ELEMENTS OF THE COMPROMISE PROPOSAL

6. Definitions (Article 13a, line 61): it is important for the European Parliament to have a definition of registration/formation. The European Parliament is flexible as to the drafting of the definition and is willing to accept the Council approach, which refers to the formation, instead of registration.

The drafting proposed at Attachés Working Party on 28 January as regards the definition of formation could be supported by many delegations with slight redrafting as proposed in the fourth column of the Addendum to this Note. A definition for "registration of a branch" is also added in a slightly amended drafting.

7. Physical presence (Articles 13b(4) and 13f(8), lines 73 and 134): The position of the two co-legislators seems to be very close. The new proposed wording is a combination of the text of the European Parliament and the Council. It makes reference to the reasons of public interest and yet it ensures that checks can only be done on where there are reasons to suspect identity alteration or misuse or non-compliance with the provisions on legal capacity.
8. Transposition period (Article 2): The European Parliament requests shorter deadlines for transposition so that digital tools can rapidly be used in company law. We would propose to accommodate to a certain extent this request which is a common goal, by accepting to shorten by one year the deadlines, while allowing for Member States encountering difficulties meeting the transposition deadlines to get a one-year derogation for those deadlines. The Presidency is of the opinion that this derogation would provide delegations with the necessary safeguard that they can achieve a timely and efficient transposition.

### IV. CONCLUSION

The Permanent Representatives Committee is invited to revise the mandate of the Presidency in view of the second informal trilogue with the European Parliament on the basis of the compromise suggestions set out in the the last column of the table of the Addendum to this Note.