

The Digital Company Law Proposal

Policy Brief

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European Commission Proposal amending Directives 2009/102/EC and (EU) 2017/1132 as regards Further Expanding and Upgrading the Use of Digital Tools and Processes in Company Law

Summary: *This proposal aims to address the developments in digitalisation and technology that have substantially changed how business registers operate, and how business registers, companies and public authorities interact with one another on company law-related issues.*

Key Words: *Single Market, Digital, Company Law, Once-only principle.*

Introduction

Companies, being at the heart of the Single Market need a predictable legal framework that allows them to grow and adapt to the increasingly digital world they operate in while navigating the ever-present and evolving economic and social challenges.

Companies in the EU are established under national law. Meanwhile, the EU is responsible for formulating a legal framework that enhances legal certainty across the single market to provide predictability for companies. Through this proposal the European Commission aims to ensure that business registers are in line with the objectives of the 2030 Digital Compass: the European way for the Digital Decade, by addressing developments in technology that have substantially changed how business registers operate, and how business registers, companies and public authorities interact with one another on company law-related issues. It aims to do so by further expanding the use of digital tools and processes in EU company law.

Aims

This proposal also aims:

(1) To enhance transparency about companies and trust between Member States as well as to create more connected public administrations, while reducing administrative burden for companies and other stakeholders in cross-border situations;

(2) To make more information about companies (e.g. about partnerships and groups of companies) publicly available in particular at EU level through the [Business Registers Interconnection System \(BRIS\)](#);



(3) To ensure that company data in business registers is accurate, reliable and up-to-date, for example by providing for checks of company information before it is entered in business registers in all Member States;

(4) To introduce company law measures to address obstacles to cross-border expansion that small and medium-sized enterprises (SMEs) by cutting red tape when companies use company information from business registers in cross-border situations, e.g. by removing formalities such as the need for an apostille for company documents, applying the “once-only principle” when companies set up subsidiaries and branches in another Member State, and introducing a multilingual EU Company Certificate to be used in cross-border situations.



The new proposed changes:

The update to Directive 2009/102/EC replaces Article 3 with a new provision. According to this provision, the national business registers must always disclose the identity of the single member. This information should be accessible through the interconnected register system.

The rest of the amendments pertain to Directive (EU) 2017/1132:

1. The proposal requires both limited liability companies and partnerships, regardless of whether they are formed fully online, in a hybrid mode, or offline, to undergo a preventive administrative or judicial control and a legality check of their instrument of constitution. The main objective here is to ensure that the formation of limited liability companies and partnerships is carried out in a legal and appropriate manner, regardless of the method used for their formation.
2. This amendment seeks to ensure that EU Company Certificates, digital EU power of attorneys, documents that are exempted from legalisation/apostille, and the translation of these documents are implemented smoothly and without hindrance from national rules that may conflict with them.
3. The amendments also include the **once-only principle** whereby a company does not need to resubmit information that is in its own registers when forming a company in another Member State and instead have registers exchange the information.

4. The proposal also calls for a new requirement wherein a parent company and a subsidiary need to disclose group-related information.
5. The new provision introduces a time limit for the filing of changes to documents and information in the register and those to be made publicly available by the register. It also requires Member States to have in place procedures to keep the information in the business register up-to-date, including the status of companies.
6. The proposal introduces the harmonised EU Company Certificate.
7. The proposal also states that documents must meet the specified requirements, they can be used and recognized in other Member States without the need for additional legalisation or similar formalities. The aim is to simplify and facilitate cross-border transactions within the EU by reducing the administrative burden of document authentication and legalisation.
8. According to the proposal, information about third country branches will also be made publicly available through the system of interconnection of registers and specifies which information should be accessed free of charge.



How do companies benefit from this reform?

- The proposal reduces administrative barriers for companies using business register information in cross-border situations.
- The "once-only principle" means companies won't need to resubmit information already available in their business register.
- Multilingual EU Company Certificate provides essential company information for use in public tenders, tax, authorisation procedures and funding in other Member States.
- Multilingual digital EU power of attorney can be used to authorize a person to represent the company in another Member State.
- Apostille on certified documents or information from business registers is not needed in another Member State.
- Certified translations of company documents or information provided by business registers are not always needed.
- The proposal will improve the reliability of company information, reducing the overall administrative burden on companies and making it easier to access finance and create businesses.



Link to more information: https://commission.europa.eu/publications/proposal-directive-further-expand-and-upgrade-use-digital-tools-and-processes-company-law-all_en

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