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LEGAL

NEWSLETTER / JULY 2018

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LEGISLATION

1.1

EU Commission - Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2017/1132 on certain aspects of company law

The EU Commission has published a proposal for a Directive of the European Parliament and of the Council as regards the use of digital tools and processes in company law, amending Directive EU 2017/1132 of 14 June 2017 with the aim of reducing costs and charges for entrepreneurs wanting to create a new business or expand their business abroad through branches. The Commission took the view that registration, presentation of documents or access to company data entails considerable additional administrative burdens.

The EU Commission has identified the following three main issues concerning the use of digital tools in company law and a strategic option has been proposed for each issue:

1. On-line registration (the creation of a company as a legal entity and the presentation of documents with the Register of Companies): the proposal contains rules for the online registration of companies and branches and for the online submission of company documents in all Member States. The Member States should ensure that these procedures can be completed online without the necessity for the applicant, or their representative, to appear in person before any competent authority or before any other person or body;
2. Multiple transmission of the same information by a company: the proposal suggests introducing rules whereby the Company Register in the Member State which receives certain data from a company, transmits that information to the Registry of another Member State in which the company has a branch (the company thus not being required to make such transmission);
3. Online access to corporate information stored in the Company Registers: the proposal aims at broadening the list of corporate information that all company registers must provide free of charge, letting Member States continue to charge fees for other information.



Scope

The EU Commission proposes amending art. 13 of EU Directive 2017/1132, concerning its scope of application. The new Directive will apply mainly to limited liability companies that represent about 80% of companies in the EU.

On-line company registration

The following proposals have been made to amend EU Directive 2017/1132 in relation to the online registration of companies:

- in Chapter III of Title I, the following Section 1a is inserted: "*Section 1a Online registration, online filing and disclosure*";
- in Chapter III of Title I, the title of Section 2 is replaced by the following: "*Registration and disclosure rules applicable to branches of companies from other Member States*".

In Chapter III of Title I, included in Section 1a is Article 13f: "*Online registration of companies*", which, as described in the Report, provides Member States with the possibility of registering companies online.

The crucial element of online registration is that it can be completed online in its entirety without the necessity for the applicant, or their representative, to appear in person before any competent authority or before any other person or body. Member States may opt-out from this obligation in relation to public limited liability companies given the complexity of establishment and registration of such companies. The provision obliges Member States to lay down detailed rules for online registration and specifies a number of mandatory and optional elements of such rules. A general maximum time limit of five working days is established for the completion of the process for the registration of companies online.

Article 13i "*Online filing by companies*" provides that Member States shall ensure that companies are able to file documents online, as with the registration process, including the presentation of necessary information at the Company Register, throughout the life cycle of a company.

Article 16 “*Disclosure in the register*” provides that the disclosure information and documents is to be effected by entering them and making them publically available in the business register. This means that third parties can rely on the information in the register without it being necessary that any further step is carried out, in particular the same information being published in the national gazette. Nevertheless, Member States can still maintain the publication of company information in the national gazette but in such a case the register should send the information to the national gazette (as opposed to the company doing that).

Article 28b and 28c of Section 2 extends the rules on registration, presentation of documents and disclosure referred to above also to branches of companies of other Member States.

Finally, Article 2 of the Directive provides that Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within 24 months after the date of entry into force. This date has not yet been fixed, as this is still only a proposal.

1.2

Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market – the “*Copyright Directive*”

On 5 July 2018 the EU Parliament postponed the vote on the proposal for a Directive on copyright in the Digital Single Market (“*Copyright Directive*”) approved on 20 June 2018 by the Committee for Legal Affairs of the European Parliament.

Objectives of the Copyright Directive

As specified in the Report accompanying the proposed Directive, the need to regulate the matter is closely linked to the evolution of digital technologies that has changed the way in which works and other protected subject matter are created, produced, distributed and exploited. New uses have emerged as well as new actors and new business models. In the digital environment, cross-border uses have also intensified and new opportunities for consumers to access copyright-protected content have materialised. Intervention at EU level is also needed to avoid fragmentation in the internal market.

Content

The Directive “*lays down rules which aim at further harmonising the Union law applicable to copyright and related rights in the framework of the internal market, taking into account in particular digital and cross-border uses of protected content. It also lays down rules on exceptions and limitations, on the facilitation of licences as well as rules aiming at ensuring a well-functioning marketplace for the exploitation of works and other subject-matter*”. It is structured as follows:

- Title I, contains general provisions, which specify the subject matter and scope of the Directive and provide definitions which should be interpreted uniformly throughout the Union;
- Title II, sets out the measures to adapt exceptions and limitations to the digital and cross-border environment;
- Title III, contains measures to improve licensing practices and ensure wider access to content. Of note, art. 7 requires Member States to put in place a legal mechanism to facilitate licensing agreements of out-of-commerce works and other subject-matter, while art. 8 guarantees the cross-border effect of such licensing agreements;
- Title IV, concerns measures to achieve a well-functioning marketplace for copyright. Arts. 11 and 12 provide for the option for Member States to provide all publishers with the possibility to claim a share in the compensation for uses made under an exception. Art. 13 creates an obligation on information society service providers storing and giving access to large amounts of works and other subject-matter uploaded by their users to take appropriate and proportionate measures to ensure the functioning of agreements concluded with rightholders and to prevent the availability on their services of content identified by rightholders in cooperation with the service providers;
- Title V, contains final provisions on amendments to other directives, the application in time, transitional provisions, the protection of personal data, the transposition, the review and the entry into force.

1.3

Legislative Decree amending the rules governing social enterprise - Final approval by the Council of Ministers

On 17 July 2018 the Council of Ministers gave its final approval for the Legislative Decree which, in implementation of the reform law of the not-for-profit sector and the rules governing universal civil service (Law 6 June 2016, no. 106), introduces supplementary and corrective provisions to Legislative Decree 112/2017 for the reform of the social enterprise sphere (about to be published in the Official Gazette). The decree amends both civil law and tax law aspects of Legislative Decree 112/2017.

Extension of the deadline by which bylaws are to be brought into compliance

In parallel with the provisions of art. 101(2) of the Not-for-Profit Sector Code (Legislative Decree 117/2017), social enterprises have 18 months in which to bring their bylaws into compliance with the new provisions of Legislative Decree 112/2017. The new deadline falls on 20 January 2019 (instead of 20 July 2018). Also relating to bylaw compliance, resolutions passed at ordinary shareholders' meetings can now only be used to implement new mandatory provisions or to introduce clauses that exclude the application of new provisions that may be derogated by means of a specific statutory clause.

Further changes of a civil nature

Other statutory amendments involve, *inter alia*:

- the definition of general interest activities by social enterprises employing very disadvantaged workers who make up at least 30% of the total workforce "*and for more than 24 months from the date of employment*" - once this time limit has been passed, the workers can no longer be considered disadvantaged;
- the prohibition on defining the distribution of profits (even indirectly) as distribution to shareholders of rebates related to the general interest activities by social enterprises set up as cooperatives;
- the limitation on the use of volunteers, their work may be additional to but cannot substitute that of employees.

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2.1

Association of multidisciplinary professionals - clarifications - Court of Cassation, SS. UU., Decision 19 July 2018, no. 19282

With Decision no. 19282 issued on 19 July 2018, the full bench of the Court of Cassation provided clarifications concerning the joint exercise of the legal profession by setting out the following principle of law: *"as from 1.1.2018 this has been regulated by art. 4-bis Law 247/2012 (inserted by art. 1(141) Law 124/2017 and further amended by Law 205/2017), which - replacing the previous provisions contained in arts. 16 et seq. Legislative Decree 96/2001 – allows for the establishment of partnerships, corporations or cooperatives whose members are, for at least two thirds of the share capital and voting rights, lawyers registered in the bar association, or lawyers registered in the bar association and professionals registered in the professional association of other professions, companies whose management body must be constituted only by partners and the majority of whom must be lawyers"*.

2.2

Civil execution - Precept - Irregularities - Court of Cassation, Sec. VI, Order 18 July 2018, no. 19105

With Order of 18 July 2018, no. 19105, the Court of Cassation clarified that *"the presence of formal irregularities in the precept can be considered to be remedied in order that the purpose be achieved following a challenge to the execution deeds, in all cases in which the challenge is limited to protesting a formal irregularity, without claiming that their rights have been prejudiced, protected by the correct carrying out of the execution procedure, after the irregularity"*.

2.3

Public company - Commercial activity - Bankruptcy - Court of Cassation, Sec. I, Decision 2 July 2018, no. 17279

In its Decision no. 17279, issued on 2 July 2018, the Court of Cassation stated, in relation to the bankruptcy of an in-house company, that *"all "public" companies which carry out commercial activities (omissis),*

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regardless of the composition of their share capital, the activities actually carried out, or the actual forms of control, are subject to bankruptcy, and, as with any other association, the statutory provisions must be applied”.

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LEGISLATION, MINISTERIAL GUIDANCE AND CASE LAW AT 31 JULY 2018.
THIS NEWSLETTER IS INTENDED AS A SUMMARY OF KEY LEGAL DEVELOPMENTS AND HIGHLIGHTS MATTERS OF GENERAL INTEREST, AND THEREFORE SHOULD NOT BE USED AS A BASIS FOR DECISION-MAKING.

FOR FURTHER DETAILS AND INFORMATION, PLEASE CONTACT YOUR RELATED PARTNER OR SEND AN EMAIL TO UFFICIOSTUDI@STUDIOPIROLA.COM