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Opportunities and Risks in the Digitalization of Company Law: The 2018 EU Company Law Package

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Outline of the Presentation

- What is the ‘Digitalization of Company Law’?
- Two scenarios
- The 2018 EU Company Law Package

Digitalization of company law I: Key events in the company life cycle



Digitalization of company law II: Company reporting



Digitalization of company law III: Communication with shareholders



Scenario I: Transparency



Scenario I: Transparency

- Comprehensive, up to date information on companies
 - Including Environmental, Social and Governance information
 - High level of confidence in authenticity of information
- Available online + free of charge
- European registry
 - Including information on disqualified directors

Advantages

- High-trust environment for business partners, consumers, workers and other stakeholders
- Potential reduction in annual costs of:
 - business fraud – estimated at £3.24 trillion
 - tax evasion in Europe – estimated at € 50-90 billion

Scenario II: International Dark Pools



Scenario II: International Dark Pools

- Cross-border chains of companies
 - Unclear ultimate ownership + liability of individual companies
 - Letterbox companies
 - Regulatory arbitrage between national tax, employment law, and social security regimes
 - Arbitrage between “speed of company foundation and group reorganization” and “speed of reporting + enforcement”
- Replacement of “gatekeepers” (e.g. notaries, courts) through digital tools
- (Electronic) identity theft

Already a widespread business model in Europe (e.g. construction, road transport, tax “optimization”)?

The 2018 EU Company Law Package

- Published by European Commission in April 2018
- Contains two draft Directives
 - On cross-border conversions, mergers and divisions
 - On the use of digital tools and processes in company law
- Moving very quickly through European Parliament + Council
 - Vote in PE Legal Affairs committee today (6 Dec) on reports
- Target: passage before May 2019 EP elections

Draft Directive on the use of digital tools and processes in company law

Main provisions – Member States must enable:

- Fully digital (online) company foundations
 - General rule: no physical presence of founder required
 - Electronic ID of founders accepted
 - Standardized templates for company charters
 - Five day maximum period for approval
- Fully digital reporting by companies + branches
 - General rule: no physical presence
 - One-stop reporting
- Digital (online) access to company reports and announcements
- No provisions on communication with shareholders

2018 Company Law Package: an assessment

Positive

- Promotion of digital tools needed for Scenario I (Transparency)
- Cost and time savings for companies (€ 42–84 million annual)
- Procedure for checking for disqualified directors
- EP Legal Affairs committee proposes strengthening amendments

Negative

- Electronic ID standards too low to prevent identity theft
 - Therefore replacement of 'gatekeepers' is critical
- Standards for guaranteeing authenticity of documents too low
- No central (European) register for disqualified directors
- Limited expansion of 'free' information (e.g. employee numbers)
- Five day limit on firm foundations very short
- Cost savings small compared to costs of fraud + tax evasion

For a more in-depth analysis

Nine briefing papers prepared by the GOODCORP expert group

<http://www.worker-participation.eu/Company-Law-and-CG/EU-Company-Law-Package>

ETUI policy brief by Hoffmann and Vitols:

ETUI Policy Brief

European Economic, Employment and Social Policy

N° 11/2018

The EU company law package: how it should be improved to strengthen workers' rights and avoid abuse through cross-border company mobility

Thank you for your attention!