BUSINESSEUROPE supports creating favorable conditions in Europe for further digitalisation of company law and corporate governance.

- Use of digital technologies throughout a company’s lifecycle should be facilitated.
- Actions need to be diverse in nature and scope and take subsidiarity into account.
- Solutions should be future proof and technologically neutral.
- We call on the EU institutions to adopt the Single Member Company proposal (S-UP) which will make online registration a widespread reality across the EU.
- BUSINESSEUROPE supports the idea of a Single Digital Gateway offering companies information and assistance they need to operate across borders.
EU COMPANY LAW GOING DIGITAL

Catching up with the digital evolution

I. Context

European Company Law has so far pursued two main objectives: removal of red tape and enabling European companies to exercise their fundamental freedom of establishment.

To accomplish those objectives, EU decision-makers traditionally looked at the legal reality in the Member States in search of hurdles that would make it harder for businesses to conduct their economic activity. Once identified, actions have been taken to address these hurdles.

Despite substantial progress, companies still find it difficult to conduct business in another member state for reasons related to, for example, registration of a new company, registration of changes in a company, creation of subsidiaries, or transfer of a company’s seat.

The Digital Age requires a change of mindset when looking at company law and corporate governance. Issues like the development of digital skills and digital infrastructure, cybersecurity, data protection and deeper international cooperation are becoming increasingly vital.

144 out of 189 countries worldwide have established online business incorporation tools

12 EU Member States still do not allow for electronic registration of a company

2,5 days to 30 days is how long it can take in Europe to start operating a business depending on the Member State of registration

Digital tools have the potential not only to break down barriers to cross border trade but also to change the way companies are run. Digitalisation has brought multiple benefits for those generating and managing economic activities in the form of lower costs, speed and overall efficiency.

Processes in companies are dematerialising. The cloud, digital applications and remote IT services are replacing (and redefining) the traditional office space and are taking charge of accounting, logistics and communications.
Manufacturers can quickly be found online as well as investment using crowdfunding. Also, the way shareholders, employees, creditors and market authorities relate with companies is also changing thanks to new communication technologies.

Efforts are being taken by national governments worldwide to adapt to the new digital reality. In spite of this, studies show that there is still some room for improvement, especially in Europe\(^1\)\(^2\).

Facilitating the use of digital technologies in the creation of companies became essential to allow entrepreneurs to be able to move fast in a highly competitive environment. It is also a way to help start-ups in Europe expand their activity and scale-up their business beyond EU borders.

**II. BUSINESSEUROPE’s messages**

- Europe must create favorable conditions for the digitalisation of company law and corporate governance.
- BUSINESSEUROPE welcomes the Commission’s strong emphasis on the digital economy in its *Single Market and Digital Single Market Strategies*. We particularly support the intention to adopt initiatives to facilitate the use of digital technologies throughout a company’s lifecycle\(^3\).
- When it comes to corporate governance, BUSINESSEUROPE promotes the use of digital tools as a way to improve transparency as well as working practices at the board and general meeting level.
- We would support a gradual parity between physical publication and digital publication of company-related information. To meet the requirements of European and national legislation, companies are still obliged to physically publish thousands of pages of information which is costly and time-consuming. A huge amount of red tape could be lifted if companies would be allowed to opt for digital publication.

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\(^1\) The [2015 World Bank Report “Doing Business”](https://doingbusiness.org) has shown that 144 out of 189 economies covered have introduced online platforms for business incorporation. In Europe only 16 member states allow for a type of online registration. Also, in the ranking of number of procedures needed to start up a business some European countries still score behind countries like Tajikistan and Senegal.

\(^2\) It is still not possible in every EU Member State to set up a company without prior involvement of a notary/attorney or a physical presence in a company register. [Impact Assessment to the Single Member company proposal](https://ec.europa.eu/comm/dg/enterprise/reports/sme/company_proposal_2009_report.pdf), European Commission, April 2014.

\(^3\) [Upgrading the Single Market Communication](https://ec.europa.eu/comm/dg/enterprise/reports/sme/upgrading.pdf), European Commission, 28 October 2015 (page 5).
BUSINESSEUROPE supports solutions which will help start-ups expand their activity and, ultimately, become scale-ups.

BUSINESSEUROPE believes that digitalisation is one of the essential pieces to help creating a Capital Markets Union.

There is no panacea to help company law and corporate governance going digital. Actions need to be diverse in nature and scope (also geographically) and complementary. BUSINESSEUROPE identifies below a number of guiding principles and recommendations for actions that are needed to accomplish this endeavor.

III. Company Law & Corporate Governance: principles and actions to catch up with the digital evolution

a. Guiding principles

| Future proof and technology neutral approach | Models and practices valid today might not be relevant anymore tomorrow. Legislation or any other measure should not seek to anticipate or steer future developments or, worse, to stifle them. |
| Subsidiarity & Mutual recognition | The EU should only intervene when it is proven that the foreseen objective cannot be reached more effectively by national/local action. Member states do not have the same level of technological development which means they often need to adopt solutions which are tailor made to their national reality. Mutual recognition could be an alternative to make sure that these national solutions do not become an obstacle for companies wishing to expand their activities in across borders. |
| Diversity and Flexibility | Actions should be diverse in nature and scope. Flexibility of approach is also important to take into account the different national contexts and not to jeopardise existing progress made by national digitally friendly legislation. |
| Balance legislative and non-legislative approach | Legislation is not the only avenue to allow for company law and corporate governance to be able to catch up with digital evolution. Measures that enhance education, awareness, coordination and cooperation within the digital economy play a fundamental role. |
| Trust | Companies and people’s trust and their willingness to rely on digital solutions and services are key. This requires balanced regulation, education and a change in mentalities. |
Cybersecurity, protection of privacy, protection against fraud

Digitalisation means increased use of platforms, databases and cloud services. Stepping up on cybersecurity and privacy of data will be essential for the good functioning of the system and to inspire confidence amongst users of digital tools (both public and private). Because of the strong interlinks between all these elements the whole system will be as safe as its weakest link.

We need to make sure there is a harmonised approach to security, taking into account at the same time that effective security cannot be accomplished only by legislation. For this approach to be successful, problems need to be addressed using different instruments, with an emphasis on more coordination and cooperation between national authorities.

Reduction of red tape

One of the ultimate benefits of digitalisation is its positive impact on efficiency. Any future EU measure to progress on digitalisation of company law and corporate governance should not mean an increase of red tape on companies. This would be contradictory with the overall objective.

b. Concrete ideas/areas for action

| Single member company proposal (under discussion) | BUSINESSEUROPE calls on the European Parliament and Council to adopt the Single Member Company proposal which ambitiously attempts to make online registration a widespread reality across the EU. |
| Shareholder identification (under discussion) | BUSINESSEUROPE supports the particular measures foreseen in the shareholders rights directive proposal (under discussion) allowing for identification of shareholders. This is key to enhance communication between a company and its owners in an increasingly complex and digitalised (shares) holding chain. |
| Use of digitalisation in General Meetings | Promotion at EU level of the voluntary use of digital tools for notification, documentation and voting in general shareholders meetings. |
| Use of digitalisation in board meetings | In a context of crescent internationalisation (and diversity) of boards the requirement of physical presence in board meetings can be cumbersome and non-compatible with the need to meet and decide swiftly. Use of digital tools could be promoted (e.g. use of video conference; possibility to electronically convening board meetings). |
## Interconnection of business registers directive (adopted in 2012)

Member States must ensure a correct implementation of the **interconnection of business registers directive**. An important part of this piece of legislation includes the Business Registers Platform (in operation by 2017) which will make it easy to access information on EU companies via the e-Justice or other national portals.

## Online registration and simplification of proceedings to set-up of companies

Registration of a company using online tools (without the need to be physically present in front of a registry or notary) should be made available to all companies at EU level. Even in those legal systems where notaries legally serve as the first contact point, they can continue to play a role within a more digitalised system.

Certain processes such as the verification of company’s name could be performed electronically. This is not the case in some member states which costs precious time for companies.

## Dematerialisation of entries to company registers

Promotion at EU level of “dematerialisation” of certain registration acts/registration entries (e.g. changes at the level of directors, auditors, articles of association; capital increase/reduction) would allow for cost-efficiency gains. This could be achieved by promoting secure platforms that would allow registers and companies to communicate electronically replacing physical presence and registered letters.

## EU e-identification and recognition of public documents

E-identification and mutual recognition of public documents should become a widespread reality across the EU. This would imply joint efforts by the EU as well as member states. For example, member states must ensure correct implementation of the eIDAS Regulation (2014) on electronic identification and trust services for electronic transactions in the internal market. Adoption of the Commission proposal for a Regulation simplifying the acceptance of certain public documents in the EU would be a step in the right direction.

## Promotion of ICT skills

There is no digitalisation without digital skills. As part of an overall approach which ensures that education and training systems better reflect labour market needs, the EU must continuously develop a policy framework that will promote ICT skills and encourage Member States best practices in these areas. Business, academia, schools, government and organisations should work together to develop a high level digital skills strategy that would facilitate global talent mobility.
**Development of online business portals**

BUSINESSEUROPE supports the Commission’s idea outlined in its [Single Market Strategy](#). National governments must invest to transform the existing Points of Single Contact into true business portals (goods and services) offering companies all the information and assistance they need to operate across borders and on the home market, including offering the possibility to complete administrative procedures entirely online by citizens and businesses.

**Facilitate contacts between investors and start-ups using digital tools**

It is essential to create structures that facilitate contacts between investors and start-ups, such as specific Europe or worldwide dedicated platforms. Digital technologies can help here. In some European countries, electronic matchmaking platforms have been launched, connecting SMEs to a community of lenders, including banks and specialised investors. This brings in more speed, more competition and more transparency. The pan-European deployment of electronic matchmaking platforms such as FINPOINT should thus be encouraged for accelerating SME financing.

**Reporting requirements of the 1st and 11th company law directives**

It is important to look at potential administrative burden reduction in the framework of the 1st and 11th Company Law Directives to put them in line with the technological developments.

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