Corporate digitalisation: step into future? (2/40/18)

New technology penetrates all areas of life, including business. In the realms of fantasy ten years ago, registering a company in the comfort of your own home within a single day has become reality. This article explores the advantages, restrictions and issues associated with digitalising EU corporate law as it affects company owners, their representatives, and other stakeholders.

What is corporate digitalisation?

In commercial law, digitalisation covers a variety of processes, including company registration, the requirement for registering and disclosing relevant information to make the process transparent, and certain aspects of corporate governance (e.g. the means of communication between a company and its shareholders).

Business benefits from corporate digitalisation

Estonia's eager embrace of modern technology has made it the most attractive of the three Baltic countries in terms of company formation. Any person can set up a company in Estonia regardless of their resident status. There has to be one founder (an individual or entity).

But Estonia is not the only member state where you can register a company online. This is possible in Britain, Ireland, Greece, Denmark, France, Luxembourg, Poland, and Spain. Online incorporation usually makes the process simpler and cheaper:

- It saves 50% of time and can be up to three times cheaper than the traditional paper documentation on average;
- Online incorporation and registration under the proposed new rules will help EU companies save €42-84 million a year.

Yet digitalisation also has its shortcomings, which we will examine through steps each founder needs to take before registering a company.

The founder's personality is the first thing to check. The classic scenario involves filing a valid ID document, but some jurisdictions such as Belgium and Hungary require personal presence.

When incorporating online in Estonia, for example, the only way to check private details is online. This usually involves filing digital certificates, which may include the person's electronic certificate, bank authentication, e-mobile, and eSignatures. Here we can talk about complete digitalisation of the process. In France, documents can be sent by post if the founders object to electronic verification, but the security of this method needs assessing.

Next, a company name should be chosen and checked. The online registration system will accept or reject a name automatically (e.g. Denmark, Estonia, and Britain). This is very convenient since it almost completely rules out mistakes and unsuccessful registrations. French legislation makes the founder legally responsible for ensuring the company name is unique.

The next step is very important - drafting, signing and notarising the documents necessary for registration

(i.e. the articles of association, the incorporation resolution, and the share register, as well as various documents giving details of the board and shareholders).

The required documents for online incorporation include the articles of association and any documents that confirm or add to what the articles say. In this sense the online method is available in Denmark, Estonia, France, Britain, and some other countries. Since the online incorporation procedure is mandatory in Denmark and Estonia, all the documents should be prepared and filed through a system designed for this purpose. The system will check the validity of documents either automatically (e.g. in Estonia, Denmark, and Greece) or through a registrar (e.g. France and Portugal). Some countries make it even more convenient by providing incorporation templates (sometimes in two or more languages).

The final step involves preparing and filing all the required documents with competent institutions to obtain an ID number. From the founder's viewpoint the stamp duty on registration is also paid at this stage. Incorporation can be done online and all the information can be sent to the companies registry at once (e.g. in Denmark and Estonia). Other countries accept online or paper filings.

Digitalisation may involve significant risks such as the risk of financial loss and reputational damage due to IT disruptions for malicious purposes or accidentally. Also, human error can never be ruled out (e.g. a typo in the company name or passport details), and commercial law requirements vary from country to country.

The existence of various approaches in member states means the EU lacks a single approach that would allow people to set up a company online or to use digital technology for giving additional information about their company, or allow companies to use digital technology for communicating with shareholders or sharing information. Unfortunately, EU companies, their shareholders and persons related to them are not always able to enjoy all the benefits of digitalisation. In certain instances where companies cannot file information with public registries electronically, the disclosure is more complicated and expensive because the registries take a longer time to process the information received, making public access more difficult. And business partners, banks, lawyers and the public may have difficulty finding any company information that is not available digitally.

While digitalisation opens unprecedented opportunities, the governments need to devise appropriate policies since digitalisation means not only investment but also cultural change.¹

¹ https://ec.europa.eu/info/sites/info/files/icleg-report-on-digitalisation-24-march-2016_en.pdf https://ec.europa.eu/info/sites/info/files/dg_just_digitalisation_of_company_law_final_report.pdf