

DIGITAL REGISTRATION AND COMMUNICATION BETWEEN BUSINESS REGISTERS (ESPECIALLY ACCORDING TO DIRECTIVE 2017/1132 AS AMENDED BY DIRECTIVE 2019/1151)

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THE DIGITALISATION DIRECTIVE I

Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 as regards the use of digital tools and processes in company law (**Digitalisation Directive**) **amends Directive (EU) 2017/1132** of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (**Company Law Directive**).

- New **Chapter III about online procedures** (formation, registration and filing), **disclosure and registers** has been introduced by the Digitalisation Directive.
- MS must **transpose** the directive into national law until **1 August 2021**, some provisions (especially those regarding disqualified directors) only until **1 August 2023**.

THE DIGITALISATION DIRECTIVE 2

- The **most important aim** of the Digitalisation Directive is to allow and to enable founders to set up a private limited liability company without the need to appear personally before any register, court or other authority or notary.
- For purely online application it is necessary to have the **technical means** in place and to define the **criteria for a reliable way of online-communication** between the register and the founders/future members.
- **All later contacts** between the company or a branch and the respective registers must be possible online. **Physical presence** can be requested only in special cases of **public interest** to prevent identification misuse.
- The Directive covers **public and private limited liability companies**, but the **provisions on online formation** and on **templates** to be provided by MS can be **transposed only for private limiteds**.

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- **Electronic identification** means of other MS have to be accepted according to the **eIDAS-Regulation** (EU) 910/2014.
- **Deadlines** for registration of a company: **five working days** if a template is used, otherwise **10 working days**.
- **Registration of branches** must be possible **fully online**, physical presence can be required in exceptional cases only.
- There must be an exchange of information when a **branch is closed** and when there are **changes** in the **company's data**.
- **Information** must be provided on **disqualified directors** to other MS (whether a given person is disqualified or recorded in relevant registers). Optional exchange of further information e.g. period and grounds of disqualification.

MOST IMPORTANT PROVISIONS: Art. 13a: DEFINITIONS

For the purposes of this Chapter:

(1) “**electronic identification means**” means an electronic identification means as defined in point (2) of Article 3 of Regulation (EU) No 910/2014 of the European Parliament and of the Council (*)

(4) “**formation**” means the whole process of establishing a company in accordance with national law, including the drawing up of the company’s instrument of constitution and all the necessary steps for the entry of the company in the register;

(5) “**registration of a branch**” means a process leading to disclosure of documents and information relating to a branch newly opened in a Member State;

(6) “**template**” means a model for the instrument of constitution of a company which is drawn up by Member States in compliance with national law and is used for the online formation of a company in accordance with Article 13g.

Art. 13b: RECOGNITION OF IDENTIFICATION MEANS FOR THE PURPOSES OF ONLINE PROCEDURES I

1. Member States shall ensure that the following electronic identification means can be used by applicants who are Union citizens in the online procedures referred to in this Chapter:
 - (a) an electronic identification means issued under an electronic identification scheme approved by their own Member State;
 - (b) an electronic identification means issued in another Member State and recognised for the purpose of cross- border authentication in accordance with Article 6 of Regulation (EU) No 910/2014.
2. Member States may refuse to recognise electronic identification means where the assurance levels of those electronic identification means do not comply with the conditions set out in Article 6(1) of Regulation (EU) No 910/2014.
3. All identification means recognised by Member States shall be made publicly available.

Art. 13b: RECOGNITION OF IDENTIFICATION MEANS FOR THE PURPOSES OF ONLINE PROCEDURES 2

4. Where justified by reason of the public interest in preventing identity misuse or alteration, Member States may, for the purposes of verifying an applicant's identity, take measures which could require the physical presence of that applicant before any authority or person or body mandated under national law to deal with any aspect of the online procedures referred to in this Chapter, including the drawing up of the instrument of constitution of a company. Member States shall ensure that the physical presence of an applicant may only be required on a case-by-case basis where there are reasons to suspect identity falsification, and that any other steps of the procedure can be completed online.

Art. 13c: GENERAL PROVISIONS ON ONLINE PROCEDURES

1. This Directive shall be without prejudice to national laws that, in accordance with Member States' legal systems and legal traditions, designate any authority or person or body mandated under national law to deal with any aspect of online formation of companies, online registration of branches and online filing of documents and information.
2. This Directive shall also be without prejudice to the procedures and requirements laid down by national law, including those relating to legal procedures for the drawing up of instruments of constitution, provided that online formation of a company, as referred to in Article 13g, and online registration of a branch, as referred to in Article 28a, as well as online filing of documents and information, as referred to in Articles 13j and 28b, is possible.
3. The requirements under applicable national law concerning the authenticity, accuracy, reliability, trustworthiness and the appropriate legal form of documents or information that are submitted shall remain unaffected by this Directive, provided that online formation, as referred to in Article 13g, and online registration of a branch, as referred to in Article 28a, as well as online filing of documents and information, as referred to in Articles 13j and 28b, is possible.

Art. 13g: ONLINE FORMATION OF COMPANIES I

1. Member States shall ensure that the online formation of companies may be carried out fully online without the necessity for the applicants to appear in person before any authority or person or body mandated under national law to deal with any aspect of the online formation of companies, including drawing up the instrument of constitution of a company, subject to the provisions laid down in Article 13b(4) and paragraph (8) of this Article. However, Member States may decide not to provide for online formation procedures for types of companies other than those listed in Annex IIA.
2. Member States shall lay down detailed rules for the online formation of companies, including rules on the use of templates as referred to in Article 13h, and on the documents and information required for the formation of a company. As part of those rules, Member States shall ensure that such online formation may be carried out by submitting documents or information in electronic form, including electronic copies of the documents and information referred to in Article 16a(4).
3. The rules referred to in paragraph 2 shall at least provide for the following:
 - (a) the procedures to ensure that the applicants have the necessary legal capacity and have authority to represent the company;
 - (b) the means to verify the identity of the applicants in accordance with Article 13b;

Art. 13g: ONLINE FORMATION OF COMPANIES 2

- (c) the requirements for the applicants to use trust services referred to in Regulation (EU) No 910/2014;
 - (d) the procedures to verify the legality of the object of the company, insofar as such checks are provided for under national law;
 - (e) the procedures to verify the legality of the name of the company, insofar as such checks are provided for under national law;
 - (f) the procedures to verify the appointment of directors.
4. The rules referred to in paragraph 2 may, in particular, also provide for the following:
- (a) the procedures to ensure the legality of the company instruments of constitution, including verifying the correct use of templates;
 - (b) the consequences of the disqualification of a director by the competent authority in any Member State;
 - (c) the role of a notary or any other person or body mandated under national law to deal with any aspect of the online formation of a company;
 - (d) the exclusion of online formation in cases where the share capital of the company is paid by way of contributions in kind.

Art. 13g: ONLINE FORMATION OF COMPANIES 3

7. Member States shall ensure that the online formation is completed within five working days where a company is formed exclusively by natural persons who use the templates referred to in Article 13h, or within ten working days in other cases, from the later of the following:
 - (a) the date of the completion of all formalities required for the online formation, including the receipt of all documents and information,.....;
 - (b) the date of the payment of a registration fee, the payment in cash for share capital, or the payment for the share capital by way of a contribution in kind, as provided for under national law.

Where it is not possible to complete the procedure within the deadlines referred to in this paragraph, Member States shall ensure that the applicant is notified of the reasons for the delay.
8. Where justified by reason of the public interest in ensuring compliance with the rules on legal capacity and on the authority of applicants to represent a company, any authority or person or body mandated under national law to deal with any aspect of the online formation of a company, including the drawing up of the instrument of constitution, may request the physical presence of the applicant. Member States shall ensure that, in such cases, the physical presence of an applicant may only be required on a case-by-case basis where there are reasons to suspect non-compliance with the rules referred to in point (a) of paragraph 3. Member States shall ensure that any other steps of the procedure can nonetheless be completed online.

Art. 13h: TEMPLATES FOR ONLINE FORMATION OF COMPANIES I

1. Member States shall make templates available, for the types of companies listed in Annex IIA, on registration portals or websites that are accessible by means of the Single Digital Gateway. Member States may also make templates available online for the formation of other types of companies.
2. Member States shall ensure that the templates, referred to in paragraph 1 of this Article, may be used by applicants as part of the online formation procedure referred to in Article 13g. Where those templates are used by applicants in compliance with the rules referred to in point (a) of Article 13g (4), the requirement to have the company instruments of constitution drawn up and certified in due legal form where preventive administrative or judicial control is not provided for, as laid down in Article 10, shall be deemed to have been fulfilled.

This Directive shall not affect any requirement under national law to have the drawing up of instruments of constitution done in due legal form, as long as the online formation referred to in Article 13g is possible.

Art. 13h: TEMPLATES FOR ONLINE FORMATION OF COMPANIES 2

3. Member States shall at least make the templates available in an official Union language broadly understood by the largest possible number of cross-border users. The availability of templates in languages other than the official language or languages of the Member State concerned shall be for information purposes only, unless that Member State decides that it is also possible to form a company with templates in such other languages.
4. The content of the templates shall be governed by national law.

Art. 28a: ONLINE REGISTRATION OF BRANCHES I

1. Member States shall ensure that the registration in a Member State of a branch of a company that is governed by the law of another Member State may be fully carried out online without the necessity for the applicants to appear in person before any authority or any person or body mandated under national law to deal with any aspect of the application for registration of branches, subject to Article 13b (4) and mutatis mutandis to Article 13g (8).
2. Member States shall lay down detailed rules for the online registration of branches, including rules on the documents and information required to be submitted to a competent authority. As part of those rules, Member States shall ensure that online registration may be carried out.

Art. 28a: ONLINE REGISTRATION OF BRANCHES 2

3. The rules referred to in paragraph 2 shall at least provide for the following:
 - (a) the procedure to ensure that the applicants have the necessary legal capacity and that they have authority to represent the company;
 - (b) the means for verifying the identity of the person or persons registering the branch or their representatives;
 - (c) the requirements for the applicants to use the trust services referred to in Regulation (EU) No 910/2014.
4. The rules referred to in paragraph 2 may also provide for procedures to do the following:
 - (a) verify the legality of the object of the branch;
 - (b) verify the legality of the name of the branch;
 - (c) verify the legality of the documents and information submitted for the registration of the branch;
 - (d) provide for the role of a notary or any other person or body involved in the process of registration of the branch under the applicable national provisions.

Art. 28a: ONLINE REGISTRATION OF BRANCHES 3

5. Member States may verify the information about the company by means of the system of interconnection of registers when registering a branch of a company established in another Member State. Member States shall not make the online registration of a branch conditional on obtaining any licence or authorisation before the branch is registered, unless such a condition is indispensable for the proper oversight laid down in national law of certain activities.
6. Member States shall ensure that the online registration of a branch is completed within 10 working days of the completion of all formalities, including the receipt of all the necessary documents and information which comply with national law by an authority or a person or body mandated under national law to deal with any aspect of the registration of a branch.....
7. Following the registration of a branch of a company established under the laws of another Member State, the register of the Member State where that branch is registered shall notify the Member State where the company is registered that the branch has been registered by means of the system of interconnection of registers. The Member State where the company is registered shall acknowledge receipt of such notification and shall record the information in their register without delay.

Art. 28b: ONLINE FILING OF DOCUMENTS AND INFORMATION FOR BRANCHES

1. Member States shall ensure that documents and information referred to in Article 30 or any modification thereof may be filed online within the period provided by the laws of the Member State where the branch is established. Member States shall ensure that such filing may be completed online in its entirety without the necessity for the applicants to appear in person before any authority or person or body mandated under national law to deal with the online filing, subject to the provisions laid down in Article 13b (4) and mutatis mutandis in Article 13g (8).
2. Article 28a (2) to (5) shall apply mutatis mutandis to online filing for branches.
3. Member States may require that certain or all documents and information referred to in paragraph 1 are only filed online.

Art. 13i: DISQUALIFIED DIRECTORS I

1. Member States shall ensure that they have rules on disqualification of directors. Those rules shall include providing for the possibility to take into account any disqualification that is in force, or information relevant for disqualification, in another Member State. For the purpose of this Article, directors shall at least include the persons referred to in point (i) of Article 14 (d).
2. Member States may require that persons applying to become directors declare whether they are aware of any circumstances which could lead to a disqualification in the Member State concerned.

Member States may refuse the appointment of a person as a director of a company where that person is currently disqualified from acting as a director in another Member State.

3. Member States shall ensure that they are able to reply to a request from another Member State for information relevant for the disqualification of directors under the law of the Member State replying to the request.

Art. 13i: DISQUALIFIED DIRECTORS 2

4. In order to reply to a request referred to in paragraph 3 of this Article, Member States shall at least make the necessary arrangements to ensure that they are able to provide without delay information on whether a given person is disqualified or is recorded in any of their registers that contain information relevant for disqualification of directors, by means of the system referred to in Article 22. Member States may also exchange further information, such as on the period and grounds of disqualification. Such exchange shall be governed by national law.
5. The Commission shall lay down detailed arrangements and technical details for the exchange of the information referred to in paragraph 4 of this Article, by means of the implementing acts referred to in Article 24.
6. Paragraphs 1 to 5 of this Article shall apply mutatis mutandis where a company files information concerning the appointment of a new director in the register referred to in Article 16.

Art. 13i: DISQUALIFIED DIRECTORS 3

7. The personal data of persons referred to in this Article shall be processed in accordance with Regulation (EU) 2016/679 and national law, in order to enable the authority or the person or body mandated under national law to assess necessary information relating to the disqualification of a person as a director, with a view to preventing fraudulent or other abusive behaviour and ensuring that all persons interacting with companies or branches are protected.

Member States shall ensure that the registers referred to in Article 16, authorities or persons or bodies mandated under national law to deal with any aspect of online procedures do not store personal data transmitted for the purposes of this Article any longer than is necessary, and in any event no longer than any personal data related to the formation of a company, the registration of a branch or a filing by a company or branch are stored.

eIDAS-REGULATION:

- The Regulation (EU) N°910/2014 on **electronic identification** and trust services for electronic transactions in the internal market (**eIDAS Regulation**) adopted on 23 July 2014 is a milestone to provide a predictable regulatory environment to enable secure and seamless electronic interactions between businesses, citizens and public authorities.

It entered **into force on 17 September 2014** and applies from 1 July 2016 except for certain articles, which are listed in its Article 52.

- All organizations delivering public digital services in an EU member state must recognize electronic identification from all EU member states. The Regulation does not aim to intervene with regard to electronic identity management systems and related infrastructures established in Member States.
- The aim of this Regulation is to ensure that for access to cross-border online services offered by Member States, secure electronic identification and authentication is possible.

BUSINESS REGISTERS INTERCONNECTION SYSTEM (BRIS) I

- BRIS is an **interconnection of business registers via a central European platform**.
- In addition to Directive (EU) 2017/1132 (chapter III) the following **Implementing Regulation** is relevant:

Commission Implementing Regulation (EU) 2015/884 of 8 June 2015 establishing technical specifications and procedures required for the system of interconnection of registers established by Directive 2009/101/EC of the European Parliament and of the Council.

- Crucial company information is provided free of charge through this system (Art. 19 para 2 Directive 2017/1132):
 - Name and legal form of the company; legal status of the company (e.g. closed, struck off), the object of the company
 - Registered office of the company and the Member State of registration
 - Registration number of the company and its EUID
 - Persons authorised to represent the company
 - Information on any branches
 - Details of the company website, if recorded.

BUSINESS REGISTERS INTERCONNECTION SYSTEM (BRIS) 2

- For other company and branch information to be made available through BRIS, the fees must not exceed the administrative costs.
- **Access** to BRIS is **open for everybody** via the European e-Justice portal, an interface search is available in all official languages.
- BRIS allows for communication between registers on:
 - foreign branches: informing the registers of other MS on the opening and termination of any winding-up or insolvency proceedings and on the striking-off of the company from the register; and on
 - cross-border conversions, mergers and divisions.
- It is in **operation since June 2017** and gives access to data on more than 20 million limited liability companies.

SINGLE DIGITAL GATEWAY

- Regulation (EU) 2018/1724 of the European Parliament and of the Council establishing the Single Digital Gateway (**SDG-Regulation**), provides for **general rules for online provision of information, procedures and assistance services** relevant for the functioning of the internal market.
- The Digitalisation Directive establishes specific rules relating to the **online formation of limited liability companies, registration of branches, and filing of documents and information by companies and branches** ('online procedures'), which are not covered by the SDG-Regulation.
- **SDG** is relevant for **natural persons establishing a business** and for their contacts with the register, although the procedure for their first registration is left to MS.



Thank you very much for your attention!

