



**EU COMPANY CERTIFICATE AND
EU DIGITAL POWER OF ATTORNEY -
DIGITISATION IN COMMERCIAL
COMPANY LAW - DRAFT DIRECTIVE
ON FURTHER EXPANDING OF DIGITAL
TOOLS IN THE ACTIVITIES OF
COMMERCIAL COMPANIES**

LEGAL ALERT

JULY 2023

On 29 March 2023, The European Commission adopted a draft Directive on further expanding and upgrading the use of digital tools and processes in company law (the "Directive"). The Directive aims to facilitate cross-border activities of companies by:

- (a) reducing bureaucracy and administrative burdens, in particular when setting up subsidiaries or branches in other Member States of the European Union; and
- b) increasing transparency and therefore increasing confidence in cross-border entrepreneurs.

These objectives are to be achieved through the introduction of digital tools to facilitate the cross-border activities of companies, i.e., an EU Company Certificate containing basic company information and a multilingual and a standardised EU template for a digital power of attorney that will be recognised by all Member States.

In addition, the Directive will introduce a so-called 'once-only principle', whereby companies setting up branches or subsidiaries in other Member States will not have to report their own data, previously disclosed in national business registers, to the registers of those countries. This data will be exchanged through the Business Registers Interconnection System (BRIS), which will be connected with the Business Registers of Beneficiaries Interconnection System (BORIS) and the Insolvency Register Interconnection (IRI) and as a result, will contain more information about companies.

The requirement to obtain apostilled documentation will also be abolished regarding certified true copies of documents and information on companies obtained from registers or notarial deeds as well as additional information on companies obtained from registers or notarial deeds.

According to the European Commission, the proposed digital tools and processes are intended to facilitate cross-border expansion for small and medium-sized companies, which typically do not have the financial and administrative resources of large companies and thus currently find it more difficult to operate across borders.

The draft Directive is currently being discussed in the European Parliament and Council. If it is adopted and the Directive enters into force, Member States will have two years to implement its provisions in national law.

ONCE-ONLY PRINCIPLE

The main objective of the Directive is to **facilitate the establishment of subsidiaries and branches in other Member States**. According to the European Commission, the reduction of formalities for the use of company information in cross-border situations is expected to make business expansion abroad less time-consuming and more cost-effective.

This 'answer' to existing problems of companies is to be called the '**once-only principle**', whereby companies would not have to submit to another Member State information and data which they have already submitted into a national business register. For example, if a Polish company wished to open a subsidiary or branch in another Member State, it would not have to submit to the authorities of another member state its data and information which is already contained in the register of entrepreneurs of the National Court Register (the Polish equivalent in this case). This is because, according to the 'once-only principle', the register of the Member State in which a subsidiary or branch of a parent company registered in another EU country is to be established should receive such information electronically from the register

of the Member State in which the parent company is registered, using the Business Registers Interconnection System (BRIS). In addition, national business registers will be obliged to make the information they collect available to any authority, entity or person empowered under national law to deal with any aspect of the establishment of a subsidiary or branch.

The adoption of the Directive is also designed to ensure that the information held regarding companies available in the various Member States is comparable and that **relevant company information can be found at EU level without having to consult national registers**. The interconnection of national registers with the EU BRIS will not only facilitate searches for company information from other Member States but will also reduce the need for companies to submit documents containing information already held in an EU register.

In addition, **the interconnection of the national registers will remove the current issue of the registration documents a company information only being available in the original language that it was submitted in**. It aims to provide the data in any official language of the European Union without the need for additional translations.

NEW DIGITAL TOOLS: EU COMPANY CERTIFICATE AND UNIFIED POWER OF ATTORNEY

The facilitation of the cross-border activities of companies is to be achieved through the introduction of the following digital tools:

- 1) a standardised EU company certificate; and
- 2) a standardised multilingual template for the issuance of an EU digital power of attorney.

The Commission stresses that companies should be able to prove with simple and reliable tools recognised across borders by all Member States that they were incorporated in one of them. One such tool is a **digital EU company certificate containing basic company information (to be made available in all official EU languages)**. Companies will be able to use it for a variety of purposes, including for administrative procedures before national authorities or court proceedings in other Member States, as well as before the European Union institutions and bodies.

The EU Company Certificate **will be issued both at the request of the company concerned and at the request of third parties**. Member States will be able to charge a fee for this, but companies should be able to obtain their own certificate at least once a year free of charge.

The certificate should be recognised in all EU Member States as conclusive proof of a company's incorporation and confirmation of its details.

Another digital tool to facilitate the cross-border activities of companies is to be **an EU standardised digital power of attorney**, which is to be produced in a multilingual EU template. Companies operating across borders will be able to use it to authorise a person to represent them. It will contain the minimum mandatory information. Such a power of attorney should be drawn up and revoked in accordance with national legal and formal requirements. It **will only be in digital form** and will be authenticated by qualified electronic signature(s).

A company wishing to use an EU power of attorney will be required to file it in the business register. This will allow third parties who demonstrate a legitimate legal interest to consult it through the relevant register. This tool may be useful for notaries, credit and financial

institutions, and competent authorities or lawyers who will be able to confirm the existence of a digital power of attorney in this way.

The EU digital power of attorney will be recognised in all EU Member States as proof of a person's authority to represent a company in the manner specified in this document.

EXEMPTION FROM THE OBLIGATION TO LEGALISE DOCUMENTS

The Directive is also intended to oblige Member States to ensure that e.g. **copies of documents certified by business registers as true copies of the original or notarial deeds and administrative documents, are exempt from any form of legalisation** or similar formality.

Before using one of the above-mentioned documents in another Member State, cross-border entities **will not have to obtain an apostille**, i.e., an official certification of the national document confirming the signature and the nature in which the person who signed it acted. This exemption from legalisation is to be extended to those documents which are needed for the establishment of companies and the registration of their branches in another EU Member State, as well as for cross-border transformations, mergers, and divisions.

The exemption from the need to legalise documents will significantly speed up all processes related to the cross-border activities of companies, including those related to the establishment of subsidiaries or branches in other EU Member States.

EXEMPTION FROM CERTIFIED TRANSLATION OF DOCUMENTS

The founding documents of companies, especially those belonging to cross-border groups or with operations in several countries, are often drafted in at least two languages. One of these is often a commonly understood official language of the European Union (e.g., English). In addition, it is not uncommon for companies to voluntarily publish a translation of their articles of association into such a language on their website.

In view of the above, and the fact that company data is to be stored in the registers in a machine-translatable format, **the requirement to obtain certified translations of the articles of association and other documents in the business register is to be limited to those deemed necessary by Member States**. By way of example, Member States will still be able to require certified translations of the above documents in the context of court proceedings.

IMPROVE THE RELIABILITY AND TIMELINESS OF INFORMATION ON COMPANIES AVAILABLE AT THE EU LEVEL

The Directive is also intended to lead to greater transparency and trust in traders operating across borders. This is to be achieved by ensuring that data on companies is more accurate, up-to-date, and reliable in national business registers, which will also be accessible at EU level through the Business Registers Interconnection System (BRIS).

Currently, there are different approaches across Member States as to how to verify company information entered in national registers in terms of accuracy, reliability, and timeliness. This results in insufficient cross-border trust in such data and situations where documents or company information from a register in one Member State are not accepted as evidence in another Member State. The Directive will therefore **harmonise the way in which data and information reported by companies to national business registers will be verified**. Member States will be obliged to carry out a **preventive administrative or judicial control of articles of association and statutes of companies**, as well as any modification of these documents, for their legality. Such checks will include verifying that these documents contain all the information required by law and that cash payments or contributions in kind have been made in accordance with national law.

In the Commission's view, such an improvement in the reliability of the information on companies available in the registers will enable it to be used more fully in cross-border administrative procedures and judicial proceedings.

In addition, the Directive will require companies to **confirm once a calendar year that the information about them disclosed in the business register is up to date**. Companies will have to confirm their information regardless of whether they have made any changes requiring notification to the register. The Commission proposes that companies could comply with this obligation when they notify changes to the register or file accounting documents.

To keep the information about companies in the registers up to date, it is also important to identify companies that no longer meet the requirements to continue to be registered in the business registers. The Directive will oblige EU Member States to introduce appropriate procedures to verify the status of companies. The verification procedures should include the possibility for companies to explain their situation and provide supporting data. It should also ensure that the status of the company is properly updated, in particular by disclosing information concerning its closure, liquidation, dissolution, or continuation of business. Those procedures should also include the possibility, as a last resort, of removing a company from the register in accordance with the procedures laid down by national law.

In addition, the **EU BRIS is to be connected to:**

- (1) **the Beneficial Ownership Registers Interconnection System (BORIS)**, which interconnects national central registers containing information on beneficial owners of companies and other legal persons, trusts, and other types of legal arrangements; and
- (2) **the Insolvency Register Interconnection (IRI)**.

This integration will allow easier and faster access to a wide range of company data, particularly relevant to their counterparties. A great simplification will undoubtedly be the possibility to search for them in a single register, i.e., BRIS.

As a consequence, the new regulations are expected to lead to a more complete protection of third parties using information about companies, in particular those operating cross-border, and to contribute to the fight against fraud and abuse, and thus to the proper functioning of the single market.

NEW NOTIFIABLE INFORMATION

The Directive will also oblige companies to disclose certain additional information and data in their business registers. Among other things, companies will be obliged to provide information in which EU Member State or third country their central management or head office of main enterprise is located, if it is not the Member State of the registered office.

The draft EU Directive would also **require companies to disclose information relating to the capital group to which they belong**. This is to enable the visualisation of capital group structures, ensure transparency, and increase the trust of the business environment as well as contribute to the effective detection of fraud and abuse. **The obligation to disclose information about capital group structures will apply to both domestic and cross-border capital groups.**

Relevant information about the capital group is to be reported in both parent and subsidiary registers, with **ultimate parent undertakings** governed by the law of a Member State being required **to disclose basic information about all subsidiaries in their national registers**. In particular, they are to include the name and legal form of each subsidiary and their country of incorporation with their registration number.

Where the ultimate parent company is governed by the law of a third country, the obligation referred to above will be transferred to the subsidiary closest to the ultimate parent in the chain of control but located in the European Union and governed by the law of a Member State.

In addition, the ultimate parent company in the group of companies, or the subsidiary company established in the European Union closest to the ultimate parent company in the chain of control (where the parent companies are governed by the law of a third country), will be required to **update the group information at least annually**. This can be no later than the date of disclosure of the accounting documents. In addition, each subsidiary will be independently responsible for updating the information on its group membership in its relevant register based on the information provided by the parent companies.

This information will also be made available directly at the Union level through the system of interconnected registers.

SUMMARY

The solutions proposed by the European Commission in the draft Directive will facilitate the activities of companies that have their registered office in the European Union, in particular in the cross-border dimension. The proposals for the introduction of the 'once – only principle', the exemption of some documents from the obligation of legalisation, and the introduction of digital tools, i.e., an EU company certificate and a model EU power of attorney, should be regarded as beneficial. These solutions will allow cross-border business to be conducted in a more informal manner and will alleviate some of the administrative burden that is currently in place.

However, this Directive is only at the draft stage and will now be debated in the European Parliament and the Council. If adopted, Member States will have two years to implement it.

We will keep you informed about the further development of this Directive and its final form.

Legal basis: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL dated 29 March 2023 amending Directives 2009/102/EC and (EU) 2017/1132 as regards further expanding and upgrading the use of digital tools and processes in company law.

Should you have any questions regarding the issues presented, please contact us, or contact our lawyers in the corporate law and corporate governance team:



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