

Upgrading digital company law

Fields marked with * are mandatory.

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The views reflected on this consultation paper provide an indication on the approach the Commission services may take but do not constitute a final policy position or a formal proposal by the European Commission.

Please note that in order to ensure a fair and transparent consultation process only responses received through the online questionnaire will be taken into account and included in the report summarising the responses.

Introduction

The ongoing digital transition of the economy and society has substantial impacts on companies, including small and medium-sized companies (SMEs). More recently, the COVID-19 pandemic showed clearly that digital tools are essential to ensure the continuity of business operations and interactions with authorities on company law related issues. Companies, in particular SMEs, should be able to have full recourse to digital tools when they are set up and throughout their operations across the single market. Authorities also need to adapt their working methods and ways of cooperation with each other, and with businesses and other stakeholders, and to fully use digital technologies.

While [Directive 2019/1151/EU on the use of digital tools and processes in company law](#) (Digitalisation Directive) provided the first step in advancing digital tools and procedures in company law (e.g. by providing for fully online creation of companies, registration of branches and filing with business registers) and is currently being transposed, there is more to be done. In this context, the new initiative on “Upgrading digital company law” aims to further adapt EU company law to the continuing digital developments.

This public consultation aims to give all citizens and organisations the opportunity to inform policy development. It will collect data and views of stakeholders on the problems to be addressed, as well as on policy options and their potential impacts. It is divided into four parts:

I: Transparency - Better access to more information about companies in the EU

II: Making the most of the company information in the EU - using company data available in national business registers in cross-border administrative or judicial procedures

III: Making it possible for companies to use information from their national business registers when expanding to markets in other Member States

IV: Digitalising company law procedures and addressing new digital developments in EU company law

This initiative will represent the second step in the digitalisation of company law. It will build on and complement the 2019 Digitalisation Directive. Therefore, this consultation will not cover online company law procedures regulated by the Digitalisation Directive. Furthermore, questions of reuse and open data (regulated by [Directive \(EU\) 2019/1024](#) on open data and the re-use of public sector information) and the [Commission proposal aiming to establish a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability](#) are also outside the scope of this consultation.

About you

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- German
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Swedish

* I am giving my contribution as

- Academic/research institution
- Business association
- Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

* First name

Info

* Surname

EUROPEANISSUERS

* Email (this won't be published)

info@europeanissuers.eu

* Organisation name

255 character(s) maximum

EuropeanIssuers

* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

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* Country of origin

Please add your country of origin, or that of your organisation.

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The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

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Only organisation details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.

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Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

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I. Transparency - Better access to more information about companies in the EU

Information about companies is important for several reasons. Be it investors, creditors, consumers or any other third party, they all need reliable information about companies. Access to company data helps also companies themselves, and in particular SMEs, to find information e.g. about business partners. In addition, different authorities need data about companies to carry out many tasks related to administrative and judicial procedures. Transparency about companies also helps authorities in the fight against abusive use of letterbox companies. For these reasons, stakeholders have continued to call for more transparency and information about companies in the Single Market.

National business registers are a primary source of reliable information about companies incorporated in Member States. The information in the business registers has legal value and the public can rely on it. At EU level, since 2017 the Business Registers Interconnection System – BRIS – interconnects national business registers and makes information about limited liability companies available to the public through a single access point at [European e-Justice portal](#). However, currently BRIS provides access only to the information about EU limited liability companies, which is harmonised through common disclosure requirements in [Directive \(EU\) 2017/1132](#) (Codified Directive), across the single market.

To satisfy the increasing calls for company data in the single market, including its use in cross-border situations, it is important to consider if additional harmonised company information (beyond what is regulated today by the Codified Directive) should be disclosed in national business registers and via BRIS.

1. Do you think it is important to have more harmonised company information available at EU level?

- Yes
- No
- No opinion

Please provide reasons:

Information requirements for limited liability companies is already extensively harmonised at EU level and easily accessible due to the BRIS system.

According to Articles 14 and 16 of the Directive 2017/1132 limited liability companies should at least disclose in the Register the following information: (a) the instrument of constitution, and the statutes if they are contained in a separate instrument; (b) any amendments to the instruments referred to in point (a), including any extension of the duration of the company; (c) after every amendment of the instrument of constitution or of the statutes, the complete text of the instrument or statutes as amended to date; 30.6.2017 EN Official Journal of the European Union L 169/59 (d) the appointment, termination of office and particulars of the persons who either as a body constituted pursuant to law or as members of any such body: (i) are authorised to represent the company in dealings with third parties and in legal proceedings; it shall be apparent from the disclosure whether the persons authorised to represent the company may do so alone or are required to act jointly; (ii) take part in the administration, supervision or control of the company; (e) at least once a year, the amount of the capital subscribed, where the instrument of constitution or the statutes mention an authorised capital, unless any increase in the capital subscribed necessitates an amendment of the statutes; (f) the accounting documents for each financial year which are required to be published in accordance with Council Directives 86/635/EEC (1) and 91/674/EEC (2) and Directive 2013/34/EU of the European Parliament and of the Council (3); (g) any change of the registered office of the company; (h) the winding-up of the company; (i) any declaration of nullity of the company by the courts; (j) the appointment of liquidators, particulars concerning them, and their respective powers, unless such powers are expressly and exclusively derived from law or from the statutes of the company; (k) any termination of a liquidation and, in Member States where striking off the register entails legal consequences, the fact of any such striking off.

Also, specific information is to be disclosed in case of merger (Articles 92 and 104, Directive 2017/1132), cross-border mergers (Articles 123 and 130, Directive 2017/1132); division (Articles 138 and 150, Directive 2017/1132); relating to branches (Articles 29, 30 and 32 Directive 2017/1132) and the opening and termination of winding -up or insolvency proceedings (Article 34, Directive 2017/1132).

We therefore don't see any need for adding new information requirements for limited liability companies.

On a different ground, we may agree that company information disclosed in national registers could be available also via BRIS, even when there is no EU harmonization of such information, under the following conditions:

- No additional filing or disclosure requirement is imposed on companies
- No additional cost is imposed on companies.
- Being the BRIS an interconnection systems which rest on the functionalities of national registers, the legal value of the company information – when it is not harmonized- is determined by national law. In this respect, it would be important to make a clear warning on that, in case of access to non-harmonised information disclosed in national registered is allowed via BRIS (see answer to Q6, 12, 20).

2. For what reasons/in which cases do you need company information? (multiple choice question)

- To find business partners
- To make investment decisions
- To find/check information about a company (e.g. as a creditor or a business partner)
- To find/check information about a company (e.g. as an employee or a consumer)
- To find/check company information as a legal professional (notary, lawyer, legal counsel, etc.)
- To find/check company information as an academic/researcher
- When dealing with competent authorities (e.g. when applying to get SME funding, for taxation, for social security, for posting of workers)
- For judicial proceedings (e.g. when company information is required by a court)
- Other
- No opinion

3. Have you encountered any of the following difficulties when looking for information about companies, in particular for information about companies in other Member States? (multiple choice question)

- a. I could not find/have access to the relevant company information at all
- b. I could not find/have access to the relevant company information at EU level but only in the national business register of the company
- c. Information about companies in different Member States was not comparable (for example, because the type, content, format or presentation of the information varied in different national registers)
- d. I faced technical difficulties
- e. I faced procedural difficulties
- f. I faced language difficulties
- g. Other issues
- h. No, I did not encounter any difficulties

EU company law rules require BRIS to provide certain important information about limited liability companies through a single access point on the "[Find a company](#)" page of the European e-Justice portal. This company information is gathered directly from the business registers. BRIS gives a free of charge^[1] access to a set of company information such as the registered office, the registration number, and soon also to information, e.g. on legal representatives and cross-border branches. Furthermore, BRIS provides access to other company information, for which Member States may charge a fee, including e.g.

instruments of constitution, accounting documents[2]. Currently the “Find a company” page of the European e-Justice portal allows to search for company information via BRIS using the company name, the company registration number or the European Identification Number (EUID).

[1] Full list in Article 19 of the Codified Company Law Directive.

[2] Full list in Article 14 of the Codified Company Law Directive.

4. Are you familiar with the Business Registers Interconnection System - BRIS - or the “Find a Company” page of the European e-Justice portal?

- Yes
- No
- No opinion

5. Do you think that there should be more search functionalities centrally at EU level via BRIS (in addition to the current search by company name/company registration number)

- Yes
- No
- No opinion

6. Do you think that it would be useful to link BRIS with the following EU level sources of information about companies to provide simple access to company related information? (multiple choice question)

- Yes, with the EU interconnection of insolvency registers
- Yes, with the EU interconnection of beneficial ownership registers
- Yes, with the EU interconnection of land registers
- Yes, with other systems
- No
- No opinion

Please explain:

It would be useful to link BRIS with other systems under the condition that information is already accessible and public and that no additional requirements are requested on companies. As a general principle, we agree that once a company information is disclosed in the relevant national registers it could be accessible via BRIS as well - without any additional information and costs requested on companies.

7. Do you see a need for more company data to be made available free of charge centrally at EU level (through BRIS)?

- Yes

- No
- No opinion

8. EU law already requires that information about third country branches in the EU (i.e. branches of non-EU companies) is available in business registers. Should this information be also accessible centrally at EU level (through BRIS)?

- Yes
- No
- No opinion

9. Do you see the need for any other improvements in BRIS? Please explain

Currently, EU company law lays down harmonised disclosure requirements in the national business registers and through BRIS for limited liability companies and their branches for certain company information, such as company name, legal form, registered office, legal representatives or accounting documents. Yet, disclosure of some relevant information is currently not required by EU company law rules. For instance, an important part of information about EU limited liability companies, from the point of view of investors, creditors, consumers, or companies themselves, includes where companies carry out their main economic activities and where the place of management is (i.e. where main business decisions are taken). Different competent authorities also often need such information. In particular, this information is essential in the context of actions taken at EU and national level to prevent the abusive use of letterbox companies. Therefore, it needs to be assessed whether there is a need to have more information about limited liability companies publicly available.

In addition, it would be important to assess if EU law should also require that information about other types of companies, e.g. partnerships is made available through BRIS.

10. Should EU company law rules require disclosure of additional information about limited liability companies in national business registers and via BRIS?

- Yes
- No
- No opinion

11. Should information about the place of management or the place of main economic activity of EU limited liability companies be disclosed in the business registers and be available centrally at EU level (through BRIS)? (multiple choice question)

- Yes, disclosure of information about the place of management

- Yes, disclosure of information about the place of main economic activity
- No
- No opinion

Please provide further explanation

Current EU legislation already provides that the registered office of a company and any change is to be disclosed. And the same is requested for the winding-up of the company; any declaration of nullity of the company by the courts; the appointment of liquidators, particulars concerning them, and their respective powers, unless such powers are expressly and exclusively derived from law or from the statutes of the company; any termination of a liquidation and, in Member States where striking off the register entails legal consequences, the fact of any such striking off are to be disclosed.

We believe this information is sufficient to identify the company and its jurisdiction.

On a different ground, we note that the definition of 'place of management' and 'place of main activity' is uncertain, factual oriented and may vary in different jurisdictions.

12. Should information about other types of companies (than limited liability companies) be made available centrally at EU level (through BRIS)?

- Yes
- No
- No opinion

13. Do you see the need for any other information to be made available centrally at EU level (through BRIS)?

- Yes
- No
- No opinion

A group of companies – bringing together parent companies and subsidiaries - is a common way to organise business. The structure of the group and intra-group relations have an impact on the member companies' decision-making process, financial credibility and solvency. Therefore, information about the structure of the group to which the company belongs would help authorities, investors, creditors and other third parties to make better-informed decisions. Although EU law provides certain rules on the disclosure of information related to groups of companies, this information is either dispersed in different documents or databases not easily detected with a simple search (e.g. notes to financial statements), or not publicly available (e.g. structure of the group). When information related to groups of companies is publicly available, the rules may only apply to certain members of the group (e.g. listed companies) and not to the whole group.

14. Do you think that it is important to have better access to company information related to groups of companies in the single market?

- Yes
- No
- No opinion

Please explain

Relevant information on groups structure can already be found in the financial statements of companies. The accounting directive provides for specific disclosure obligation:

- according to Article 17, 1, g): the name and registered office of each of the undertakings in which the undertaking, either itself or through a person acting in his own name but on the undertaking's behalf, holds a participating interest, showing the proportion of the capital held, the amount of capital and reserves, and the profit or loss for the latest financial year of the undertaking concerned for which financial statements have been adopted; the information concerning capital and reserves and the profit or loss may be omitted where the undertaking concerned does not publish its balance sheet and is not controlled by the undertaking;
- according to Article 28,2: The notes to the consolidated financial statements shall, in addition to the information required under paragraph 1, set out the following information: (a) in relation to undertakings included in the consolidation: (i) the names and registered offices of those undertakings, (ii) the proportion of the capital held in those undertakings, other than the parent undertaking, by the undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertaking.

In Addition, in the Directive 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing as amended by the Directive (EU) 2018/843 and by Directive (EU) 2019/2177 contains measure that increased transparency as to the natural persons who are beneficial owners in companies. In particular, according to Article 30, 1 "Member States shall ensure that corporate and other legal entities incorporated within their territory are required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held."

Finally, additional information on ownership structure is requested to listed companies by the Transparency directive (requesting disclosure of major shareholdings) and Takeover Directive (requesting disclosure of ownership structure).

15. Which of the following information about groups of companies should be disclosed? (multiple choice question)

- Whether a company is a member of a group of companies
- Information on the group structure with entities' names and their ownership percentages
- Information on the identity of the parent company(ies)
- Information on the identity of the ultimate controlling company(ies) in the group (ultimate parent company(ies))
- Information on entities in the group which have the same board members
- Other
- None of the above
- No opinion

Please provide further explanation

See our answer above.

16. Should such disclosure on groups be limited (e.g. to certain sizes of groups or to cross-border group structures) and, if so, to which categories of groups?

- Yes
- No
- No opinion

II. Making the most of the company information in the EU - using company data available in national business registers in cross-border administrative or judicial procedures

Although business registers contain information that has legal value and the public can rely on it, the use of such company information in cross-border situations is difficult and sometimes impossible. The different national approaches as regards how the company information is verified before it is entered into the business register may contribute to the difficulties to use company data in cross-border situations. In addition, for instance, some Member States do not accept documents from other registers while others impose additional requirements, e.g. apostille, certified copies or certified translations. For companies, this creates administrative burden and compliance costs. The legal professionals often cannot make use of company information from other Member States in administrative or court proceedings. In addition, authorities often face difficulties in verifying information about companies in other Member States, which is often time-consuming or labour-intensive, or they need to ask companies themselves to resubmit the information.

It is important to consider ways of removing barriers and difficulties to the use of company information available in business registers in cross-border administrative or judicial procedures.

A specific case regarding the use of company information when setting up a subsidiary or a branch is described below, under Section III.

17. Have you encountered difficulties to use company information from its business register when dealing with competent authorities or in court proceedings in another Member State?

- Yes
- No
- No opinion

18. What do you think are the reasons for those difficulties? (multiple choice question)

- Lack of common rules for the verification of company data before it is entered in a business register
- Different content, format or presentation of company documents or information from a register in another Member State
- Language difficulties
- Other
- No opinion

19. As an authority or a court, have you encountered difficulties when accessing or verifying information about companies in another Member State?

- Yes
- No
- No opinion

20. Do you think that it should be possible to directly use company information contained in business registers when dealing with competent authorities or in court proceedings in another Member State?

- Yes
- No
- No opinion

Please explain and provide examples

The application of the “once-only” principle requires that the company’s information obtained from a foreign Commercial Register by the BRIS be accepted when dealing with competent authorities in another Member State. However, being the BRIS an interconnection systems which rest on the functionalities of national registers, the legal value of the company information – when it is not harmonized - is determined by national law. In this respect, it would be important to make a clear warning on that, in case of access or use of other information disclosed in national registered is allowed via BRIS (see answer to Q1).

21. Do you think that authorities (e.g. tax or labour authorities) and courts from one Member State should have dedicated access through BRIS to company information in the business registers of the other Member States?

- Yes
- No
- No opinion

Please explain

22. Which of the following could facilitate the use of company data when dealing with competent authorities or in court proceedings in another Member State? (multiple choice question)

- a. Replacing the need for legalisation/apostille, e.g. by secure digital transmission channel
- b. Providing for recognition of electronic certified copies
- c. Defining common minimum rules for the verification of the correctness of company data before it is entered in a business register
- d. Other
- e. None of the above
- f. No opinion

III. Making it possible for companies to use information from their national business registers when expanding to markets in other Member States

EU company law provides rules for setting up companies and registering branches fully online as well as rules for cross-border operations of limited liability companies, such as cross-border mergers, divisions or conversions. However, stakeholders representing companies, and in particular SMEs, call for additional measures, which would make it quicker and less costly for companies, SMEs and start-ups, to expand to markets in other Member States. This is also one of the aims of the recent [Declaration on the EU Startup Nations Standard of Excellence](#). Making better use of digital tools to set up subsidiaries and branches in other Member States would be an important improvement in that context.

BRIS, in addition to being a single access point to information about limited liability companies, also provides secure means for exchange of information between business registers. In this way it offers technical means to implement the once-only principle in cross-border situations. However, the current EU company law rules provide only a limited use of that principle. It would be important to assess if it would be possible to expand the application of the once-only principle via BRIS to setting up of subsidiaries or branches in other Member States. In practice, this would mean that a company setting up a subsidiary or a branch could ask to use the information contained in its business register without the need to submit the same information to the register of the subsidiary or the branch. This would help companies, and in particular SMEs, to expand to markets in other Member States and would contribute to the specific action contained in the EU Startup Nations Standard: namely, that legal documents from other EU jurisdictions can be submitted as proof for the incorporation of a start-up (or creation of a subsidiary of an existing start-up expanding in the single market)

23. Have you encountered difficulties when trying to expand to markets in other Member States, in particular by setting up a subsidiary or a branch in another Member State? (multiple choice question)

- Yes, when setting up a subsidiary in another Member State
- Yes, when setting up a branch in another Member State
- Yes, in other cases
- No
- No opinion

24. Do you think that applying the once-only principle (i.e. no need for a company to resubmit the information already available in its business register) could help when setting up subsidiaries and branches in another Member State? (multiple choice question)

- Yes, when setting up subsidiaries
- Yes, when setting up branches
- No
- No opinion

Please explain (subsidiaries)

Please explain (branches)

IV. Digitalising company law procedures and addressing new digital developments in EU company law

The Digitalisation Directive introduced rules on fully online registration and filing for limited liability companies and branches. However, there are still some procedures in the existing EU company law rules, which are not yet fully digital-proof, and e.g. require physical presence or paper filing. In addition, the digital developments and the COVID-19 pandemic clearly showed the importance of digital tools and the need to consider if additional procedural steps in company law should still be digitalised.

25. Are there still procedures or procedural steps in company law which would need to be digitalised at EU level?

- Yes
- No
-

No opinion

26. Do you think that it should be possible to allow fully online formation and filing for companies other than limited liability companies (e.g. partnerships)?

- Yes
- No
- No opinion

Please explain

The Digitalisation Directive, which provides for the online formation and filing for limited liability companies, has just been implemented.

As a matter of fact, Member States are required to put into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 August 2021, but Member States which encounter particular difficulties in transposing this Directive are entitled to benefit from an extension of the period for transposition of up to one year

In light of this, we suggest not to extend the possibility to fully online formation and filing of companies to other entities until a proper evaluation on the implementation of the Directive and its application is carried out.

With the digitalisation of the economy and companies operating in an increasingly virtual environment, new questions/challenges also appear for traditional company law rules. These include the use of new technologies and new scenarios, such as companies with virtual rather than physical registered offices. Traditionally, a registered office refers to the physical address of a company. For legal and administrative reasons, all companies are normally required to have a registered seat, which usually corresponds to the location where the company has its physical office. However, in the recent years, the perception of how business can be conducted has evolved. While the concept of a “virtual registered office” is not defined, there are more and more companies operating without permanent physical offices.

27. What do you understand by the concept of a virtual registered office?

In a world dominated by digital tools, it does not seem so difficult to consider the possibility that a virtual registered office could replace or, at least, coexist with a physical registered office, moreover, considering that it would not cause major changes in the day-to-day life of a company.

Provided that the companies are obliged to designate a jurisdiction in their Articles of Association, which will determine the legal framework applicable to them, the possibility of operating through a virtual registered office does not seem so distant.

Bearing this in mind, we think that a virtual registered office could be defined as a virtual or electronic mailbox or address that the law presumes to be permanently controlled by the company and used by it to fulfil its obligations and exercise its rights.

The issue should be addressed at EU Level. Among the safeguard measures to be considered, there are:

- the seriousness and accountability of those who offer the service for the virtual registered office

- The confidentiality of the correspondence and documents received
- the security of the access to the Virtual registered office

28. Do you think that virtual registered offices can serve real business needs?

- Yes
- No
- No opinion

29. In your experience, is the use of virtual registered offices widespread/growing?

- Yes
- No
- No opinion

30. In your opinion, what is the overall impact of companies using virtual registered offices?

- Positive impact
- Neutral
- Negative impact
- No opinion

31. What issues does the use of virtual registered offices raise?

32. Is there a need for any action to address the use of virtual registered offices?

- Yes, at EU level
- Yes, at national level
- No, there is no need for action at all
- No opinion

Other comments

33. Is there anything else that you would like to share on the issues covered by this public consultation?

In case you would like to upload an additional document, such as a position paper or study that could support or detail your position, please upload it here. The uploaded document will be published alongside your response to the questionnaire and will be treated as additional background to better understand your position. If you have chosen in the section "About you" for your contribution to remain anonymous, please make sure to remove personal information (name, email) from the additional uploaded document and its document properties.

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Contact

just-cleg@ec.europa.eu