

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

* Language of my contribution

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- Portuguese
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- Slovenian
- Spanish

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

Diana

* Surname

VAN KLEEF

* Email (this won't be published)

diana.vankleef@eumedion.nl

* Organisation name

255 character(s) maximum

Eumedion

* 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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- British Indian Ocean Territory
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- The Gambia
- Timor-Leste
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- Tokelau
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda

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- China
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- Clipperton
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- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena
- Ascension and Tristan da Cunha
- Saint Kitts and Nevis
- Saint Lucia
- Ukraine
- United Arab Emirates
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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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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:

As correctly stated below, 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). The EU company law rules could require disclosure of that information in national business registers and via BRIS.

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

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

7.1. Please specify what data should be made available.

As correctly stated below, 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). The EU company law rules could require disclosure of that information in national business registers and via BRIS.

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

As correctly stated below, 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). The EU company law rules could require disclosure of that information in national business registers and via BRIS.

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

10.1 Of what type of information?

As correctly stated above, 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). The EU company law rules could require disclosure of that information in national business registers and via BRIS.

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

As correctly stated above, 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). The EU company law rules could require disclosure of that information in national business registers and via BRIS.

11.1 Should this information be publicly available or should it only be available to competent authorities?

- It should be publicly available
- It should only be available to competent authorities
- No opinion

Please provide further explanation

As correctly stated above, 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). The EU company law rules could require disclosure of that information in national business registers and via BRIS.

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

Please explain

As already stated in our response to the consultation document on enhancing the convergence of insolvency laws (2021) we are in favour of increasing the transparency of decisions on disqualifications in the vicinity of insolvency by enhancing cooperation and information exchange between competent authorities, possibly in the context of the BRIS. We consider this measure at EU level favourable for the enhancement of the effective implementation of decisions disqualifying directors as a consequence of breaching their duties in the vicinity of insolvency.

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 describe for what purposes

We agree with the remark above that 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. And that 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). We are of the opinion that the EU should require groups to provide information on their structure in a consolidated, investor-friendly and easy-to-read document.

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

As already mentioned above we are of the opinion that the EU should require groups to provide information on their structure in a consolidated, investor-friendly and easy-to-read document.

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

Please explain

At least listed companies should be required to disclose information on their structure in a consolidated, investor-friendly and easy-to-read document.

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

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

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

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

Please explain which ones

We welcome and encourage the use of digital tools to expand shareholder participation and voting in AGMs. Currently Dutch company law does not provide for the option to hold 'virtual only' AGMs and only allows for physical AGMs. Due to the Covid-19 pandemic, emergency legislation was established which provided for the option to hold 'virtual only' AGMs under the condition that several requirements were met. The experiences with these virtual AGMs during the last two AGM seasons are mixed. We also refer to our evaluation of the 2020 and 2021 AGM season (<https://www.eumedion.nl/clientdata/215/media/clientimages/Evaluation-AGM-season-2020-def.pdf> <https://en.eumedion.nl/clientdata/217/media/clientimages/Evaluation-AGM-season-2021-DEF.pdf?v=210709094651>).

Partly because of these experiences, the enthusiasm amongst institutional investors for holding virtual AGMs in a post corona era has waned. Our preference would be to revert to a hybrid AGM model (physical and online participation), with also the possibility of real time, online voting after the Covid-19 pandemic subsides. This may offer more convenience and less time commitments, allowing more institutional investors, in

particular foreign institutional investors, to find their way to the AGM. Companies and shareholders may even wish to consider whether there is merit in splitting the traditional AGM into two events. One for presentations, Q&A, and consideration of matters in the annual report, and the second purely for voting on resolutions raised. The first event could be delivered via a webcast and visual presentation with the facility for questions, while the second could be a closed session with only the Chair, the company secretary and the civil law notary being present for confirming the voting outcomes. An important advantage of this 'meeting format' is that all shareholders have the ability to vote following presentations and explanations from the board.

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

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?

Article 4 of Directive (EU) 2017/1132 (Codified Directive) requires among other things that the registered office shall appear in either the articles of association or the instrument of incorporation or a separate document published. A virtual office can be used as registered office. It can be used for registration purposes, for keeping legal documents and for receiving mail and other correspondence.

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

- Yes
- No
- No opinion

Please explain and provide examples

Less overhead costs (e.g. no need to rent an office) and flexibility for employees to work from any place they would like.

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

Please provide further explanation

Companies with virtual registered offices could be used to circumvent safeguards for shareholders/investors that are incorporated in national company law or for fraudulent, criminal and/or tax circumventing purposes.

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

Companies with virtual registered offices could be used to circumvent safeguards for shareholders/investors that are incorporated in national company law or for fraudulent, criminal and/or tax circumventing purposes.

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

32.1 What should be the objectives of such action? (multiple choice question)

- To ensure transparency through disclosure requirements
- To provide safeguards
- To ensure a level-playing field for companies in the single market
- Other

What safeguards do you consider necessary?

Safeguards for the protection of the rights of shareholders/investors.

Other comments

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

No.

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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just-cleg@ec.europa.eu