

SOME CONSIDERATIONS ON DIGITAL TOOLS IN THE FIELD OF COMPANY LAW

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Abstract:

In the last few years, a series of measures have been adopted by EU, with the stated purpose of facilitating public access to information about companies and their branches established in the European Union, as well as the effective development of cross-border commercial relations. Thanks to their business activities and investments, including on a cross-border basis, companies play a leading role in contributing to the EU's economic prosperity, competitiveness and in carrying through the EU's twin transition to a sustainable and digital economy. To this end, companies need a predictable legal framework that is conducive to growth and adapted to face the new economic and social challenges in an increasingly digital world. While companies are established under national law, EU company law lays down a legal framework that enhances legal certainty across the single market and predictability for them. This company law framework, which encompasses the roles and responsibilities of the business registers, needs to keep abreast with new developments and challenges. The COVID19 pandemic crisis clearly demonstrated the need for increased resilience of cooperation across the EU, as well as the importance of continuing to facilitate and simplify procedures for the business of traders, an important component of a society based on European values and a more resilient economy.

Keywords: *digitalisation, cross-border cooperation, trade registers, companies, legal certainty.*

Expanding and upgrading the use of digital tools and processes by companies

Globally[1] , at different rates in each country, digitization takes place as a necessity of integration into the infrastructure frameworks established by new technologies. In the era of globalization and interconnectedness, international transactions and commercial relationships have become increasingly common. These new technologies not only take over from humans tasks that once, in the not-too-distant past, were done manually and repetitively, but they can even create entire specific, fully automatic processes by themselves, which do not need the intervention of people.

The need for digitization is increasingly present among companies, and they are constantly looking for solutions that make their work more efficient, faster and that bring them the desired results. An investment in digitizing processes can prove to be a good idea in the long run, as it will help the firm save time and financial resources needed to carry out manual processes.

The accelerated development of commercial relations, the need for rapid interconnection and the collection of information in real time are realities of recent years that have proved the need for digitization, simplification of procedures in commercial matters and more. The COVID-19 pandemic was the catalyst that triggered the rapid implementation of digitization procedures in all areas, clearly demonstrating the essential role of digital tools, for example, in judicial procedures, in ensuring the continuity of companies' interactions with commercial registers and authorities, etc.

Businesses need digital tools to access information, interact with national authorities and enjoy effective access to justice[2]. Digital access to justice can facilitate operations, reduce costs and regulatory burden, while improving access to the single market for all businesses, especially SMEs. Legal practitioners must be able to provide the highest level of support to their clients, particularly by communicating with the courts and transmitting documents safely and efficiently. It is important that national and European authorities have the appropriate tools for secure communication with other countries and to exchange evidence and documents. EU justice and home affairs agencies need effective means to support national authorities and cooperate effectively with each other[3] .

One area where a slow rate of digitization was noted is that of registers and databases. Individuals, businesses and legal practitioners face difficulties in accessing the information to which they are entitled. In many cases, this access is not available online, actually creating a number of inefficiencies.

Directive (EU) 2017/1132 of the European Parliament[4] and of the Council of 14 June 2017 relating to certain aspects of company law brought together a large part of the European Union (EU) company law rules in a single directive. The directive covers matters such as incorporation, capital and advertising requirements, as well as company operations (such as mergers and divisions).

This Directive has the merit of codifying the names of the system of interconnection of trade registers, which interconnects national trade registers and makes information on joint-stock companies available to the public through a single point of access, the European e-justice portal, and which provides secure means for the exchange of

information between trade registers (for example, on branches, cross-border operations, persons who have been denied the right to exercise a management function)[5] .

Subsequently, this Directive was amended by 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 and by Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019, as regards cross-border conversions, mergers and divisions.

BRIS - Business Registers Interconnection System

Based on Directive (EU) 2017/1132, the BRIS - Business Registers Interconnection System - was implemented in the matter of trade register cooperation at the European level. Thus, since June 2017, the trade registers of all EU countries are interconnected, allowing access to information about companies registered in any EU country, Iceland, Liechtenstein or Norway, information about foreign branches and cross-border mergers of companies. Information on the name and legal nature, place of business and country of registration, as well as the identification number of a corporate entity or an entity equivalent to companies, is made available through BRIS, free of charge. In addition, it is possible to obtain, electronically, information and documents related to the commercial registration documents of the companies, such as the members of the corporate bodies, the statute, the annual accounts and the subscribed share capital.

The purpose of BRIS is to facilitate public access to information about companies and their branches established in the European Union by: ensuring the interconnection of trade registers from the EU member states and from the European Economic Area, thus facilitating cooperation and electronic communication between the registers; increasing confidence in the single European market by ensuring transparency and access to up-to-date information; a higher degree of legal security regarding the information contained in the trade registers at the European level[6].

In our country, the Ministry of Justice, through the National Trade Register Office (ONRC), as the implementing body, ensures the interconnection with BRIS - Business Registers Interconnection System according to the provisions of Law no. 152/2015 for the

modification and completion of some normative acts in the field of registration in the trade register regarding the implementation of European Directive no. 17/2012/EU regarding the interconnection of central, trade and company registers[7] .

BRIS is made up of the following components:

- the European e-Justice portal, which provides the interface for electronic access to information on companies registered in the trade registers of EU member states and the European Economic Area;
- European Central Platform (ECP) – The central service platform that interconnects the trade registers of the member states to be able to use the e-justice portal;
- Trade registers from the EU member states and from the European Economic Area.

The Romanian Electronic System for the interconnection of the trade register of the National Trade Register Office (ONRC) with BRIS has become operational since September 2019 and can be accessed on the European e-justice portal, <https://e-justice.europa.eu/> .

Through BRIS, the following information registered in the trade register kept by the ONRC is available free of charge: the name and legal form of the person registered in the trade register, the registered/professional headquarters of the person registered in the trade register and the member state in which it is registered, order number from the trade register of the registered/registered person, the unique identifier at European level (EUID) and the unique tax registration code, the state of the company.

The new law on the Trade Register[8] transposes Directive (EU) 2019/1.151 of the European Parliament and the Council of 20 June 2019 amending Directive (EU) 2017/1.132 regarding the use of digital tools and processes in the context of company law. According to the statement of reasons, this normative act, necessary and mandatory, moreover, as a result of Directive (EU) 2019/1.151, brings the following new elements[9] :

- Online accessibility of all formalities for setting up a company and registering a branch by using electronic means of identification and electronic means of communication;

- Simplification of the registration procedure in the trade register to allow the submission of documents in electronic format, the verification of the fulfillment of the conditions provided by the law by communication between the authorities and the use of information/documents already at their disposal;
- Regulation of the registration procedure in the trade register based on the legality control, carried out by the registrar;
- Regulation of the status of the Trade Registry registrar;
- Regulation of online access to information on companies, including information on companies registered in other member states of the European Union and, in order to improve the accessibility of the public service of the trade register, ensuring the availability of extended and updated information on the establishment and operation of companies;
- The codification of the legislation in the field of registration in the Trade Register and its systematization, in relation to the regulations in the field of companies, in the matter of preventing and combating money laundering, of the protection of personal data.

Ever since its publication, the law has sparked numerous controversies. Practitioners and theoreticians in law have opined that online prevails in connection with the registration procedure in the Trade Register, the concept of a listed company is not regulated in the legislation, nor in the new regulatory act, there is a lack of a definition and regulation of the emblem[10]. One thing is certain, however: The new law lays the foundations for an intensified digitization of the Trade Register.

Extension and further improvement of the use of digital tools and processes in the field of company law

In the same context of the acceleration of the digitization procedure and the expansion of digital tools, recently, on March 29, 2023, the European Commission[11] adopted the Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 2009/102/EC and (EU) 2017/ 1132 regarding the extension and further improvement of the use of digital tools and processes in the field of company law[12] .

The proposal aims to facilitate the cross-border operations of businesses and increase transparency and trust in businesses by making more information about them

publicly available at EU level. The proposal will contribute to the further digitization of the single market and help businesses, especially small and medium-sized enterprises, to operate in the EU space.

According to the statement of reasons[13], the proposal aims to increase transparency in the single market on companies through the use of digital tools such as BRIS, improve the reliability of company data and build trust between Member States' registers and their authorities, including by creating the conditions for public authorities to be more connected.

The proposal also aims to eliminate and reduce formalities related to the use of company information in cross-border situations, to shorten the duration of the procedure for setting up subsidiaries and branches in other Member States and to make it more cost-effective, including by the use of the "once only" principle (according to which companies should not be required to submit the same information to the commercial registers several times). In this way, it seeks to reduce the overall administrative burden for companies and other stakeholders in cross-border situations and facilitate the expansion of SMEs across the EU.

To reduce bureaucracy and administrative burden for cross-border businesses, the proposed rules include:

- applying the "once only" principle so that companies do not have to provide information again when setting up a branch or company in another Member State. Relevant information can be exchanged through the trade register interconnection system;
- an EU company certificate, containing a set of basic information on companies, which will be available free of charge in all EU languages;
- a standard multilingual EU digital power of attorney model that will authorize a person to represent the company in another member state;
- eliminating formalities, such as the need for an apostille or certified translations for company documents.

The proposal updates existing EU rules for companies to further adapt them to digital developments and new challenges and to boost economic growth and competitiveness in the single market.

To ensure greater transparency and trust in businesses, the proposed rules also aim to ensure that important information about companies (for example, about partnerships and groups of companies) is made available to the public, in particular EU level, through BRIS. At the same time, according to the proposal for the Directive, it is aimed to facilitate searches for information about EU companies, allowing searches to be carried out through BRIS and, at the same time, through two other EU systems that interconnect the national registers of beneficial owners and insolvency registers, but also ensuring that the data on companies appearing in the trade registers is accurate, reliable and up-to-date, for example by carrying out checks on the information on companies before they are entered in the trade registers in all Member States.

Conclusions

The legislative initiatives adopted or proposed at the European level, also transposed into national legislation, are the natural consequence of the evolution of commercial relations in the current social, economic and legal context and are intended to significantly reduce administrative barriers when companies use information about the company from the registers commercial in cross-border situations, including in administrative or judicial proceedings. Small and medium-sized companies benefit, thanks to these legislative changes, from the reduction of administrative burden and increased legal security, as well as easier access to information. The new regulations aim to improve the safety and reliability of company information in commercial registers across the EU, and also to increase access to company information, especially at EU level, and to remove administrative barriers when companies and public authorities use such information in cross-border situations, through the use of digital tools and processes.

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