

Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification) (Text with EEA relevance)

TITLE I

GENERAL PROVISIONS AND THE ESTABLISHMENT AND FUNCTIONING OF LIMITED LIABILITY COMPANIES

CHAPTER III

Disclosure and interconnection of central, commercial and companies registers

Section 1

General provisions

Article 13

Scope

The coordination measures prescribed by this Section shall apply to the laws, regulations and administrative provisions of the Member States relating to the types of company listed in Annex II.

Article 14

Documents and particulars to be disclosed by companies

Member States shall take the measures required to ensure compulsory disclosure by companies of at least the following documents and particulars:

- (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;
- (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.

Article 15

Changes in documents and particulars

1 Member States shall take the measures required to ensure that any changes in the documents and particulars referred to in Article 14 are entered in the competent register referred to in the first subparagraph of Article 16(1) and are disclosed, in accordance with Article 16(3) and (5), normally within 21 days of receipt of the complete documentation regarding those changes including, if applicable, the legality check as required under national law for entry in the file.

2 Paragraph 1 shall not apply to the accounting documents referred to in Article 14(f).

Article 16

Disclosure in the register

1 In each Member State, a file shall be opened in a central, commercial or companies register ('the register'), for each of the companies registered therein.

Member States shall ensure that companies have a unique identifier allowing them to be unequivocally identified in communications between registers through the system of interconnection of central, commercial and companies registers established in accordance with Article 22(2) ('the system of interconnection of registers'). That unique identifier shall comprise, at least, elements making it possible to identify the Member State of the register, the domestic register of origin and the company number in that register and, where appropriate, features to avoid identification errors.

2 For the purposes of this Article, 'by electronic means' shall mean that the information is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted,

conveyed and received in a manner to be determined by Member States by wire, by radio, by optical means or by other electromagnetic means.

3 All documents and particulars which are required to be disclosed pursuant to Article 14 shall be kept in the file, or entered in the register; the subject matter of the entries in the register shall in every case appear in the file.

Member States shall ensure that the filing by companies, as well as by other persons and bodies required to make or assist in making notifications, of all documents and particulars which are required to be disclosed pursuant to Article 14 is possible by electronic means. In addition, Member States may require all, or certain categories of, companies to file all, or certain types of, such documents and particulars by electronic means.

All documents and particulars referred to in Article 14 which are filed, whether by paper means or by electronic means, shall be kept in the file, or entered in the register, in electronic form. To this end, Member States shall ensure that all such documents and particulars which are filed by paper means are converted by the register to electronic form.

The documents and particulars referred to in Article 14 that have been filed by paper means up to 31 December 2006, shall not be required to be converted automatically into electronic form by the register. Member States shall nevertheless ensure that they are converted into electronic form by the register upon receipt of an application for disclosure by electronic means submitted in accordance with the measures adopted to give effect to paragraph 4 of this Article.

4 A copy of all or any part of the documents or particulars referred to in Article 14 shall be obtainable on application. Applications may be submitted to the register by paper means or by electronic means as the applicant chooses.

Copies as referred to in the first subparagraph shall be obtainable from the register by paper means or by electronic means as the applicant chooses. This shall apply in the case of all documents and particulars already filed. However, Member States may decide that all, or certain types of, documents and particulars filed by paper means on or before a date which may not be later than 31 December 2006 shall not be obtainable from the register by electronic means if a specified period has elapsed between the date of filing and the date of the application submitted to the register. Such specified period may not be less than 10 years.

The price of obtaining a copy of the whole or any part of the documents or particulars referred to in Article 14, whether by paper means or by electronic means, shall not exceed the administrative cost thereof.

Paper copies supplied to an applicant shall be certified as ‘true copies’, unless the applicant dispenses with such certification. Electronic copies supplied shall not be certified as ‘true copies’, unless the applicant explicitly requests such a certification.

Member States shall take the necessary measures to ensure that certification of electronic copies guarantees both the authenticity of their origin and the integrity of their contents, by means at least of an advanced electronic signature within the meaning of Article 2(2) of Directive 1999/93/EC of the European Parliament and of the Council⁽⁴⁾.

5 Disclosure of the documents and particulars referred to in paragraph 3 shall be effected by publication in the national gazette designated for that purpose by the Member State, either of the full text or of a partial text, or by means of a reference to the document which has been

deposited in the file or entered in the register. The national gazette designated for that purpose may be kept in electronic form.

Member States may decide to replace publication in the national gazette with equally effective means, which shall entail at least the use of a system whereby the information disclosed can be accessed in chronological order through a central electronic platform.

6 The documents and particulars may be relied on by the company as against third parties only after they have been disclosed in accordance with paragraph 5, unless the company proves that the third parties had knowledge thereof.

However, with regard to transactions taking place before the sixteenth day following the disclosure, the documents and particulars shall not be relied on as against third parties who prove that it was impossible for them to have had knowledge thereof.

7 Member States shall take the necessary measures to avoid any discrepancy between what is disclosed in accordance with paragraph 5 and what appears in the register or file.

However, in cases of discrepancy, the text disclosed in accordance with paragraph 5 may not be relied on as against third parties; such third parties may nevertheless rely thereon, unless the company proves that they had knowledge of the texts deposited in the file or entered in the register.

Third parties may, moreover, always rely on any documents and particulars in respect of which the disclosure formalities have not yet been completed, save where non-disclosure causes them not to have effect.

Article 17

Up-to-date information on national law with regard to the rights of third parties

1 Member States shall ensure that up-to-date information is made available explaining the provisions of national law pursuant to which third parties may rely on particulars and each type of document referred to in Article 14, in accordance with Article 16(5), (6) and (7).

2 Member States shall provide the information required for publication on the European e-Justice portal ('the portal') in accordance with the portal's rules and technical requirements.

3 The Commission shall publish that information on the portal in all the official languages of the Union.

Article 18

Availability of electronic copies of documents and particulars

1 Electronic copies of the documents and particulars referred to in Article 14 shall also be made publicly available through the system of interconnection of registers.

2 Member States shall ensure that the documents and particulars referred to in Article 14 are available through the system of interconnection of registers in a standard message format and accessible by electronic means. Member States shall also ensure that minimum standards for the security of data transmission are respected.

3 The Commission shall provide a search service in all the official languages of the Union in respect of companies registered in the Member States, in order to make available through the portal:

- a the documents and particulars referred to in Article 14;
- b the explanatory labels, available in all the official languages of the Union, listing those particulars and the types of those documents.

Article 19

Fees chargeable for documents and particulars

1 The fees charged for obtaining the documents and particulars referred to in Article 14 through the system of interconnection of registers shall not exceed the administrative costs thereof.

2 Member States shall ensure that the following particulars are available free of charge through the system of interconnection of registers:

- a the name and legal form of the company;
- b the registered office of the company and the Member State where it is registered; and
- c the registration number of the company.

In addition to those particulars, Member States may choose to make further documents and particulars available free of charge.

Article 20

Information on the opening and termination of winding-up or insolvency proceedings and on striking-off of a company from the register

1 The register of a company shall, through the system of interconnection of registers, make available, without delay, the information on the opening and termination of any winding-up or insolvency proceedings of the company and on the striking-off of the company from the register, if this entails legal consequences in the Member State of the register of the company.

2 The register of the branch shall, through the system of interconnection of registers, ensure receipt, without delay, of the information referred to in paragraph 1.

3 The exchange of information referred to in paragraphs 1 and 2 shall be free of charge for the registers.

Article 21

Language of disclosure and translation of documents and particulars to be disclosed

1 Documents and particulars to be disclosed pursuant to Article 14 shall be drawn up and filed in one of the languages permitted by the language rules applicable in the Member State in which the file referred to in Article 16(1) is opened.

2 In addition to the compulsory disclosure referred to in Article 16, Member States shall allow translations of documents and particulars referred to in Article 14 to be disclosed voluntarily in accordance with Article 16 in any official language(s) of the Union.

Member States may prescribe that the translation of such documents and particulars be certified.

Member States shall take the necessary measures to facilitate access by third parties to the translations voluntarily disclosed.

3 In addition to the compulsory disclosure referred to in Article 16, and to the voluntary disclosure provided for under paragraph 2 of this Article, Member States may allow the documents and particulars concerned to be disclosed, in accordance with Article 16, in any other language(s).

Member States may prescribe that the translation of such documents and particulars be certified.

4 In cases of discrepancy between the documents and particulars disclosed in the official languages of the register and the translation voluntarily disclosed, the latter may not be relied upon as against third parties. Third parties may nevertheless rely on the translations voluntarily disclosed, unless the company proves that the third parties had knowledge of the version which was the subject of the compulsory disclosure.

Article 22

System of interconnection of registers

1 A European central platform ('the platform') shall be established.

2 The system of interconnection of registers shall be composed of:

- the registers of Member States,
- the platform,
- the portal serving as the European electronic access point.

3 Member States shall ensure the interoperability of their registers within the system of interconnection of registers via the platform.

4 Member States may establish optional access points to the system of interconnection of registers. They shall notify the Commission without undue delay of the establishment of such access points and of any significant changes to their operation.

5 Access to information from the system of interconnection of registers shall be ensured through the portal and through the optional access points established by the Member States.

6 The establishment of the system of interconnection of registers shall not affect existing bilateral agreements concluded between Member States concerning the exchange of information on companies.

Article 23

Development and operation of the platform

1 The Commission shall decide to develop and/or operate the platform either by its own means or through a third party.

If the Commission decides to develop and/or operate the platform through a third party, the choice of the third party and the enforcement by the Commission of the agreement

concluded with that third party shall be done in accordance with Regulation (EU, Euratom) No 966/2012.

2 If the Commission decides to develop the platform through a third party, it shall, by means of implementing acts, establish the technical specifications for the purpose of the public procurement procedure and the duration of the agreement to be concluded with that third party.

3 If the Commission decides to operate the platform through a third party, it shall, by means of implementing acts, adopt detailed rules on the operational management of the platform.

The operational management of the platform shall include, in particular:

- the supervision of the functioning of the platform,
- the security and protection of data distributed and exchanged using the platform,
- the coordination of relations between Member States' registers and the third party.

The supervision of the functioning of the platform shall be carried out by the Commission.

4 The implementing acts referred to in paragraphs 2 and 3 shall be adopted in accordance with the examination procedure referred to in Article 164(2).

Article 24

Implementing acts

By means of implementing acts, the Commission shall adopt the following:

- (a) the technical specification defining the methods of communication by electronic means for the purpose of the system of interconnection of registers;
- (b) the technical specification of the communication protocols;
- (c) the technical measures ensuring the minimum information technology security standards for communication and distribution of information within the system of interconnection of registers;
- (d) the technical specification defining the methods of exchange of information between the register of the company and the register of the branch as referred to in Articles 20 and 34;
- (e) the detailed list of data to be transmitted for the purpose of exchange of information between registers, as referred to in Articles 20, 34 and 130;
- (f) the technical specification defining the structure of the standard message format for the purpose of the exchange of information between the registers, the platform and the portal;
- (g) the technical specification defining the set of the data necessary for the platform to perform its functions as well as the method of storage, use and protection of such data;
- (h) the technical specification defining the structure and use of the unique identifier for communication between registers;
- (i) the specification defining the technical methods of operation of the system of interconnection of registers as regards the distribution and exchange of information,

- and the specification defining the information technology services, provided by the platform, ensuring the delivery of messages in the relevant language version;
- (j) the harmonised criteria for the search service provided by the portal;
 - (k) the payment modalities, taking into account available payment facilities such as online payment;
 - (l) the details of the explanatory labels listing the particulars and the types of documents referred to in Article 14;
 - (m) the technical conditions of availability of services provided by the system of interconnection of registers;
 - (n) the procedure and technical requirements for the connection of the optional access points to the platform.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 164(2).

Article 25

Financing

1 The establishment and future development of the platform and the adjustments to the portal resulting from this Directive shall be financed from the general budget of the Union.

2 The maintenance and functioning of the platform shall be financed from the general budget of the Union and may be co-financed by fees for access to the system of interconnection of registers charged to its individual users. Nothing in this paragraph shall affect fees at the national level.

3 By means of delegated acts and in accordance with Article 163, the Commission may adopt rules on whether to co-finance the platform by charging fees, and, in that case, the amount of the fees charged to individual users in accordance with paragraph 2 of this Article.

4 Any fees imposed in accordance with paragraph 2 of this Article shall be without prejudice to the fees, if any, charged by Member States for obtaining documents and particulars as referred to in Article 19(1).

5 Any fees imposed in accordance with paragraph 2 of this Article shall not be charged for obtaining the particulars referred to in Article 19(2)(a), (b) and (c).

6 Each Member State shall bear the costs of adjusting its domestic registers, as well as their maintenance and functioning costs resulting from this Directive.

Article 26

Information on letters and order forms

Member States shall prescribe that letters and order forms, whether they are in paper form or use any other medium, are to state the following particulars:

- (a) the information necessary in order to identify the register in which the file referred to in Article 16 is kept, together with the number of the company in that register;

- (b) the legal form of the company, the location of its registered office and, where appropriate, the fact that the company is being wound up.

Where, in those documents, mention is made of the capital of the company, the reference shall be to the capital subscribed and paid up.

Member States shall prescribe that company websites are to contain at least the particulars referred to in the first paragraph and, if applicable, a reference to the capital subscribed and paid up.

Article 27

Persons carrying out disclosure formalities

Each Member State shall determine by which persons the disclosure formalities are to be carried out.

Article 28

Penalties

Member States shall provide for appropriate penalties at least in the case of:

- (a) failure to disclose accounting documents as required by Article 14(f);
- (b) omission from commercial documents or from any company website of the compulsory particulars provided for in Article 26.

Section 2

Disclosure rules applicable to branches of companies from other Member States

Article 29

Disclosure of documents and particulars relating to a branch

1 Documents and particulars relating to a branch opened in a Member State by a company of a type listed in Annex II, which is governed by the law of another Member State, shall be disclosed pursuant to the law of the Member State of the branch, in accordance with Article 16.

2 Where disclosure requirements in respect of the branch differ from those in respect of the company, the branch's disclosure requirements shall take precedence with regard to transactions carried out with the branch.

3 The documents and particulars referred to in Article 30(1) shall be made publicly available through the system of interconnection of registers. Article 18 and Article 19(1) shall apply *mutatis mutandis*.

4 Member States shall ensure that branches have a unique identifier allowing them to be unequivocally identified in communications between registers through the system of interconnection of registers. That unique identifier shall comprise, at least, elements making it

possible to identify the Member State of the register, the domestic register of origin and the branch number in that register, and, where appropriate, features to avoid identification errors.

Article 30

Documents and particulars to be disclosed

1 The compulsory disclosure provided for in Article 29 shall cover the following documents and particulars only:

- a the address of the branch;
- b the activities of the branch;
- c the register in which the company file referred to in Article 16 is kept, together with the registration number in that register;
- d the name and legal form of the company and the name of the branch, if that is different from the name of the company;
- e the appointment, termination of office and particulars of the persons who are authorised to represent the company in dealings with third parties and in legal proceedings:
 - as a company organ constituted pursuant to law or as members of any such organ, in accordance with the disclosure by the company as provided for in Article 14(d),
 - as permanent representatives of the company for the activities of the branch, with an indication of the extent of their powers;
- f — the winding-up of the company, the appointment of liquidators, particulars concerning them and their powers and the termination of the liquidation in accordance with disclosure by the company as provided for in Article 14(h), (j) and (k),
 - insolvency proceedings, arrangements, compositions, or any analogous proceedings to which the company is subject;
- g the accounting documents in accordance with Article 31;
- h the closure of the branch.

2 The Member State in which the branch has been opened may provide for the disclosure, as referred to in Article 29, of

- a the signature of the persons referred to in points (e) and (f) of paragraph 1 of this Article;
- b the instruments of constitution and the memorandum and articles of association if they are contained in a separate instrument, in accordance with points (a), (b) and (c) of Article 14, together with amendments to those documents;
- c an attestation from the register referred to in point (c) of paragraph 1 of this Article relating to the existence of the company;
- d an indication of the securities on the company's property situated in that Member State, provided such disclosure relates to the validity of those securities.

Article 31

Limits on the compulsory disclosure of accounting documents

The compulsory disclosure provided for by Article 30(1)(g) shall be limited to the accounting documents of the company as drawn up, audited and disclosed pursuant to the law of the Member State by which the company is governed in accordance with

Directive 2006/43/EC of the European Parliament and of the Council⁽⁵⁾ and Directive 2013/34/EU.

Article 32

Language of disclosure and translation of documents to be disclosed

The Member State in which the branch has been opened may stipulate that the documents referred to in Article 30(2)(b) and Article 31 are to be published in another official language of the Union and that the translations of such documents are to be certified.

Article 33

Disclosure in cases of multiple branches in a Member State

Where a company has opened more than one branch in a Member State, the disclosure referred to in Article 30(2)(b) and Article 31 may be made in the register of the branch of the company's choice.

In the case referred to in the first paragraph, compulsory disclosure by the other branches shall cover the particulars of the branch register of which disclosure was made, together with the number of that branch in that register.

Article 34

Information on the opening and termination of winding-up or insolvency proceedings and on striking-off of the company from the register

1 Article 20 shall apply to the register of the company and to the register of the branch respectively.

2 Member States shall determine the procedure to be followed upon receipt of the information referred to in Article 20(1) and (2). Such procedure shall ensure that, where a company has been dissolved or otherwise struck off the register, its branches are likewise struck off the register without undue delay.

3 The second sentence of paragraph 2 shall not apply to branches of companies that have been struck off the register as a consequence of any change in the legal form of the company concerned, a merger or division, or a cross-border transfer of its registered office.

Article 35

Information on letters and order forms

Member States shall prescribe that letters and order forms used by a branch shall state, in addition to the information prescribed by Article 26, the register in which the file in respect of the branch is kept together with the number of the branch in that register.

Section 3

Disclosure rules applicable to branches of companies from third countries

Article 36

Disclosure of documents and particulars relating to a branch

1 Documents and particulars concerning a branch opened in a Member State by a company which is not governed by the law of a Member State but which is of a legal form comparable with the types of company listed in Annex II, shall be disclosed in accordance with the law of the Member State of the branch as laid down in Article 16.

2 Article 29(2) shall apply.

Article 37

Compulsory documents and particulars to be disclosed

The compulsory disclosure provided for in Article 36 shall cover at least the following documents and particulars:

- (a) the address of the branch;
 - (b) the activities of the branch;
 - (c) the law of the State by which the company is governed;
 - (d) where that law so provides, the register in which the company is entered and the registration number of the company in that register;
 - (e) the instruments of constitution, and memorandum and articles of association if they are contained in a separate instrument, with all amendments to those documents;
 - (f) the legal form of the company, its principal place of business and its object and, at least annually, the amount of subscribed capital if those particulars are not given in the documents referred to in point (e);
 - (g) the name of the company and the name of the branch if that is different from the name of the company;
 - (h) the appointment, termination of office and particulars of the persons who are authorised to represent the company in dealings with third parties and in legal proceedings:
 - as a company organ constituted pursuant to law or as members of any such organ,
 - as permanent representatives of the company for the activities of the branch.
- The extent of the powers of the persons authorised to represent the company shall be stated, as well as whether those persons may represent the company alone or are required to act jointly;

- (i) — the winding-up of the company and the appointment of liquidators, particulars concerning them and their powers and the termination of the liquidation,

- insolvency proceedings, arrangements, compositions or any analogous proceedings to which the company is subject;
- (j) the accounting documents in accordance with Article 38;
- (k) the closure of the branch.

Article 38

Limits of compulsory disclosure of accounting documents

1 The compulsory disclosure provided for by Article 37(j) shall apply to the accounting documents of the company as drawn up, audited and disclosed pursuant to the law of the State which governs the company. Where they are not drawn up in accordance with or in a manner equivalent to Directive 2013/34/EU, Member States may require that accounting documents relating to the activities of the branch be drawn up and disclosed.

2 Articles 32 and 33 shall apply.

Article 39

Information on letters and order forms

Member States shall prescribe that letters and order forms used by a branch state the register in which the file in respect of the branch is kept together with the number of the branch in that register. Where the law of the State by which the company is governed requires entry in a register, the register in which the company is entered, and the registration number of the company in that register shall also be stated.

Section 4

Application and implementing arrangements

Article 40

Penalties

Member States shall provide for appropriate penalties in the event of failure to disclose the matters set out in Articles 29, 30, 31, 36, 37 and 38 and of omission from letters and order forms of the compulsory particulars provided for in Articles 35 and 39.

Article 41

Persons carrying out disclosure formalities

Each Member State shall determine who shall carry out the disclosure formalities provided for in Sections 2 and 3.

Article 42

Exemptions to provisions on disclosure of accounting documents for branches

1 Articles 31 and 38 shall not apply to branches opened by credit institutions and financial institutions covered by Council Directive 89/117/EEC⁽⁶⁾.

2 Pending subsequent coordination, the Member States need not apply Articles 31 and 38 to branches opened by insurance companies.

Article 43

Contact Committee

The Contact Committee set up pursuant to Article 52 of Council Directive 78/660/EEC⁽⁷⁾ shall also:

- (a) facilitate, without prejudice to Articles 258 and 259 of the Treaty, the harmonised application of the provisions of Sections 2, 3 and this Section, through regular meetings dealing, in particular, with practical problems arising in connection with their application;
- (b) advise the Commission, if necessary, on any additions or amendments to the provisions of Sections 2, 3 and this Section.

- (1) Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (OJ L 372, 31.12.1986, p. 1).
- (2) Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings (OJ L 374, 31.12.1991, p. 7).
- (3) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).
- (4) Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures (OJ L 13, 19.1.2000, p. 12).
- (5) Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87).
- (6) Council Directive 89/117/EEC of 13 February 1989 on the obligations of branches established in a Member State of credit institutions and financial institutions having their head offices outside that Member State regarding the publication of annual accounting documents (OJ L 44, 16.2.1989, p. 40).
- (7) Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (OJ L 222, 14.8.1978, p. 11).