

Company law directive

DIRECTIVE 2009/101/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent

CHAPTER 1 SCOPE

Article 1

The coordination measures prescribed by this Directive shall apply to the laws, regulations and administrative provisions of the Member States relating to the following types of company:

Belgium: naamloze vennootschap, société anonyme, commanditaire vennootschap op aandelen, société en commandite par actions, personenvennootschap met beperkte aansprakelijkheid; société de personnes à responsabilité limitée;

Bulgaria: акционерно дружество, дружество с ограничена отговорност, командитно дружество с акции;

Czech Republic: společnost s ručením omezeným, akciová společnost;

Denmark: aktieselskab, kommanditaktieselskab, anpartsselskab;

Germany: die Aktiengesellschaft, die Kommanditgesellschaft auf Aktien, die Gesellschaft mit beschränkter Haftung;

Estonia: aktsiaselts, osaühing;

Ireland: Companies incorporated with limited liability;

Greece: ανώνυμη εταιρία, εταιρία περιορισμένης ευθύνης, ετερόρρυθμη κατά μετοχές εταιρία;

Spain: la sociedad anónima, la sociedad comanditaria por acciones, la sociedad de responsabilidad limitada;

France: société anonyme, société en commandite par actions, société à responsabilité limitée, société par actions simplifiée;

Italy: società per azioni, società in accomandita per azioni, società a responsabilità limitata;

Cyprus: δημόσιες εταιρείες περιορισμένης ευθύνης με μετοχές ή με εγγύηση, ιδιωτικές εταιρείες περιορισμένης ευθύνης με μετοχές ή με εγγύηση;

Latvia: akciju sabiedrība, sabiedrība ar ierobežotu atbildību, komanditsabiedrība;

Lithuania: akcinė bendrovė, uždaroji akcinė bendrovė;

Luxembourg: société anonyme, société en commandite par actions, société à responsabilité limitée;

Hungary: részvénytársaság, korlátolt felelősségű társaság;

Malta: kumpannija pubblika/public limited liability company, kumpannija privata/private limited liability company;

The Netherlands: naamloze vennootschap, besloten vennootschap met beperkte aansprakelijkheid;

Austria: die Aktiengesellschaft, die Gesellschaft mit beschränkter Haftung;

Poland: spółka z ograniczoną odpowiedzialnością, spółka komandytowo-akcyjna, spółka akcyjna;

Portugal: a sociedade anónima de responsabilidade limitada, a sociedade em comandita por acções, a sociedade por quotas de responsabilidade limitada;

Romania: societate pe acţiuni, societate cu răspundere limitată, societate în comandită pe acţiuni;

Slovenia: delniška družba, družba z omejeno odgovornostjo, komaditna delniška družba;

Slovakia: akciová spoločnosť, spoločnosť s ručením obmedzeným;

Finland: yksityinen osakeyhtiö/privat aktiebolag, julkinen osakeyhtiö/publikt aktiebolag;

Sweden: aktiebolag;

United Kingdom: Companies incorporated with limited liability.

[Article 1a](#)

[The measures on the disclosure of information on the beneficial ownership apply in in respect of the laws, regulations and administrative provisions of the Member States relating to:](#)

[\(a\) corporate and other legal entities referred to in Article 30 of Directive 2015/849 of the European Parliament and of the Council¹, including the types of companies referred to in Article 1 of this Directive, save for those which are non profit-making;](#)

[\(b\) trusts which comprise any property held by, or on behalf of, a person carrying on a business which consists of or includes the management of trusts, and acting as trustee of a trust in the course of that business with a view to gain profit, and other types of legal arrangements having a structure or functions similar to such trusts.](#)

CHAPTER 2 DISCLOSURE

Article 2

Member States shall take the measures required to ensure compulsory disclosure by companies as referred to in Article 1 of at least the following documents and particulars:

¹ [Directive \(EU\) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation \(EU\) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC \(OJ L 141, 5.6.2015, p. 73\).](#)"

- (a) the instrument of constitution, and the statutes if they are contained in a separate instrument;
- (b) any amendments to the instruments mentioned 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 must be apparent from the disclosure whether the persons authorised to represent the company may do so alone or must 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 78/660/EEC (6), 83/349/EEC (7), 86/635/EEC (8) and 91/674/EEC (9);
- (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) the termination of the liquidation and, in Member States where striking off the register entails legal consequences, the fact of any such striking off.

Article 3

1. In each Member State, a file shall be opened in a central register, commercial register or companies register, for each of the companies registered therein.
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 must be disclosed pursuant to Article 2 shall be kept in the file, or entered in the register; the subject matter of the entries in the register must 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 must be disclosed pursuant to Article 2 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 2 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 2 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.

4. A copy of the whole or any part of the documents or particulars referred to in Article 2 must 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 must 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 2, whether by paper means or by electronic means, shall not exceed the administrative cost thereof.

Paper copies supplied 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 (10).

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 4

1. Documents and particulars which must be disclosed pursuant to Article 2 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 3(1) is opened.

2. In addition to the mandatory disclosure referred to in Article 3, Member States shall allow documents and particulars referred to in Article 2 to be disclosed voluntarily in accordance with Article 3 in any official language(s) of the Community.

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 mandatory disclosure referred to in Article 3, 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 3, 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 mandatory disclosure.

Article 5

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 mentioned in Article 3 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 mentioned in the first paragraph and, if applicable, a reference to the capital subscribed and paid up.

Article 6

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

Article 7

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

(a) failure to disclose accounting documents as required by Article 2(f);

(b) omission from commercial documents or from any company website of the compulsory particulars provided for in Article 5-;

(ba) failure to disclose beneficial ownership information as required by Article 7b.
[AM44]

Member States shall ensure that where obligations apply to legal persons, penalties can be applied to the members of the management body or to any other individuals who under national law are responsible for the breach. [AM45]

Article 7b

Disclosure of beneficial ownership information

1. Member States shall take the measures required to ensure compulsory disclosure by the entities referred to in Article 1a(a) and (b) of this Directive of adequate, accurate and current information on their beneficial ownership, in accordance with Articles 30 and 31 of Directive 2015/849.

The information shall consist of the name, ~~the month and year~~ **date** of birth, the nationality, ~~and~~ the country of residence **and contact details (without disclosure of**

a home address) of the beneficial owner as well as the nature and extent of the beneficial interest held. [AM46]

2. The disclosure of beneficial ownership information as referred to in paragraph 1 shall be ensured through the central registers referred to in Article 30(3) ~~and Article 31(3a)~~ of Directive 2015/849.

3. Member States shall ensure that the beneficial ownership information referred to in paragraph 1 of this Article shall also be made publicly available through the system of interconnection of registers referred to in Article 4a(2) **in accordance with data protection rules and open data standards, and subject to online registration. Member States may introduce a fee to cover the administrative costs.** [AM47]

4. In exceptional circumstances laid down in national law, where the access to the information set out in paragraph 1 would expose the beneficial owner to the risk of ~~fraud~~, kidnapping, blackmail, violence or intimidation, or where the beneficial owner is a minor or otherwise incapable, Member States may provide for an exemption from the compulsory disclosure of to all or part of the information on the beneficial ownership on a case-by-case basis. ~~Member States shall ensure that these exemptions are granted upon an evaluation of the exceptional nature of the circumstances, with the evaluation accessible to the Commission upon request.~~ **Exemptions shall be reassessed at regular intervals of at least every two years to avoid abuse. Any exemption granted must be clearly indicated in the register.** [AM48]

5. The personal data of beneficial owners referred to in paragraph 1 shall be disclosed for the purpose of enabling third parties and civil society at large to know who are the beneficial owners, thus contributing to prevent the misuse of legal entities and legal arrangements through enhanced public scrutiny. For this purpose the information shall be publicly available through the national registers and through the system of interconnection of registers for no longer than 10 years after the company has been struck off from the register.

5a. Member States shall require the competent authorities to effectively monitor and to take the necessary measures with a view to ensuring compliance with the requirements of this Article. Member States shall ensure that the competent authorities have adequate powers, including the power to compel the production of any information that is relevant to monitoring compliance and perform checks, and have adequate financial, human and technical resources to perform their functions. Member States shall ensure that staff of those authorities maintain high professional standards, including standards of confidentiality and data protection, they shall be of high integrity and be appropriately skilled. [AM49]

--

CHAPTER 3 VALIDITY OF OBLIGATIONS ENTERED INTO BY THE COMPANY

Article 8

If, before a company being formed has acquired legal personality, action has been carried out in its name and the company does not assume the obligations arising from such action, the

persons who acted shall, without limit, be jointly and severally liable therefor, unless otherwise agreed.

Article 9

Completion of the formalities of disclosure of the particulars concerning the persons who, as an organ of the company, are authorised to represent it shall constitute a bar to any irregularity in their appointment being relied upon as against third parties unless the company proves that such third parties had knowledge thereof.

Article 10

1. Acts done by the organs of the company shall be binding upon it even if those acts are not within the objects of the company, unless such acts exceed the powers that the law confers or allows to be conferred on those organs.

However, Member States may provide that the company shall not be bound where such acts are outside the objects of the company, if it proves that the third party knew that the act was outside those objects or could not in view of the circumstances have been unaware of it; disclosure of the statutes shall not of itself be sufficient proof thereof.

2. The limits on the powers of the organs of the company, arising under the statutes or from a decision of the competent organs, may not be relied on as against third parties, even if they have been disclosed.

3. If the national law provides that authority to represent a company may, in derogation from the legal rules governing the subject, be conferred by the statutes on a single person or on several persons acting jointly, that law may provide that such a provision in the statutes may be relied on as against third parties on condition that it relates to the general power of representation; the question whether such a provision in the statutes can be relied on as against third parties shall be governed by Article 3.

CHAPTER 4 NULLITY OF THE COMPANY

Article 11

In all Member States whose laws do not provide for preventive, administrative or judicial control, at the time of formation of a company, the instrument of constitution, the company statutes and any amendments to those documents shall be drawn up and certified in due legal form.

Article 12

The laws of the Member States may not provide for the nullity of companies otherwise than in accordance with the following provisions:

- (a) nullity must be ordered by decision of a court of law;
- (b) nullity may be ordered only on the grounds:

- (i) that no instrument of constitution was executed or that the rules of preventive control or the requisite legal formalities were not complied with;
- (ii) that the objects of the company are unlawful or contrary to public policy;
- (iii) that the instrument of constitution or the statutes do not state the name of the company, the amount of the individual subscriptions of capital, the total amount of the capital subscribed or the objects of the company;
- (iv) of failure to comply with the provisions of the national law concerning the minimum amount of capital to be paid up;
- (v) of the incapacity of all the founder members;
- (vi) that, contrary to the national law governing the company, the number of founder members is less than two.

Apart from the foregoing grounds of nullity, a company shall not be subject to any cause of non-existence, absolute nullity, relative nullity or declaration of nullity.

Article 13

1. The question whether a decision of nullity pronounced by a court of law may be relied on as against third parties shall be governed by Article 3. Where the national law entitles a third party to challenge the decision, he may do so only within six months of public notice of the decision of the court being given.
2. Nullity shall entail the winding-up of the company, as may dissolution.
3. Nullity shall not of itself affect the validity of any commitments entered into by or with the company, without prejudice to the consequences of the company's being wound up.
4. The laws of each Member State may make provision for the consequences of nullity as between members of the company.
5. Holders of shares in the capital shall remain obliged to pay up the capital agreed to be subscribed by them but which has not been paid up, to the extent that commitments entered into with creditors so require.

CHAPTER 5 GENERAL PROVISIONS

Article 14

Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 15

The Commission shall present to the European Parliament and to the Council, by no later than 1 January 2012, a report, together with a proposal, if appropriate, for amendment of the provisions of Article 2(f) and Articles 3, 4, 5 and 7 in the light of the experience acquired in applying those provisions, of their aims and of the technological developments observed at the time.

Article 16

Directive 68/151/EEC, as amended by the acts listed in Annex I, Part A, is hereby repealed, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law of the Directives set out in Annex I, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

Article 17

This Directive shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

Article 18

This Directive is addressed to the Member States.