



# Eastern and Central European Member State Solutions for Transposing Directive 2019/1151 (EU)

## *Part II. Finland and Poland. Conclusions*

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**Abstract.** In a two-part study, the author analyses the transposition of Directive 2019/1151 (EU) by various Member States of the European Union. In this second part of the series, the author proceeds to the presentation of the national implementations of the directive in Finland and Poland. The author then presents the conclusions of the study, positing that in all examined jurisdictions material steps have been taken to implement Directive 2019/1151 (EU).

**Keywords:** Directive 2019/1151 (EU), online company formation, Eastern and Central European Member States, transposition, electronic identification, machine readability, structured filing system

## 4. Finland

In Finland, companies are created by registering them in the Companies Register (*Kaupparekisteri* in Finnish, *Handelsregistret* in Swedish).<sup>1</sup> This is owned and maintained by the Finnish Patent and Registration Office (*Patenti – ja rekisterihallitus*, *Patent – och registerstyrelsen*), the legal framework for which

<sup>1</sup> Under Article 17(1) of the Finnish Constitution, the official languages of Finland are Finnish and Swedish. The English names of the authorities are provided in their official translation. If not specified in the footnotes, all further translations of non-English texts into English are by the author.

is provided by Act No 129 of 1979. The Finnish Business Register is a publicly accessible register containing information on companies (enterprises). As a general rule, all companies must be listed in the register, report any changes to their registered data, and most companies must also submit their annual accounts to the register.

The Trade Register uses a common filing procedure and data reporting system with the tax office. The Company Information Service (*Yritys- ja yhteisötietojärjestelmä* in Finnish; *Företags- och organisationsdatasystemet* in Swedish)<sup>2</sup> is a partly free-of-charge data service jointly operated by the Finnish Patent and Registration Office and the Finnish Tax Administration (*Verohallinto* in Finnish; *Skatteförvaltningen* in Swedish).

The system contains the contact details and identification data of the companies. The data of the companies are recorded in the business register on the basis of notifications and applications received by the business registration authority (the Finnish Patent and Registration Office). The register contains information submitted both by the companies themselves and by the courts and other authorities.

Pursuant to Section 21a of the Business Register Act (No 129 of 1979), the Finnish Patent and Registration Office may update data and check personal data contained in applications and their annexes submitted by clients using the Finnish Population Register system.

Pursuant to Section 21 of the Act on the Prohibition of Business Enterprises (Act No 1059 of 1985), the Finnish Judicial Registration Centre provides the Companies Register with information on the prohibitions on business enterprises in force and their starting and ending dates. The content of the register of companies is determined by the Finnish legislation. The Finnish legislation governing the business register, the forms of companies, and the activities of companies in general determines the information to be included for the different forms of companies.

#### 4.1. Identification

The legal framework for online company formation is provided by Act No 129 of 1979 and Act No 244 of 2001. Companies are registered through the portal <https://www.ytj.fi>, which is jointly maintained by the Finnish Patent and Registration Office and the Finnish Tax Administration. During registration, electronic identification can be done in two ways, firstly through the Finnish e-identifier<sup>3</sup> and secondly

<sup>2</sup> <https://www.ytj.fi>.

<sup>3</sup> The e-identifier, which is provided by the Finnish Digital and Population Data Service Agency (*Digi – ja väestötietovirasto* in Finnish, *Myndigheten för digitalisering och befolkningsdata* in

via the bank ID.<sup>4</sup> The bank identity is provided through the process required to log into the Internet banking system. Thanks to international cooperation, citizens of other countries can also use their national e-IDs.<sup>5</sup> In accordance with the Finnish data protection legislation in force,<sup>6</sup> the data of persons involved in the company formation is handled separately and is not made public. Once company formation has been approved, the beneficial owner(s) of the registered company must also be reported via the Company Information Service interface using the identification methods mentioned above, in accordance with the Prevention of Money Laundering and Terrorist Financing Act (No 444 of 2017).<sup>7</sup> In the latter case, paper-based reporting is accepted only in exceptional cases.<sup>8</sup>

The above-mentioned identification operations are an integral part of the company formation process: the Internet platform specifically designed for online company formation (<https://www.ytj.fi>) requests, as a first step, the identification of the persons involved in the company formation as described above, without which it is not possible to proceed. The process shows that under current Finnish law, the personal data of business owners is treated separately from the company formation process. Pursuant to Section 6(5) of the Prevention of Money Laundering and Terrorist Financing Act (No 444 of 2017), the Finnish Patent and Registration Office updates the registered data of beneficial owners based on the data received from the Judicial Registration Centre.

If a legal representative prepares the deed of incorporation, this must be attached to the completed forms through the online interface. You have three months from the date of signing the instrument of incorporation to register the company online.<sup>9</sup> The online platform also provides for the online creation of

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Swedish) via the [www.suomi.fi](http://www.suomi.fi) portal, is a single identifier (*Tunnistus* in Finnish, *Identifikation* in Swedish) that provides access to the database of all participating public administrations.

4 Only the identifiers of authorized financial institutions may be used. See: <https://www.ytj.fi>.

5 YTJ transaction service.

6 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) and the Finnish Data Protection Act (2018/1050).

7 The person concerned holds more than 25% of the shares in the company, directly or indirectly through another company. The person holds, directly or indirectly through another company, more than 25% of the voting rights in the company. Shares belonging to the company or its subsidiary are not taken into account in the calculation of the number of votes. The person exercises effective control over the company on another basis. Other grounds may refer, for example, to a partnership agreement.

8 None of the persons responsible for the company has the necessary identification and cannot obtain it. The company does not allow any filing through the online service (<https://www.ytj.fi>) because of the type of company. Only companies are listed as partners in a general partnership and as members in a limited partnership. The company is in liquidation, bankruptcy, or restructuring proceedings.

9 [https://www.prh.fi/en/kaupparekisteri/yrityksen\\_perustaminen/perusilmoituksen\\_tekeminen.html](https://www.prh.fi/en/kaupparekisteri/yrityksen_perustaminen/perusilmoituksen_tekeminen.html).

the Memorandum and Articles of Association, based on a template that contains the minimum information required.<sup>10</sup> At the same time, the online interface requires the attachment of the articles of association of the company to be registered and, if necessary, minutes of board meetings. The Finnish law does not provide for mandatory legal representation when setting up a company online (or on paper).<sup>11</sup> Neither the articles of association nor the memorandum and articles of association are subject to legal representation procedures, but the signatures of all participating shareholders are required for approval.

## 4.2. Electronic Identification Solutions

As explained above, identification is achieved through a dedicated web interface, available at *YTJ asiointipalvelu*. Once the interface is opened, the landing page displays two basic ways of identifying a person: firstly, the person involved in the company formation has to choose between the options of bank or (state) citizen e-identification (e-ID).

Bank identification is only available to customers of banks that participate in the BankID initiative, which allows their customers to use their electronic account details for electronic communication with the authorities (currently 10 banks in Finland participate in this initiative).<sup>12</sup> After selecting a bank identity, the person selects their bank and is directed to the bank's online banking login page. By entering the online banking login details, the person identifies themselves for the purpose of setting up a company online.

Citizen identity is based on the Finnish e-identification system, which is maintained by the Finnish Digital and Population Data Service Agency.

The final way to identify a person involved in the online company formation is to create the possibility of identification specifically for persons from other Member States.

The Finnish platform for online company formation also takes into account the possibility of having to identify nationals of other Member States for the purposes of online company formation. It is important to note, however, that this possibility is open to only a few (12 to be precise)<sup>13</sup> EU Member States.

The Finnish Patent and Registration Office generally accepts documents with electronic signatures, except for the Memorandum and Articles of Association, which must be submitted in the original.<sup>14</sup> In exceptional cases, scanning in .pdf

10 [https://www.ytj.fi/material/collections/1P9W9pBJe/M1ysSyjsU/limited\\_company\\_setup\\_package.pdf](https://www.ytj.fi/material/collections/1P9W9pBJe/M1ysSyjsU/limited_company_setup_package.pdf).not.

11 Act 129 of 02.02.1979.

12 Finnish BankID.

13 Italy, The Netherlands, Denmark, Germany, Estonia, Spain, Belgium, Luxembourg, Croatia, Czech Republic, Slovakia, and Portugal.

14 In Finnish or Swedish.

format is accepted, clearly indicating the system used for signing and the fact that the document has been signed. The so-called Y-forms (these cannot be signed electronically) relating to the incorporation of the company, together with the necessary attachments and proof of payment of the procedural fee must be sent to the Helsinki office of the Finnish Patent and Registration Office.<sup>15</sup>

In cases where the share capital or the subscription price of the shares is zero euros or where the company is satisfied with the articles of association drafted by a standard online platform or where all the share subscribers and board members are of legal age, are natural persons, and they and the managing director (if any) have a Finnish personal identity code and a personal netbank ID or e-ID or if the auditors and the persons authorized to represent the company (if any) have a Finnish personal identity code, it is not necessary to upload the documents after scanning the hard copies; posting them is sufficient.<sup>16</sup>

### **4.3. Identification during Change Registration**

If the details of the company in the register change, it is necessary to report the change to the Finnish Patent and Registration Office. Most of the changes can be made online, depending on the type of company, but in this case the Y-forms must be submitted on paper to the Helsinki office. The necessary changes and amendments should also be made using the YTJ service, so it should be assumed that the general identification rules for online company formation should also be applied when registering changes.

### **4.4. Machine Readability of Files**

The rules for online company formation in Finland are designed to ensure that people starting a company do not need to obtain pre-issued documents unless the company's articles of association and statutes already exist. The whole company formation process can therefore be carried out from 'scratch', using only the documents prepared during the formation process. The online platform provides the possibility to draw up a sufficient set of articles of association in addition to filling in the necessary forms. However, the instructions for using the online platform require the various forms to be filled on a computer. Taking these into account, it can be said that the online incorporation process produces machine-readable documents.

When setting up a company online, all related documents are prepared electronically. The Finnish Patent and Registration Office will send the certificate

15 [https://www.ytj.fi/material/collections/1P9W9pBJe/M1ysSyjsU/limited\\_company\\_setup\\_package.pdf](https://www.ytj.fi/material/collections/1P9W9pBJe/M1ysSyjsU/limited_company_setup_package.pdf).not.

16 [https://www.prh.fi/en/kaupparekisteri/yrityksen\\_perustaminen/osakeyhtio.html](https://www.prh.fi/en/kaupparekisteri/yrityksen_perustaminen/osakeyhtio.html).

of incorporation to the founder by post after the registration has been approved. Using the *Virre*<sup>17</sup> system, company certificates can be accessed for a certain fee, based on the company ID, and an apostille-certified English translation can be requested to be sent by post by the Digital and Population Data Service Agency.

The Business Register Act lays down provisions on the data to be recorded in the register and the publication of the register. The Act gives everyone the right to access data, abstracts, and certificates from the business register. Pursuant to Article 1a of Act No 1929 of 1979, all data recorded in the register are public, and everyone has the right of access to data, abstracts, and certificates from the business register. The only exceptions are the personal identification number of natural persons and the address of natural persons living abroad; these data are not public. Data on the last identification digits of the personal identification number of natural persons living abroad and their address may be published only if the publication complies with the requirements for official procedures laid down in Article 16(3) of the Act on the Openness of Government Activities. Otherwise, the country of residence is published instead of the address.

Article 26 of the Business Register Act provides that third parties acting in good faith may rely on the information entered and published in the register. The data is published electronically immediately after its registration.

#### 4.5. Formal Requirements

Electronic documents are treated as ‘original’ documents in digital administration, fully replacing paper documents. This is regulated by the Act on Electronic Identification and Electronic Trust Services (No 617 of 2009) and the Act on Electronic Services and Communications in the Public Sector. Under the Limited Liability Companies Act (No 624 of 2006), electronic signatures can be used to sign corporate documents such as minutes of shareholders’ or board meetings, articles of association, and share certificates.

When the eIDAS Regulation<sup>18</sup> was adopted in 2014, these requirements were standardized in all EU Member States, including Finland. The eIDAS regulation gives Qualified Electronic Signatures (QES) the same legal weight as handwritten signatures.

As the company is formed online and the legislation does not require mandatory legal representation of the founders during the formation process, the company itself will be responsible for ensuring the correct format of the company documents in other procedures during the company’s later existence.

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17 <https://virre.prh.fi/novus/home?execution=e1s1>.

18 Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC.

#### 4.6. Platforms and Concurrency

In Finland, online company formation may, as we have seen, be achieved via the website <https://www.ytj.fi>. After logging in and providing contact details, the person accessing the platform can fill in, upload, or download the necessary documents. The platform does not allow remote parties to perform the necessary tasks simultaneously in the online space (e.g. videoconferencing).

#### 4.7. Structured Filing System

The creation of a structured online repository is linked to the Business Information Act (No 244 of 2001). *Virre* (<https://virre.prh.fi/>), an information service operated by the Finnish Patent and Registration Office, provides assistance for the production of<sup>19</sup> company information and company abstracts. However, company information is also available on the <https://www.ytj.fi> portal, and open-system databases that can be processed by machine can be accessed from the Finnish Patent and Registration Office's website.<sup>20</sup>

### 5. Poland

Polish law enshrines the principle of freedom to conduct a business. This means that everyone is free to start, continue, and stop an economic activity on an equal basis.

Polish company law is governed by the Commercial Companies Code (*Kodeks spółek handlowych*) of 15 September 2000 (published in the Official Gazette No 94, item 1037 – hereinafter: 'Commercial Companies Code').<sup>21</sup> The Polish legislator has recently amended the Commercial Code by several acts in order to transpose EU Directive 1151/2019.<sup>22</sup> The Commercial Companies Code contains systemic provisions that regulate the establishment and organization of companies, their operation, dissolution, merger, division, and transformation.

19 The *Virre* Information Service provides easy access to official registration information on companies, businesses, foundations, and corporate mortgages. Basic details are free of charge. Other items are subject to a fee.

20 [https://avoindata.prh.fi/index\\_en.html](https://avoindata.prh.fi/index_en.html).

21 *Kodeks spółek handlowych* [Commercial Companies Code]. Ustawa 2000 szeptemr 15. Dz. U. 2000. 94(1037) [2022]. <http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20000941037/U/D20001037Lj.pdf> (Polish); [https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:72017L0828POL\\_278501&from=EN](https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:72017L0828POL_278501&from=EN) (English).

22 Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law.

Important elements of the legal regulation of commercial companies are also found in the Act of 20 August 1997 on the National Register of Companies (ANCR), which contains the rules for registration in the Commercial Court Register (the Companies Register) and the provisions governing the registration procedure.<sup>23</sup> The National Register of Companies established by the ANCR is a central register covering the whole State. It is composed of three separate registers: 1. the Commercial Register, 2. the Register of Associations, Other Social and Professional Organizations, Foundations and Public Health Institutions, and 3. the Register of Insolvency Debtors. The register and registration procedures are managed by the district courts (*sądy rejonowe*) in a computerized system. The data collected in the register are collated and provided by the Central Information Centre of the National Register of Company Courts (*Centralna Informacja Krajowego Rejestru Sądowego*).

In Poland, all entrepreneurs must be registered in the Register of Commercial Activities (*Ewidencja Działalności Gospodarczej*) or in the Register of Entrepreneurs of the National Register of Companies (*KRS*). The National Company Court Register is managed by the Polish Ministry of Justice. It provides information on companies, associations, and other legal entities.

According to the ANCR<sup>24</sup> (which was also amended recently to comply with EU Directive 1151/2019), entities subject to registration must provide information to the court of registration when an event or legal situation has occurred. Registration is in principle upon request, unless the law requires registration *ex officio*. The motion must be submitted on an official form or on a form made available on the ICT system of the National Company Court Registry (Article 19(1) and (2) of the ANCR). The law regulates the time limit, procedure, and effects of submitting a motion, as well as the consequences of failing to submit within the time limit. The National Register of Company Courts has above all an informative function and is therefore public (Article 8 ANCR).

The Commercial Code provides for the formation of limited liability companies,<sup>25</sup> joint-stock companies, various limited partnerships,<sup>26</sup> and general partnerships,<sup>27</sup> requiring a notarial deed for the articles of association / constitutive documents, and notarial cooperation is inevitable for the formation of such companies.

Since 2012, it has become possible for limited liability companies (abbreviated as *sp. z o.o.* in Polish) to use a certificate of incorporation provided to users by the National Register of Companies, which is signed by the founders either with a certified secure electronic signature or by an electronic signature attached to

23 <https://www.global-regulation.com/translation/poland/3354093/act-of-20-august-1997%252c-of-the-national-court-register.html>.

24 Original Polish: 'Ustawa z dnia 20 sierpnia 1997 r. o Krajowym Rejestrze Sądowym'.

25 Article 157 (2) of the Companies Code.

26 Article 106 of the Companies Code, Article 131 of the Companies Code.

27 Article 136 (2) of the Companies Code.



a trusted ePUAP profile. Where founders use this template, registration is done via the S24 website (<https://ekrs.ms.gov.pl/s24/>). In this case, it is therefore not necessary to have an instrument of incorporation authenticated by a notary. Furthermore, as of 1 July 2021, applications for registration of limited liability companies can only be submitted electronically. Paper applications are no longer processed by the National Register of Companies.

This does not exclude the possibility of drawing up the articles of association of a limited liability company in the form of a notarial deed, in which case the online registration procedure should be carried out through the website of the National Register of Companies (<https://prs.ms.gov.pl/>).

A draft law amending the Act on the National Register of Courts (ANCR) and certain other laws is available on the official website of the Polish government.<sup>28</sup> According to this description, most of the strategic objectives of the Directive have already been achieved, and those that are the subject of the amendment in question represent a continuation of the work started in the expected direction. They are all aimed at improving customer service and the principle of accessibility and openness to justice.

Entrepreneurs in Poland can register their company online via the *Biznes.gov.pl* website. This is a ‘one-stop shop’, meaning that all the formal procedures can be completed on a single website and the National Register of Company Court informs the Social Insurance Institution (*ZUS*) and the Tax Administration that the online applicant is starting a business.

## 5.1. Identification

An electronic signature or a trusted ePUAP (Trusted Platform for Public Administration Services) profile is required to create and submit an online company formation application. There are two ways to register a company in the National Register of Companies (KRS):

- through the portal created by the National Register of Company Courts (PRS) or
- via the S24 online system (which allows you to register a limited liability company in less than a day using an online-only procedure).

In both cases, to register a company, you must first create a user account on the PRS portal or S24. This requires an e-mail address and a password. In addition, the user account must be authorized with a qualified signature, a trusted signature, or a handwritten signature. Only one account can be authorized with one signature. The online registration process is facilitated by a step-by-step wizard in the system.

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28 <https://www.gov.pl/web/premier/projekt-ustawy-o-zmianie-ustawy-o-krajowym-rejestrze-sadowym-oraz-niektorych-innych-ustaw2>.

If the documents supporting the registration are drafted on paper, the application must be accompanied by:

- electronic copies authenticated by a notary or certified by a lawyer acting in the case *or*

- electronic copies of the documents (in this case, the original document, the certified copy, or the abstract certified by the authority must be sent to the National Register of Company Courts after the application has been lodged).<sup>29</sup>

The possibility of using ICT systems is explicitly indicated in Article 19(2b) of the above-mentioned Commercial Code, which states that motions submitted electronically must be accompanied by a secure electronic signature with a valid qualified certificate (with the exception of the company,<sup>30</sup> which is established in the S24 system and whose registration may be supplemented by another electronic signature, and which also requires the creation of a separate user in the S24 ICT system). Anyone with an account on the PRS portal or S24 can submit a registration request. This need not necessarily be a member or a legal representative of the company. When the registration application is completed, it must be signed by:

- all members of the executive board/directorate *or*
- the company's legal representative (lawyer or legal adviser), appointed by the managing director/directorate.

If the application is not made by a member of the executive board or by the company's legal representative, it must be signed by the person authorized to do so. This option is available on both portals. The application can only be made available to a person who has a user account in the system (PRS or S24).

According to the information on the Ministry of Justice website,<sup>31</sup> the 'Electronic Access to the Court Register / National Register of Companies / Court and Commercial Gazette (MSiG)' web module allows:

- the electronic submission of requests, annexes, and documents to the courts of registration or the National Register of Company Courts (KRS),
- receiving letters from the courts or from the National Register of Company Courts (KRS).

Terms and conditions of use of the online platform providing access to the National Register of Companies include:

- a secure electronic signature attested by a valid qualified certificate issued by a qualified certification service provider and registered with the National Certification Authority,

29 <https://koniecznywierzbiicki.pl/en/a-month-with-the-electronic-national-court-register/>.

30 In 2012, the Polish legislator amended the Commercial Code to allow limited liability companies to be incorporated online within 24 hours. This is S24.

31 <https://www.arch.ms.gov.pl/en/national-registers/national-court-register/electronic-access-to-the-national-court-register/>.

– documents submitted in electronic format as an electronically signed file in one of the following formats: .pdf (with printing option), .doc, .odt, .txt, or .rtf.

Pursuant to Article 19(2b) of the ANCR, applications to incorporate a company submitted electronically must be accompanied by a secure electronic signature attested by a valid qualified certificate or a signature linked to the profile of the Trusted Platform for Public Administration Services (ePUAP).

Directive (EU) 2015/849/EC of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose 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, was transposed into Polish national law, by the amendment of the Act on Combating Money Laundering and Terrorist Financing of 1 March 2019,<sup>32</sup> by which the Polish legislator created the Central Register of Beneficial Owners (*Centralny Rejestr Beneficjentów Rzeczywistych*).<sup>33</sup> After the entry into force of the relevant Act (i.e. after 13 October 2019), companies registered in the National Company Court Register must report the required data within 7 days of the registration in the National Company Court Register at the latest. The deadline for submitting updates to the Central Register of Beneficial Owners is 7 days from the date of the change. The records are kept in an IT system that is publicly accessible.

The identification operations mentioned above are an integral part of the company formation process: the Internet platform specifically created for online company formation (<https://ekrs.ms.gov.pl/s24/>, <https://login.gov.pl/login/login>) requires as a first step the identification of the persons involved in the company formation as described above, without which it is not possible to proceed and finalize the registration of the limited liability company.

If a legal representative (in most cases a lawyer) is acting on behalf of the person wishing to form the company, they will act in the capacity of the person involved in the company formation process. This means that during the identification process, they will be subject to the same rules as the company founder. The legal representative will therefore not carry out the identification of the company founders but will be subject to identification by the Registrar of the National Company Court Register as a participant in the company registration process. When registering in S24, the legal representative will need to use the authorization template available on this platform. If the application is made by a lawyer, the signature process is automatically extended to include additional declarations and documents signed by the lawyer himself.

32 *Ustawa z dnia 1 marca 2018 r. o przeciwdziałaniu praniu pieniędzy oraz finansowaniu terroryzmu*. <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20180000723>.

33 <https://crbr.podatki.gov.pl/adcrbr/#/>.

Polish law does not provide for mandatory legal representation for online (or conventional) company formation. In the system, any natural person may sign documents on behalf of another person (natural or legal). The basis for such representation (i.e. the power of attorney) and the identification information of the represented person (name, ID card number or number in the relevant register, etc.) need to be indicated. According to the regulations, a separate authorization can be granted in the Internet system for all the operations necessary for the registration in the National Register of Companies.

## 5.2. Electronic Identification Solutions

For authentication and identification at the time of incorporation, either an electronic signature consisting of a login name and a password or a secure electronic signature certified by a valid qualified certificate is acceptable.

On 1 January 2012, an amendment to the Commercial Code entered into force, allowing the incorporation of limited liability companies via the Internet within 24 hours (through the S24 system).<sup>34</sup> The relevant decree of the Minister of Justice sets out the specific rules and conditions for such registration.

First of all, it should be noted that – at least for the time being – the app is only available in Polish. As regards the content of the instrument of constitution introduced by the Regulation, some provisions are mandatory (e.g. the establishment of a company for an indefinite period), while for other provisions the user has several options such as the redemption of shares, the consent of the company to the sale or pledge of shares, the voting rights of the pledgee or beneficial owner, the payment of an advance on dividends, the creation of a supervisory board (if its creation is not compulsory), or the consent of shareholders to the disposal of rights or to the assumption of liabilities exceeding twice the share capital. Once the first proxy has signed the form, no changes to the content of the company's articles of association are possible.

All the data that would normally be provided on paper in a traditional way of registering a company (such as address, competent court, areas of activity) and annexes (e.g. list of shareholders, declaration of the board members on the cash contribution in full) must be entered in the system.

Therefore, from 1 June 2012, the procedure is possible through a profile authenticated in e-PUAP (the electronic platform for public administration services). If the form needs to be signed by more than one person, all of them must be indicated when the form is filled out. The form is considered signed when all authorized users have signed it. All signatures must be made in the same session in the system, which in practice means that all users must be present on the

34 *Ustawa z dnia 1 kwietnia 2011 r. o zmianie ustawy – Kodeks spółek handlowych oraz niektórych innych ustaw.* <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20110920531>.

same computer to sign the form. In the case where the application is signed on behalf of another person, the basis for such authorization must be presented as mentioned above. In all cases, it is necessary to create an account in the system in order to sign any documents and enter other data.

One of the persons signing the form must submit the application to the court. This is only possible after the court fee has been paid via the eCard system. After payment, the form is automatically forwarded to the court, where it is finally registered.

However, it should be noted that certain documents must also be submitted on paper to the court within 7 days of registration. This applies to the signature address stamp of each member of the executive/directorate board (certified by a notary) and the declarations of the executive/directorate board members on the total amount of the cash contribution, if not attached to the application at the time of registration of the company.

In conclusion, online business registration has been available in Poland since 2012.<sup>35</sup> According to the Polish Commercial Code, limited liability companies (*sp. z o.o.*) can be incorporated using a qualified electronic signature and an online template made available to users.<sup>36</sup>

Similar provisions apply to public limited companies (*spółka jawna*)<sup>37</sup> and limited partnerships (*spółka komandytowa*).<sup>38</sup> The electronic template used for online registration can be changed afterwards.

After opening the interface, the landing page will display two basic ways of identifying the person involved: first, the person involved in the company formation must choose between 1. the option of bank/(government) identification (e-ID) in e-PUAP and 2. identification by electronic signature.

The bank identification option is only available to customers of banks that participate in the MojeID initiative and thus offer their customers the possibility to use their electronic account data for electronic communication with the authorities (currently 10 banks in Poland offer this option to their customers). After selecting the bank identification, the person selects their bank and is redirected to the bank's online banking login page. By entering the online banking login details, the person identifies themselves for the purpose of setting up a company online. There is no separate image/video identification during the identification process.

The Polish platform for setting up a company online (<https://login.gov.pl>) also takes into account the possibility of having to identify nationals of other Member

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35 The Informal Company Law Expert Group 2016. 75.

36 Article 157-1 of the Companies Code.

37 Article 23-1 of the Companies Code.

38 Article 106-1 of the Companies Code.

States. It is important to note, however, that this possibility is only open to a few EU Member States (12 to be precise).<sup>39</sup>

Citizen identification is based on the Polish e-identification scheme, which is maintained by the *Serwis Rzeczypospolitej Polskiej*. Secure electronic signatures, certified by a qualified certificate, can also be used by foreign nationals who prepare and submit company registration documents, financial statements, and accompanying documents to the National Register of Companies in electronic format only.

However, the Accounting Act does not require persons to sign financial documents to have a PESEL number, which is an identification code issued for tax and reporting purposes.<sup>40</sup> In the case of companies where the board of directors is composed exclusively of foreigners who do not have a PESEL number, the filing of the financial statements with the National Company Court Register is subject to a fee (PLN 140). The free filing of financial statements is available to all entrepreneurs registered in the National Company Court Register, provided that the filing is made by the person authorized to represent the company whose PESEL number is registered in the National Company Court Register. The system should automatically indicate the persons who can sign the application. If there is no representative with a PESEL number in the register, the system will send a message that the free submission is not possible.

A person requesting an electronic signature who is not a Polish citizen may present the following documents: a passport or an identity card proving their identity. The identity card must be listed in the Public Register of Authentic Identity and Travel Documents published by the Council of the European Union. Foreign nationals may obtain a qualified electronic signature without a PESEL number. They can prove their identity by providing proof of identity at the workstations of the company distributing the electronic signature. Their identity can also be confirmed by a notary. If the identity document certified by a notary is not in Polish, English, German, or Russian, it must be accompanied by a certified translation by a certified translator.

As mentioned above, an electronic signature or a trusted ePUAP (Trusted Platform for Public Administration Services) profile is required to compile and submit an online company formation application.

The signature specimens of the persons authorized to represent the company and the declarations of the members of the management / directorate board on the total amount of the cash contribution must be included in a notarized

39 Italy, the Netherlands, Denmark, Germany, Estonia, Spain, Belgium, Luxembourg, Croatia, Czech Republic, Slovakia, and Portugal.

40 Elektroniczny System Ewidencji Ludności – its definition and the process for obtaining it are available at: <https://www.gov.pl/web/gov/uzyskaj-numer-pesel--usluga-dla-cudzoziemcow-en>.

document and cannot be submitted only electronically<sup>41</sup> (due to the nature of such documents). Therefore, in addition to electronic means of identification, these documents also require notarization and identification based on physical presence. One must attach the documents required for the incorporation of one's company in the form of electronic annexes both on the National Company Court Register Portal (PRS) and in the S24 system. In the PRS system, documents prepared before a notary do not need to be attached. For these documents, only the notarial deed number (identifier) must be entered in the Central Repository of Electronic Copies of Notarial Deeds (*CREWAN*).<sup>42</sup>

The notary will be obliged to inform the parties to the deed of the way and procedure for submitting the application and that the application must include the identifier of the electronic abstract of the notarial deed from the CREWAN system, if the notarial deed contains the data on which the entry in the KRS company register is based.

### 5.3. Identification during Change Registration

In the case of limited liability companies, it is possible to amend, via the S24 online system, the following: address, registered office, PKD codes,<sup>43</sup> the composition of the board of directors, the composition of the supervisory board, the establishment of a branch of the limited liability company, changes affecting the owners, changes affecting the capital, the winding up of the company, and amendments to certain clauses of the articles of association.

In addition, the company can also submit its financial statements through the S24 system. No change notifications can be submitted via the S24 portal for a company that is not registered in S24. Nor can an amendment application be submitted for a company that has already been amended by a notary. The above restrictions do not apply to financial statements.<sup>44</sup>

However, most of the amendments can be registered online through the PRS portal, but in this case too, the signature specimens of the persons authorized to represent the company and the declarations of the managing director / board members on the total amount of the cash contribution, which must be included in a notarized document, must be submitted on paper to the court within 7 days of the registration. It can therefore be concluded that the general identification

41 However, it is possible to submit notarial deeds in this electronic way if the notary has added a secure electronic signature certified by a valid qualified certificate (according to Article 6944 § 3 of the Polish Code of Civil Procedure).

42 *Ustawa z dnia 14 lutego 1991 r. Prawo o notariacie*. <https://sip.lex.pl/akty-prawne/dzuzdziennik-ustaw/prawo-o-notariacie-16794052/art-92-a>.

43 *Polska Klasyfikacja Działalności*. For a definition, see: <https://www.biznes.gov.pl/en/table-pkd-code>.

44 <https://ekrs.ms.gov.pl/s24/>.



rules for online incorporation should also be applied when registering a change of name.

#### 5.4. Machine Readability of Files

The user should attach the necessary documents in the form of electronic annexes to the registration both on the National Company Court Register Portal (PRS) and in the S24 system.

The following documents must accompany the application for registration:

- a declaration from each member of the Executive Board / Directorate confirming that all contributions have been paid in full by each member;
- a list of the founding members, indicating their names and surnames or company names, the number and nominal value of the shares held and, if the company has only one shareholder, the address for service;
- a list of the names, surnames, and addresses for service (or company name and registered office) of the members of the organs of the company and of the persons entitled to appoint the board of directors;
- the names, surnames, and addresses of the members of the board of directors or of the holders of the commercial proxy;
- the document appointing the members of the company's organs if this is not included in the instrument of incorporation / constitutive instrument;
- a declaration of consent to the appointment by the members of the executive/directorate board or the commercial agent;
- a power of attorney with proof of payment of the relevant fee if the application is submitted by an authorized representative.

In S24, the articles of association and the list of shareholders are automatically attached to the application. All other documents must be attached separately by the user.<sup>45</sup> The forms generated in the S24 system and the instrument of incorporation provided by the system for electronic signature have a machine-readable format.

The machine readability of documents authenticated by a notary stored in CREWAN is such that it is sufficient to indicate the number of the authenticated documents in the application for company registration (there is no need to attach an electronic copy of the documents). This allows the clerk of the National Register of Companies to identify the content of the notarial deed in CREWAN.<sup>46</sup>

Members / other participating persons receive their own copy of the company documents in electronic form. Copies, abstracts, certificates, information, documents, and copies of documents provided to applicants via ICT systems,

<sup>45</sup> <https://ekrs.ms.gov.pl/s24/>.

<sup>46</sup> *Ustawa z dnia 14 lutego 1991 r. Prawo o notariacie*. <https://sip.lex.pl/akty-prawne/dzuzdziennik-ustaw/prawo-o-notariacie-16794052>.



as well as the way in which documents and copies of documents issued are handled, are all online.<sup>47</sup>

It is important that the records kept in the IT system are accessible to all. Anyone has the right to obtain electronically certified copies, abstracts, certificates, and information from the register.<sup>48</sup>

Detailed company information can be accessed from the KRS online system as a .pdf file: the company's representative authorities and their composition, shareholders' details, the company's capital, the objects of its activities, information on possible bankruptcy proceedings, claims, changes in the National Company Court Register, or suspension. Importantly, detailed information from the KRS register is only available in the form of a company abstract for companies on the register (the report cannot be accessed for companies that have been deleted from the register).<sup>49</sup>

Basic information about the companies (address, type of activity, identification numbers, date of entry and exit) can be found on the following website: <https://aplikacja.ceidg.gov.pl/ceidg/ceidg.public.ui/search.aspx>. Abstracts of company documents can also be ordered in paper format, stamped in the original, from the National Company Court Registry, which takes 2–3 weeks to mail.<sup>50</sup>

For companies registered online in the National Company Court Register after 1 July 2021, the registration files are to be kept exclusively electronically and cannot be converted to paper.<sup>51</sup> For other companies, in general, in addition to the documents to be issued electronically, copies or certificates in the traditional version will continue to be available,<sup>52</sup> which, following the changes, will require an electronic application to the National Company Court Registry for the issuance of a paper document and a fee before they can be received or posted at the court premises.

## 5.5. Formal Requirements

The abstract from the register, which can be accessed online (<https://ems.ms.gov.pl/krs/wyszukiwaniepodmiotu>), has the same legal force as documents issued by the Central Information Office, provided that they have the characteristics that allow the data contained in the register to be verified. The authenticity of the

47 <https://www.rsmmpoland.pl/en/blog/doing-business-poland-insights/convenient-and-fast-e-krs-new-dimension-registration-process>.

48 Article 8(3) of the ANCR Act.

49 <https://www.biznes.gov.pl/en/firma/doing-business-in-poland/cooperation-with-contractors-and-consumers/how-to-find-information-about-an-entrepreneur/how-to-find-information-about-an-entrepreneur-how-to-check-a-contractor>.

50 <https://www.systemday.com/poland-company-documents/>.

51 <https://codozasady.pl/en/p/no-more-paper-applications-to-the-national-court-register>.

52 ANCR Law Article 4(3).

data entered in the register must be presumed (if the data entered in the register is contrary to the data contained in the application for registration, the entity may not invoke the incorrectness of the data against a third party acting in good faith if the entity has not submitted a request for rectification, completion, or deletion of the data without delay).<sup>53</sup>

Company documents issued in electronic format are therefore considered official documents containing up-to-date information about a company registered in Poland.

## **5.6. Platforms and Concurrency**

For the electronic template of the limited liability company contract signed in the S24 mode, the deadline for payment in the system and sending the documents to the court is 7 days. After this deadline, a new contract must be signed.

An application for registration in the National Register of Companies is processed by the court of registration within 7 days of its receipt by the court via the PRS. An application for the registration of a limited liability company whose articles of association have been drawn up using the model document available in the S24 system will be dealt with by the court within 1 day of its receipt in the National Register of Companies so that the online incorporation tasks are not carried out simultaneously through either registration system.

If the company registration application is not prepared by a member of the board of directors or a legal representative of the company, the application must be made available for signature by an authorized person – this can be done by going to the online registration portals.

This option is available in both portals (PRS or S24). The request can be made available only to a person who has a user account in the system (PRS or S24).

As regards company incorporation documents that need to be signed by more than one person, all signatures on the S24 online registration platform must be made in the same session in the system, which in practice means that all users must be present on the same computer when signing the form.<sup>54</sup> In the case where the registration application is signed on behalf of another person, the basis for such authorization must be presented as mentioned above.

Documents prepared in PRS must be sent in electronic format to the persons who are to sign the document (if the document is ready to be sent, saved on disk in formats such as .txt, .rtf, .pdf, .xps, .odt, .doc, .xls, .ppt, .docx, .csv, or .jpg). When they are received, the responsible person can sign them with a trusted profile or qualified signature (if available) using the Trusted Signature Document

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53 <https://polish-lawyer.eu/polish-company-register/>.

54 <https://www.ecovis.com/global/poland-s24-registration/>.

Signer service.<sup>55</sup> It is then possible to check who signed the document and when, and to view the content of the added document.

### 5.7. Structured Filing System

In Poland, there are currently three systems where interested parties can obtain information about a company, depending on the type of company that is incorporated and the way it is operating.

As detailed above, the search system for limited liability companies is governed by the ANCR Act on the National Register of Company Courts.<sup>56</sup> Within the framework of the system, all Polish citizens and citizens of other Member States have the possibility to search and collect information on existing registered companies. The system offers several options to search by company name, registered office, NIP, KRS, or REGON number. The search system is available at <https://ekrs.ms.gov.pl/web/wyszukiwarka-krs/strona-glowna/>.<sup>57</sup>

If the search is successful, the first step is to obtain basic information about the company such as its address, date of incorporation, form of operation, identification numbers, and history. Clicking on another button on the interface will also provide a much more detailed document about the company, which will be automatically accessed to the searcher's computer and can be viewed as a .pdf file. This more detailed information includes the company's representatives, shareholder details, the company's capital, the objects of its activities, and other information for companies involved in bankruptcy proceedings.<sup>58</sup>

## Conclusions

This article has explored the diverse approaches adopted by some EU Member States in transposing Directive 2019/1151 (EU), which introduces online company formation procedures for limited liability companies and branches established by EU companies. By focusing on key areas such as identification in general, electronic identification solutions, identification during change registration, machine readability of files, formal requirements, platforms and concurrency, and the establishment of a structured filing system, we have gained valuable

55 <https://moj.gov.pl/uslugi/signer/upload?xFormsAppName=SIGNER>.

56 <https://www.global-regulation.com/translation/poland/3354093/act-of-20-august-1997%252c-of-the-national-court-register.html>.

57 Accessed: 2022.04.23.

58 *How to Find Information about an Entrepreneur?* Available at: <https://www.biznes.gov.pl/en/firma/doing-business-in-poland/cooperation-with-contractors-and-consumers/how-to-find-information-about-an-entrepreneur>.

insights into the strategies implemented by Member States to align with the directive's provisions.

In the light of the transposition requirements, we can see that some of the Central, Northern, and Eastern European Member States are very well on their way to conforming to the expectations raised by the Directive, while other Member States should undertake more advancements in this process.

Regarding identification, Member States have taken various measures to ensure the accurate identification of members, officers, and other officials involved in the online incorporation process. These measures aim to fulfil obligations related to preventing money laundering and combating terrorist financing, either by incorporating identification tasks into the company formation process or by addressing them separately. The involvement of legal representatives, if applicable, and the roles of registration authorities or courts in conducting identification tasks have also been examined.

Electronic identification solutions have played a pivotal role in facilitating online company formation. Member States have employed a range of electronic means and recognized identification systems to streamline the identification process. Specific aspects, such as the use of image or video identification methods, have been explored. Additionally, challenges related to identifying individuals from other Member States and the process of electronically signing documents have been addressed.

During change registration, maintaining the efficiency and integrity of the identification processes has been a key consideration. Member States have devised facilitation rules to ensure smooth identification procedures during this stage, while maintaining compliance with the directive.

To meet the requirements of machine readability, Member States have implemented provisions to ensure that documents submitted during the incorporation, registration, or change of a company are in a format that can be processed by machines. Any discrepancies between the format in which the parties involved receive their copies of company documents and the format in which they are submitted to the Registry have been examined. Moreover, the procedures for creating paper copies of electronic company documents and the entities responsible for such actions have been considered.

Formal requirements, including the acceptance of electronic, machine-readable documents as the 'original' form, have been analysed in conjunction with the rules on machine readability. The responsibility for ensuring the appropriate format of documents lies with the companies or legal representatives acting as intermediaries, and Member States may provide free services to support this requirement.

The possibility of establishing platforms or services to facilitate simultaneous and real-time tasks related to online incorporation has been explored. These

platforms would enable absent parties to participate through videoconferencing or other means, ensuring efficient completion of tasks such as identification, document drafting, electronic signatures, and data storage. The availability of a unified interface for accessing these tasks has also been considered.

Lastly, the establishment of a structured filing system has been recognized as crucial for ensuring the searchability and exchange of data with other systems. Member States have implemented strategies to organize filing systems effectively, promoting efficient data retrieval and sharing.

By examining these various aspects, this article has shed light on the Eastern and Central European Member States' efforts to transpose Directive 2019/1151 (EU) into their legal frameworks. The insights gained from this study contribute to a comprehensive understanding of the challenges and solutions surrounding online company formation procedures in the region. It is hoped that this knowledge will assist policymakers, legal practitioners, and stakeholders in further enhancing and refining their practices, ultimately fostering a more streamlined and efficient environment for company formation in Eastern and Central Europe.

## References

- How to Find Information about an Entrepreneur?* <https://www.biznes.gov.pl/en/firma/doing-business-in-poland/cooperation-with-contractors-and-consumers/how-to-find-information-about-an-entrepreneur> (accessed: 22.04.2022).
- THE INFORMAL COMPANY LAW EXPERT GROUP (ICLEG) (2016). *Report on Digitalisation in Company Law*. [https://commission.europa.eu/system/files/2020-03/icleg-report-on-digitalisation-24-march-2016\\_en\\_1.pdf](https://commission.europa.eu/system/files/2020-03/icleg-report-on-digitalisation-24-march-2016_en_1.pdf) (accessed: 22.04.2022).
- \*\*\* <http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20000941037/U/D20001037Lj.pdf-inPolish>; [https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:72017L0828POL\\_278501&from=EN](https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:72017L0828POL_278501&from=EN) (accessed: 24.04.2022).
- \*\*\* <https://www.ytj.fi> (accessed: 25.04.2022).
- \*\*\* <https://codozasady.pl/en/p/no-more-paper-applications-to-the-national-court-register> (accessed: 23.04.2022).
- \*\*\* <https://cbrb.podatki.gov.pl/adcrbr/#/> (accessed: 27.04.2022).
- \*\*\* <https://ekrs.ms.gov.pl/s24/> (accessed: 26.04.2022).
- \*\*\* <https://ekrs.ms.gov.pl/s24/> (accessed: 26.04.2022).
- \*\*\* <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20110920531> (accessed: 22.04.2022).
- \*\*\* <https://koniecznywierzbiicki.pl/en/a-month-with-the-electronic-national-court-register/> (accessed: 22.04.2022).

- \*\*\* <https://moj.gov.pl/uslugi/signer/upload?xFormsAppName=SIGNER> (accessed: 23.04.2022).
- \*\*\* <https://polish-lawyer.eu/polish-company-register/> (accessed: 23.04.2022).
- \*\*\* <https://sip.lex.pl/akty-prawne/dzu-dziennik-ustaw/prawo-o-notariacie-16794052/art-92-a> (accessed: 24.04.2022).
- \*\*\* <https://sip.lex.pl/akty-prawne/dzu-dziennik-ustaw/prawo-o-notariacie-16794052> (accessed: 27.04.2022).
- \*\*\* <https://www.arch.ms.gov.pl/en/national-registers/national-court-register/electronic-access-to-the-national-court-register/> (accessed: 2022.04.27).
- \*\*\* <https://www.biznes.gov.pl/en/firma/doing-business-in-poland/cooperation-with-contractors-and-consumers/how-to-find-information-about-an-entrepreneur/how-to-find-information-about-an-entrepreneur-how-to-check-a-contractor> (accessed: 27.04.2022).
- \*\*\* <https://www.biznes.gov.pl/en/table-pkd-code> (accessed: 30.04.2022).
- \*\*\* <https://www.ecovis.com/global/poland-s24-registration/> (accessed: 24.04.2022).
- \*\*\* <https://www.global-regulation.com/translation/poland/3354093/act-of-20-august-1997%252c-of-the-national-court-register.html> (accessed: 2022.04.20).
- \*\*\* <https://www.global-regulation.com/translation/poland/3354093/act-of-20-august-1997%252c-of-the-national-court-register.html> (accessed: 23.04.2022).
- \*\*\* <https://www.gov.pl/web/gov/uzyskaj-numer-pesel--usluga-dla-cudzoziemcow-en> (accessed: 29.04.2022).
- \*\*\* <https://www.gov.pl/web/premier/projekt-ustawy-o-zmianie-ustawy-o-krajowym-rejestrze-sadowym-oraz-niektorych-innych-ustaw2> (accessed: 23.04.2022).
- \*\*\* <https://www.rsmppoland.pl/en/blog/doing-business-poland-insights/convenient-and-fast-e-krs-new-dimension-registration-process> (accessed: 29.04.2022).
- \*\*\* <https://www.systemday.com/poland-company-documents/> (accessed: 23.04.2022).
- \*\*\* [https://www.prh.fi/en/kaupparekisteri/yrityksen\\_perustaminen/perusilmoituksen\\_tekeminen.html](https://www.prh.fi/en/kaupparekisteri/yrityksen_perustaminen/perusilmoituksen_tekeminen.html) (accessed: 23.04.2022).
- \*\*\* [https://www.ytj.fi/material/collections/1P9W9pBJe/M1ysSyjsU/limited\\_company\\_setup\\_package.pdf.not](https://www.ytj.fi/material/collections/1P9W9pBJe/M1ysSyjsU/limited_company_setup_package.pdf.not) (accessed: 23.04.2022).
- \*\*\* [https://www.prh.fi/en/kaupparekisteri/yrityksen\\_perustaminen/osakeyhtio.html](https://www.prh.fi/en/kaupparekisteri/yrityksen_perustaminen/osakeyhtio.html) (accessed: 23.04.2022).
- \*\*\* <https://virre.prh.fi/novus/home?execution=e1s1> (accessed: 23.04.2022).
- \*\*\* [https://avoindata.prh.fi/index\\_en.html](https://avoindata.prh.fi/index_en.html) (accessed: 23.04.2022).