



Online formation of companies: European experiences from Portugal to E-stonia

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What do you need...

...to establish a company online?

- Legal framework
 - Technological framework
 - Reasonable certainty on who's who
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Legal framework

Up to each domestic lawmaker to decide “how”

- Daily Mail EUCJ decision and *seqq.*

At European level: art. 10 Codified Directive

“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.”

- But it's up to each MS to decide *how* it is *due*
 - Further consequence: notary needed? It depends!
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Technological framework

Again, at domestic level

- Spontaneous
 - Or even solicited by foreign experiences
- Required by the Law
 - In particular EU Law, with Directive 2019/1151
 - Implementation by August 2021

To be checked:

- Identity
 - Capacity
 - Legality
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Who's who?

One of the key issues for the topic

Need to have the certainty on the identity of the shareholder(s) (and of the directors as well), *in particular when it comes to foreign citizens that want to be members of a new company*

Need to have such a system harmonised at a European level

The answer? eIDAS

- that is, for instance, the Italian SPID
 - (but this is just one of the possible answers: in any case the most harmonised one)
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eIDAS

Regulation (EU) 910/2014, in particular Art. 6 on mutual recognition

1. When an **electronic identification** using an **electronic identification means** and authentication is **required under national law** or by administrative practice to **access a service provided by a public sector body online** in one Member State, **the electronic identification means issued in another Member State shall be recognised in the first Member State** for the purposes of cross-border authentication for that service online, **provided that** the following conditions are met:

(a) **the electronic identification means is issued under an electronic identification scheme that is included in the list published by the Commission pursuant to Article 9;**



eIDAS

(b) the assurance level of the electronic identification means corresponds to an assurance level equal to or higher than the assurance level required by the relevant public sector body to access that service online in the first Member State, provided that the assurance level of that electronic identification means corresponds to the assurance level substantial or high;

(c) the relevant public sector body uses the assurance level substantial or high in relation to accessing that service online.

Such recognition shall take place no later than 12 months after the Commission publishes the list referred to in point (a) of the first subparagraph.

2. An electronic identification means which is issued under an electronic identification scheme included in the list published by the Commission pursuant to Article 9 and which corresponds to the assurance level low may be recognised by public sector bodies for the purposes of cross-border authentication for the service provided online by those bodies.



eIDAS electronic identification

General principles, levels and requirements established at European level

- Minimum technical specifications issued by the European Commission by means of implementing acts

Service providers authorised at domestic levels in order to issue the identification means

- They can have different levels of confidence (Art. 8)
 - Low
 - Substantial
 - High
 - Mirrored by the SPID levels in Italy
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eIDAS and its brothers

eIDAS is just a form...

...but insofar the same level of confidence can be achieved by a different (national) scheme of identification, not included in eIDAS, it is anyway acceptable, for the purpose of art. 13b.1-.2 Directive (EU) 2017/1132

1. Member States shall ensure that the following electronic identification means can be used by applicants who are Union citizens in the online procedures referred to in this Chapter:

(a) an electronic identification means issued under an electronic identification scheme approved by their own Member State;

(b) an electronic identification means issued in another Member State and recognised for the purpose of cross-border authentication in accordance with Article 6 of Regulation (EU) No 910/2014.

2. Member States may refuse to recognise electronic identification means where the assurance levels of those electronic identification means do not comply with the conditions set out in Article 6(1) of Regulation (EU) No 910/2014.



This is the content of the CodDir

But where does it come from?

The idea of forming companies online does not come out of the blue

- At national level
 - And also at European level
 - SUP draft directive (2014), withdrawn (2018)
 - Theoretically, limited to single member companies...
 - ...but actually a Trojan horse to introduce what has been eventually achieved by the Directive (EU) 2019/1151
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Some national experiences

- The most well-known: E-stonia
- Denmark
- Finland
- France
- Portugal
- [Spain]
- [Poland, Lithuania...]

In general: this is rather spread all over Europe



E-stonia

Already in 2012 98.3% Ltd established online

As of 2016: 99.9% (but there is always the “traditional” alternative)

Online procedure with or without notaries

But even if the application is made without notary, a certification by a notary is to be submitted eventually, in any case

Available for most business forms (not for corporations)

Two procedures: 1 day (expedited); or 5 days (normal)



E-stonia

Identification:

Joint system with Belgium, Latvia, Lithuania and Finland
Or in any case Estonian Digital Identity

Signature by the members: double PIN

Cooperation with Finland for avoiding people not enabled to establish a company

In any case: standard articles of association, that are modifiable

Minimum capital not to be paid immediately

<https://www.rik.ee/en>



Denmark

Since 2016, all the most relevant corporate operation are possible online only; 95% of registrations are online

Members' identification: ID system authorised by the State, and notification to the person mentioned in the registration

People in charge of companies are notified as well (sms) when any amendment in the registration takes place

In case of violations: warning & penalty system

NemID system is available to Danes only



Denmark

The procedure:

Founders choose the company form, with some help to understand critical words

Possible problems are handled by algorithms:

- Latency time
- Captcha
- Signature rights
- Company and members' names

No need to use templates: documents to be uploaded

Payment of capital to be made online, directly to the bank on the account of the company under formation, and the bank is pinged once that registration occurs

<https://virk.dk/>



Finland

Online service available just for people having a Finnish personal identity code, and personal internet banking code

Handling fees and other administrative costs to be paid online

Some information in English, but the operation is to be carried out in Finnish <(or Swedish)

Online registration is possible only if:

Templates are used

Shares are paid in the company's bank account

All the subscribers are adult



Finland

Identification of members, directors and auditors

By means of a Finnish eIDAS of level strong
Service offered by Finnish banks too

Identification of the business-to-be by means of a Business ID, that enables the company to open a bank account

Shares are to be paid on such bank account

Every communication to be made online

Once that all the notifications have been made, and the capital has been paid, the request of registration is closed

The registration takes place in 1-3 days

In the meanwhile, however, the company is entitled to operate since the moment it has a Business ID

<https://www.ytj.fi/en/index/notifications/tipsforonlinefiling.html>



France

Online incorporation since 2007

Company's registration on multiple websites

Notarial intervention is required in very few cases

Online payment of fees possible in just one website (since 2010: Guichet unique de creation d'entreprise)

Once completed, the extract of the registration (to be used for obtaining the registration to other different services - tax, labour, and so on) is issued within two days



France

In the Guichet unique system, the system identifies the competent Centre de Formation d'Entreprise, making the paperwork

This means that the website is just an intermediary

There are other alternatives (the relevant CFE, directly, but for a fee; or the Registre du Commerce et des Sociétés, that does not take care of all the formalities, but just the registration)

Identification system does not seem to be very developed

<https://www.guichet-entreprises.fr/en/index.html>

<https://www.infogreffe.com/acces-formalite/immatriculation.html>



Portugal

Since 2006

Empresa-online

Normally no notarial intervention needed

Identification via e-identification (*Cartão do cidadão* or *Chave móvel digital*)

No need of templates

Any company form is available

Not necessarily the procedure is to be completed within one day (on the contrary, it must work this way for another Portuguese system, the *empresa na hora*)

<https://eportugal.gov.pt/en/espaco-empresa/empresa-online>



Spain

Relevant because of notarial intervention

Online formation since 2003 SLNE; extended in 2010

System changed in 2013

Not a completely online system: always in person before the notary

Two main websites:

Circe: <https://paeelectronico.circe.es/>

Pae electrónico: <https://paeelectronico.es/es-es/Paginas/PagInicio.aspx>



Spain

In these websites there is

- The possibility to choose a new name for the company

- The DUE (Single electronic document) to be filled in

 - The DUE is transmitted to more administrations for non-company law purposes

Once the DUE is filled-in, you can book a (physical) meeting with a notary in the next following 12 working hours (electronic notarial agenda)

Before the notary, the parties complete the deed of incorporation; the notary sends it electronically to the CIRCE network

Templates are possible, but not needed

- With template: incorporation within 6 hours from the transmission by the notary

- Without templates: provisional registration within 6 hours; final registration within 15 days



Just to sum up

The Spanish case is perhaps the most interesting: online, with notary

As a perspective, it should be enough to move the notary online

In general, the system after Directive (EU) 2019/1151 should be somehow a Frankenstein monster made up with elements coming from different abovementioned experiences

In Italy, we do not know how it will work



Thank you for your attention!

Questions?

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