



# Online formation of companies: European practices

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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

- Initially, spontaneous
- Now, required by the Law
  - In particular EU Law, with Directive 2019/1151
  - Implementation by August 2021 (with delays)

To be checked (by whom?)

- 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** – mutual recognition of electronic identification means

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# The problems of checks

Who checks what?

Notaries, but not only, and not everywhere.

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."

Ok, but:

- What's a due legal form?
    - Escritura pública (ES); documento autêntico (PT); atto pubblico (IT): with no definition under ECL
  - What level of control?
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# So these checks must be online

General principle: **it should be possible to establish a company entirely online everywhere in the EU, with no need of a physical presence in the place where you want to establish the company**

At least **private companies**

**Online payments** of capital and fees

- But exceptions possible for in-kind contributions

**“Quick” registration** (within 5 days, if founders use templates...)

- Otherwise, 10 days

**Principle of freedom of establishment as law in action**

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# 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

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# 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)

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# 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>

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# 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

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# 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/>

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# 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

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# 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>

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# 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

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# 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>

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# 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>

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# 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>

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# 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

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# Just to sum up

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

As a perspective, it is **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? Mr Della Pietra, the floor is yours!

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