Revision of Directive 2019/1151/EU on digital tools and processes in company law

This briefing is one in a series of ‘implementation appraisals’, produced by the European Parliamentary Research Service (EPRS), on the operation of existing EU legislation in practice. Each briefing focuses on a specific EU law which is likely to be amended or reviewed as part of the European Commission’s annual work programme. ‘Implementation appraisals’ aim to provide a succinct overview of publicly available material on the implementation, application and effectiveness to date of an EU law, drawing on input from EU institutions and bodies, as well as external organisations. They are provided by the EPRS Ex-Post Evaluation Unit to assist parliamentary committees in their consideration of new Commission proposals, once tabled.

SUMMARY

Directive 2019/1151/EU on the use of digital tools and processes in company law was the first step towards digitalisation in the area of company law. The directive amended EU company law provisions to enable online formation, registration of branches and filing of documents for limited liability companies. Its purpose was to facilitate such processes and make them cost-effective for businesses, including for cross-border activities.

The digitalisation of company law is one aspect of EU digital policy development, whose implementation relies on other technological and legal developments. The revision of Directive 2019/1151/EU was announced in the 2023 Commission work programme to further expand and upgrade its scope and adapt it to recent technical, economic and social changes. This appraisal looks at the practical implementation of the directive in light of the expected Commission proposal for its revision, pointing out key related technological and legal issues.

Background

Company law comprises the legislation that regulates all the procedures related to the creation, registration, operation, governance and dissolution of companies. EU company law was developed to support the development of a European single market based on a set of common rules applicable to European companies. The 2017 Company Law Directive provided for the initial legal framework and harmonisation of rules across borders.

Following the changes stemming from economic globalisation and digitalisation, the use of digital tools and processes became part of the lifecycle of companies, including for complying with company law requirements. In this context, the European Commission started to consider making digital tools and processes part of the legal framework. In 2015, with the upgrading of the single market, and in 2016, with the start-up and scale-up initiative, the Commission announced its intention to present initiatives to remove barriers and facilitate e-procedures, including the formation and registration of companies. It adopted the EU eGovernment action plan 2016-2020, which included 25 actions that were set to mark a step forward in the Commission's digital policy-making and support its efforts towards a more open, efficient and user-centric digital public administration. For businesses, it acknowledged the importance of improving the use of digital tools when complying with company law-related requirements.
There were two main groups of problems:

- national rules and practices varied greatly, affecting the freedom of establishment enshrined in Article 49 of the Treaty on the Functioning of the European Union (TFEU), and opportunities to carry out and develop business across borders were missed. Divergent, incompatible or non-existent, these rules resulted in inconsistencies in the EU single market and in unnecessary costs and burdens for businesses. Some of the divergences directly concerned the possible (lack of) online registration of business, arrangements for filing documents by electronic means, rules regarding the publication online of such information and the various fees applied to available online information requests by third parties;

- these divergences were exacerbated by loopholes in EU digital rules: limited liability companies were not addressed in some cases, although they constituted the majority of EU businesses.5

A company law initiative 'to facilitate the use of digital technologies throughout a company's lifecycle and cross-border mergers and divisions' was announced in the 2017 Commission work programme. The 2018 impact assessment accompanying the proposal for the directive on the use of digital tools and processes in company law noted that 'the use of digital tools and processes, in particular in order to initiate economic activity by setting up a company or continuing it in another Member State easily, rapidly and cost-effectively, is one of the prerequisites for a competitive market and for competitive companies. However the current EU law provides only for very limited use of such tools and in particular there are no provisions on the online registration of companies'. On 20 June 2019, the directive on the use of digital tools and processes (the Digitalisation Directive) was adopted. It was the first part of the 'company law package', subsequently complemented with the adoption of the Mobility Directive.6

There was no subsequent eGovernment action plan; instead, the Commission adopted the 2030 Digital Compass, whereby it announced its digital ambitions for 2030 and its path towards the sustained digital transformation of the EU. The proposal to revise the Digitalisation Directive is one of several actions that underpin this process. The new initiative on 'upgrading digital company law' aims to further adapt EU company law to digital developments. It represents the second step in the digitalisation of company law and will build on and complement the 2019 Digitalisation Directive.

**Legal Framework**

The Digitalisation Directive is based on Articles 50(1) and 50(2) TFEU and entered into force on 31 July 2019. The directive marked the first step towards digitalisation in EU company law by amending the 2017 Company Law Directive with regard to the use of digital tools and processes in company law; it introduced rules to enable the use of online processes in the formation of companies, the registration of branches and the filing of documents and information (revised Article 1).7 Those rules, laid down in Article 13 of the Digitalisation Directive,8 were previously limited to certain types of companies; they are now applicable to all limited liability companies (or equivalent) as listed in all official languages of the EU in the new Annex II.

Certain new provisions of a general nature,9 introduced by the Digitalisation Directive, build on existing EU rules in the area of digitalisation, in particular the 2014 eIDAS Regulation (eIDAS stands for electronic identification, authentication and trust services). The eIDAS Regulation was adopted to enhance trust in electronic transactions in the internal market and to increase the effectiveness of public and private online services. To this effect, the eIDAS Regulation provides for a common technical and regulatory foundation for electronic transactions; it strengthens the provisions for interoperability and mutual recognition of electronic identification schemes across borders, enhances existing rules for electronic signatures and provides a legal framework for other types of trust services (electronic seals, electronic delivery services, electronic documents, electronic time stamps and website authentication services).10 The idea is that any person, business or public body in any Member State should be able to carry out electronic transactions with any other person,
business or public body in the internal market in a secure manner and without running into any obstacles. To ensure trustworthy online processes in company law, the new Articles 13(a) and 13(b) explicitly bind the use of digital tools and processes to the regulation’s definitions and provisions.¹¹

The **scope** of the Digitalisation Directive is circumscribed to procedural aspects; it does not prejudge national law requirements.¹² What the directive requires is the possibility to fulfil whatever national laws require through online processes (Article 13(c)). Obligations to facilitate such processes must be fulfilled in line with **basic principles** stipulated respectively by Articles 13(d), 13(e) and 13(f) of the Digitalisation Directive: firstly, the amount of fees for online procedures charged by the registers must not exceed the recovery of the costs of providing such services;¹³ secondly, payment should be possible through widely available online payments that can be used across borders; and thirdly, Member States should ensure that concise and user-friendly information is available on registration portals or websites to assist in the formation and registration of companies. Article 13(f) requires that such information be made available on websites that are accessible through the **Digital Single Gateway** set up by Regulation 2018/1724.¹⁴

The Digitalisation Directive sets the rules for online formation, online filing and disclosure. The requirement that ‘the online formation of companies may be carried out **fully online** without the necessity for the applicants to appear in person before any authority or person or body mandated under national law’ is laid down in Article 13(g). Exceptions are envisaged where justified by the public interest in preventing identity misuse or alteration and only on a case-by-case basis, as envisaged in Article 13(b)(4).

The online formation of companies must be an easy process, based on **detailed rules**. Applicants must fulfil certain requirements regarding the use of templates (Article 13(h)), the use of certain documents and the need to provide certain information for the formation of online companies. Article 13(g)(3) lists a minimum set of rules that must be fulfilled by the applicants: there must be procedures to ensure the legal capacity of the applicant, procedures regarding the means used to verify their identity, requirements regarding the means to use under eIDAS, procedures to verify the legality of the object of the company and/or its name if requested under national law, and procedures to verify the appointment of directors. Member States may then impose additional requirements. This freedom of choice is a mechanism to take into consideration legal traditions such as the role of notaries or any other person or body mandated under national law to deal with any aspect of company law (Article 13(g)(4)(c)).

The online formation of companies cannot be conditional on obtaining authorisation before the company is registered (Article 13(g)(5)). The measures regarding payments (Article 13(g)(6)) and timeframes (Article 13(g)(7)) aim to facilitate and speed up procedures.

The online formation of companies aims to facilitate cross-border activities and prevent fraud or abuses. In that regard, rules applicable in case of **disqualified directors** aim to ensure a smooth use and exchange of information pertaining to the disqualification of directors or any relevant information that stems from another Member State; such an exchange may enable, for instance, a Member State, if applicable under its law, to refuse the appointment of a person currently disqualified in another Member State.¹⁵ However, this is not an obligation, so Member States are not obliged to request such information on a systematic basis.

The amendments further address **compulsory disclosure** by companies of some documents as envisaged by Article 14 of the Company Law Directive. The new Article 16 details how such disclosure must be implemented through a central, commercial or business register, using digital tools, including the **Business Register Interconnection System (BRIS)**,¹⁶ while maintaining the possible use of a national gazette.¹⁷ Article 16 further includes rules for opposability of information and documents to third parties; rules for ensuring access to that information and documents under certain conditions are specified under Article 16(a). An application for accessing information and transfer of copies can usually be done by electronic means. The new Article 19 enshrines the principle of minimum fees¹⁸ and enlarges the list of information and documents that should at least be available free of charge through national registers and when exchanged through BRIS. Following
the amendment of Article 22, which establishes BRIS, the Commission is entitled to establish access points to BRIS, whereas previously this option was only available to Member States (Article 22(4)).

In the new Section 2, the amendments by the Digitalisation Directive concern registration and disclosure rules applicable to branches of companies from other Member States. Similar principles apply as for the creation of companies: registration of branches may be done fully online, in accordance with similar detailed rules; a few basic requirements concern the legal capacity, the identity and the use of eIDAS services, while Member States may add a few optional requirements. Verification of information may be done through BRIS, and timelines must be fast. The filing of documents and information whose disclosure is mandatory should be possible online; likewise, in case of closure of a branch or other changes, information should be exchanged online between the register of the Member State where the company is located and the register of the Member State where the branch is located.

Member States were required to transpose the amendments contained in the Digitalisation Directive into their national legislation by 1 August 2021 (or, in case of particular difficulties, 1 August 2022). Not all Member States have done so to date, and the Commission is therefore sending letters of formal notice to 10 Member States that failed to notify their transposition of the directive after the expiry of the deadline.

**European Commission**

**Inception impact assessment**

The Commission had to carry out an **evaluation** of the provisions introduced by the Digitalisation Directive no later than 1 August 2024 (Article 3). Member States were required to provide the necessary information, namely data on the number of online registrations and related costs.\(^\text{19}\) Article 3(2) requires the Commission to evaluate, inter alia, the need for and feasibility of additional rules that concern limited liability companies, on the one hand, and other types of companies, on the other hand,\(^\text{20}\) and ensure unencumbered access to such information. The evaluation is expected also to address the need for and feasibility of further application of the ‘once-only principle’ (OOP).\(^\text{21}\) Specific provisions are subject to evaluation as well, particularly practical experience in applying the rules on disqualification of directors and the methods of online filing and online access, including the use of application programming interfaces.

There is no indication of such an evaluation in the **inception impact assessment** (IIA) published on 20 July 2021. The IIA acknowledges instead that research and data gathering is ongoing and that an impact assessment is being prepared to support the preparation of this initiative and to inform the Commission’s decision. In addition, the IIA points to the work of the **Informal Expert Group on Company Law and Corporate Governance**\(^\text{22}\) that will feed into the initiative. Other data to be used comprise quantitative data available through BRIS and data gathered in the context of other initiatives that may be relevant for the digitalisation of company law, such as the **communication on identifying and addressing barriers to the single market and the accompanying staff working document** on the business journey on the single market. Outcomes of the public consultation will be considered as well.

The IIA offers an insight into the Commission’s views on the scope of the revision, policy options and their expected impact. The revision is planned in a **context** characterised by the ongoing digital transition of the economy and of society in general, which both have a considerable impact on companies’ lifecycle. The upgrade of company law will be interrelated with other policy documents such as the **2030 Digital Compass** and the **2020 communication on Digitalisation of Justice in the EU**. The increasing dependence on digital tools was highlighted by the COVID pandemic, which showed how digital tools were instrumental in ensuring business continuity and how closed borders may affect the smooth running of commercial operations. Further reforms appeared necessary to allow an increasing use of digital tools and processes.
Revision of Directive 2019/1151/EU on digital tools and processes in company law

Such reforms are in line with the Commission's priorities for the transition to a digital Europe where improving digital commercial law is a key element of the single market. Although the 2019 amendments marked the initial steps towards digitalisation, they addressed a limited set of provisions, and the 2017 Company Law Directive still has loopholes. The need to access and use trustworthy information concerns numerous stakeholders other than companies, such as public authorities, legal professionals, and creditors who are currently unable to access such information. EU harmonised disclosure requirements concern only limited liability companies and only certain types of information, limiting the array of transparency. The lack of harmonisation of some of the provisions hinders effective cross-border access to information and, sometimes, action against fraudulent companies. Finally, the exchange of information between business registers is still limited, as is the application of the OOP.

The 2023 revision will focus on three areas: 1) increased transparency and access to information; 2) enhanced use of authentic and trustworthy company data across borders; and 3) making EU company law rules and procedures fit for the digital age.

Various options will be examined under each of these objectives. For some of them, BRIS might be instrumental, being the main tool available to access company data centrally at EU level. As such, it could be used further to disclose additional information or enable the use of company information available from business registers in cross-border administrative and court procedures. Likewise, it could help expand the application of the OOP in cross-border exchanges. As noted by the IIA, a report on the functioning of BRIS will be prepared in parallel to this initiative.

Stakeholder consultations

An online open public consultation was held from 21 December 2021 until 8 April 2022. In total, 83 stakeholders replied to this consultation. A quarter of responses came from business associations, 21% from EU citizens, 19% from public authorities and 12% came mostly from legal professionals and notaries.

The large majority of respondents were in favour of more transparency through better access to more information about companies in the EU. To a large extent, this view is a reflection of the difficulties that most of the respondents reportedly encountered when looking for information on companies. More than half of the respondents stated that they would request information as creditors or business partners. There was also a large demand for more search functionalities and more company data being made available free of charge at EU level via BRIS. Disclosure of additional information about limited liability companies in national business registers and via BRIS was also requested by a majority of respondents. Having information about companies other than limited liability companies, including groups of companies, was also widely supported.

A majority of companies and public authorities requested easier access to information related to administrative and court proceedings, seemingly as a result of difficulties currently encountered by a majority of them, including when the company is in another Member State. Making it possible for companies to use information from their national business registers when expanding to markets in other Member States is also a concern, and the application of the OOP could help for many respondents.

The vast majority of companies want more digitalisation in company law, in particular to allow fully online formation and filing for companies other than limited liability companies. On the use of virtual registered offices, 23 opinions were more diverse: the impact of such offices was deemed negative by 45% of businesses and positive by 34%, while the remainder had no opinions. Among the detractors there were concerns that such offices facilitate fraudulent operations, whereas supporters thought it could help to reduce overheads for small companies or start-ups. The majority would back ‘any action to address the use of virtual registered offices’, be it at EU or national level. The objective that received most support was that of ensuring transparency through disclosure requirements. The provision of safeguards and measures for ensuring a level playing field for companies in the single market also received support.
European Commission studies (before the 2019 directive)

The Commission has used several studies to develop company law policies; these studies informed the preparation of the current directive. One study, the 2018 study on digitalisation of company law, presented an overview of the use of digital tools in company law procedures across 14 Member States, looking at potential benefits, constraints and challenges associated with such digitalisation throughout each step of the company’s whole lifecycle. After a thorough examination of the various systems in place in 2018, the report proposed measures drawing lessons from systems already implemented in some Member States at the time. Measures were designed to address challenges that were identified, their costs and their benefits. Most provisions in the 2019 directive could be seen as responding to these challenges, with one noticeable exception; despite broad digitalisation of processes, there are still a few cases where Member States may implement face-to-face processes. Another important remark relates to the technological developments and security requirements that have been developed since 2018 and may render some of the concerns at that time less relevant today.24

In another study on the impact of digitalisation, the aim was to thoroughly assess the impact of the use of digital tools in the four main company operations (registration, dissolution, filing and disclosure, and cross-border mergers) on the following areas: socio-economic, legal certainty and fraudulent/illegal activities. The main conclusions were the following:

- Regarding socio-economic impacts, the use of digital tools undeniably has a positive effect on the efficiency with which the four main company law operations can be conducted.
- Regarding legal certainty, and contrary to hypotheses suggesting higher risks, the majority of stakeholders considered that the use of digital tools for company law operations had a positive impact. Similarly to the conclusions on socio-economic impacts, it is considered that the use of digital tools positively impacted (i.e. increased) the accessibility and transparency of business information, which leads to improved legal certainty across all stakeholder groups.
- Regarding fraudulent/illegal activities, the starting hypothesis considered that the use of digital tools would lead to an increase in such activities. In fact, the majority of stakeholders consulted in the 14 Member States considered that the use of digital tools across the four company law operations reduced the incidence of fraudulent/illegal activities. However, there is no undisputable evidence of a direct causal link between both phenomena.

European Parliament position/MEPs' questions

In its 16 May 2017 resolution on the EU eGovernment action plan 2016-2020, Parliament stressed that better access to information and increased use of improved digital tools for company law-related formalities are instrumental in increasing legal certainty, reducing company expenses and enhancing transparency in the internal market.

Parliament insisted on implementing the ‘once-only’ principle so that interactions of citizens and businesses with public administrations become easier. In that respect, it welcomed the Commission’s intention to quickly establish a Single Digital Gateway that would provide citizens and businesses with ‘a linked-up, coherent package of online single market services at both national and EU level’. For Parliament, the Single Digital Gateway would be crucial in executing the most important procedures in cross-border situations and in implementing the OOP.

Parliament called on the Commission to consider further ways to promote digital solutions for formalities throughout a company’s lifecycle, the electronic filing of company documents and the provision of cross-border and other information for business registers; in this field, legislation may be the only way to create an appropriate legal framework for EU-wide digital solutions. It also called
for work to be stepped up on the electronic interconnection of Member States’ business registers, and for the provision of a common European template or framework.

Considering the technological challenges, Parliament urged Member States to ensure fast and complete implementation of the eIDAS Regulation. It stressed that eSignature, eIdentification and eAuthentification are the building blocks of cross-border digital public services. It also stressed the importance of encouraging the uptake of notified eID schemes under the eIDAS Regulation.

In May 2022, Parliament adopted a resolution on tackling non-tariff and non-tax barriers in the single market. It regretted the slow implementation of the Single Digital Gateway and called on Member States to dedicate sufficient resources to remedy this. It stressed the need to ensure an SME-friendly and user-centred approach, whereby information on single market rules and administrative procedures would be provided to make it a virtual one-stop shop as far as possible. In addition, it called for the scope of the Single Digital Gateway to be extended to all business-relevant administrative procedures.

MEPs’ questions

Written question Agnieszka Kozłowska-Rajewicz (EPP), 11 July 2018 – The Single Digital Gateway

The Member underlined that easy, universal and up-to-date access to information about national regulations is key for business growth and labour mobility within the EU single market. The Member noted that the future Single Digital Gateway is a project designed to this effect, since it will provide access to such national rules, requirements and procedures to enable citizens and businesses from other Member States to start their professional activities. She recalled that the Gateway is planned to cover three strands, namely information, procedures and assistance services.

The Member asked the Commission, first, if the Single Digital Gateway comprises a single centralised platform, or if it will function as a directory leading to different digital sources; second, what the linguistic profile of the Gateway will be; third, what kind of assistance services the Gateway will provide, and if it will also include national information and assistance points.

Written answer given by Ms Bieńkowska on behalf of the European Commission, 6 September 2018

In its reply, the Commission explained that, first, the Single Digital Gateway will consist of a single interface in the form of a search facility hosted on the Your Europe portal. Citizens and businesses will find information, procedures and assistance services available on national- or EU-level websites.

Second, the Commission indicated that the interface will enable users to launch a search or find information in any of the official languages of the Union. National-level information on national websites will be made accessible in the national language(s) of the country concerned and in an official language of the Union broadly understood by the largest possible number of cross-border users.

Third, the Commission confirmed that the Gateway will indeed provide access to the assistance and problem-solving services set up by EU law. All of these services are networks of contact points at national level. There will be additional assistance and problem-solving services, such as EU-wide services that were not set up by binding EU law – for example, the European Consumer Centres, Your Europe Advice, Solvit, the Intellectual Property helpdesk, Europe Direct and the Enterprise Europe Network. It may also cover national assistance services.

Written question Olivier Chastel (Renew), 11 March 2020 – Cutting red tape for small and medium-sized enterprises (SMEs)

The Member recalled that there are nearly 25 million small and medium-sized enterprises (SMEs) in Europe, and that they account for two-thirds of jobs; the 2020 Commission strategy’s objective is to unlock the potential of SMEs. Noting that some 78 % of SMEs take the view that administrative procedures are the main barrier to the single market, the Member asked what initiatives are to be
proposed to cut red tape in connection with digitalisation, and generally, what steps are envisaged by the Commission to lighten the burden of red tape on SMEs.

**Written answer** given by Mr Breton on behalf of the European Commission, 7 July 2020

The Commission replied that the SME strategy includes measures to cut further red tape in connection with digitalisation. The Commission specified that the Single Digital Gateway will facilitate online access to the information, administrative procedures and assistance services that SMEs need to become active in another EU country. It noted that Member States are encouraged to implement it and '[link] their services in a one-stop-shop'.

**Written question** Sandro Gozi (Renew), 31 March 2021 – Establishment in another Member State

The Member, acknowledging that ‘freedom of establishment in the single market is often hampered by obstacles to the issuing of certificates and authorisations’, asked the Commission if relaunching the work around a European statute for small businesses could be envisaged in order to simplify the procedures for setting up and transferring activities across Member States.

**Written answer** given by Mr Reynders on behalf of the European Commission, 20 July 2021

In its reply, the Commission expressed, among other things, its belief that the directives on the use of digital tools and processes in company law and on cross-border operations will, once transposed, bring significant cost savings and make cross-border business easier for SMEs. The Commission will assess how to further help companies, and SMEs, including through further digitalisation of company law tools and procedures.

### Council of the European Union

On 6 October 2017, with the adoption of the Tallinn Declaration, the Member States made a strong call to step up efforts towards effective and inclusive eGovernment, where the end-users – citizens, businesses, the public sector – are truly at the centre of services (user-centricity principle). Member States, acknowledging the increasing role of digitalisation worldwide, reaffirmed their commitment to strive ‘to be open, efficient and inclusive, providing borderless, interoperable, personalised, user-friendly, end-to-end digital public services to all citizens and businesses – at all levels of public administration’. Member States reiterated their attachment to the principles of eGovernment and presented the steps they would take to further implement them, making them the thread for future policy actions. Those five principles are key enablers for the EU’s digital policy, including aspects relevant for company law. They are explained in the table below, based on the 2016-2020 eGovernment action plan.

<table>
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<th>Main eGovernment principles</th>
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<td><strong>Digital by default:</strong> inclusion and accessibility: the delivery of public services in digital form should always be the preferred option, while still enabling other channels for those who are disconnected by choice or necessity. To enable inclusion, digital public services must be designed to minimise exclusion of disadvantaged users or those who have never or rarely been online (inclusive by default), such as the elderly, migrants or persons with disabilities.</td>
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<td><strong>Once-only principle:</strong> citizens and businesses should have the possibility to provide any given piece of information only once to administrations in due respect of data protection rules.</td>
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<td><strong>Trustworthiness and security:</strong> citizens and businesses must be assured that, when interacting with public administrations, privacy and data protection rules are respected. All digital public services must be designed with full respect for the protection of personal data. Meaningful consent and explicit opt-in mechanisms are central to the sharing and re-use of personal data, in addition to users’ access, control and the possibility for corrections, including withdrawal of consent. All initiatives need to respect data, cyber and IT security, as these are important pre-conditions for increasing trust in and take-up of digital services.</td>
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Main eGovernment principles

**Openness and transparency:** Openness allows the sharing and reuse of information and data among administrations, while allowing citizens and businesses to track administrative processes involving them, to control and correct their own data and give feedback about the quality of the public services. Transparent and open government processes imply engagement with stakeholders in the design and delivery of services, and are expected to increase accountability and trust while reducing opportunities for corruption.

**Interoperability by default:** Users expect to have the freedom to interact with administrations from anywhere in the EU and across borders, and the freedom to interact with any device. Public services are expected to work seamlessly across silos, facilitating mobility within the single market, relying on the free movement of data and digital services in the EU.

Source: Author, based on the Tallinn Declaration.

On 8 December 2020, Member States adopted the Berlin Declaration on Digital Society and Value-Based Digital Government, whereby they reiterated their commitment towards the principle enunciated in the Tallinn Declaration. Member States also stressed the need to streamline digital policy actions in the light of challenges revealed by the COVID crisis, while insisting on taking into consideration fundamental rights and European values.

On 9 June 2020, the Council, in its conclusions on shaping Europe’s digital future, had called on Member States to foster the digitalisation of the single market. Addressing measures related to electronic identification and trust services, public administrations, standards and blockchain – which are particularly relevant for businesses – the Council recognised that solutions to the management of digital identity and trust services (electronic signatures, seals, time stamps, registered delivery services and website authentication) will contribute to shaping the society of the future. The Council called on the Commission to review the existing legislation, inter alia to create a reliable, common, interoperable and technologically neutral framework for digital identity. In this context, the Council called on the Commission to consider proposals to develop the current framework for cross-border identification and authentication based on the eIDAS Regulation towards a framework for a European digital identity.  

European Court of Auditors

In 2022, the European Court of Auditors (ECA) published a special report on eGovernment actions targeting businesses. The 2016-2020 eGovernment action plan was the starting point of this assessment, but the ECA limited the scope of its audit to actions targeting businesses for the period of the action plan. Those actions are listed in the table below with the corresponding number used in the action plan and the respective legal base.

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<tr>
<th>No</th>
<th>Actions from action plan</th>
<th>Legal base</th>
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<tr>
<td>2</td>
<td>Accelerate the take-up of electronic Identification, Authentication and Trust Services (eIDAS services), including eID and eSignature</td>
<td>Regulation 910/2014</td>
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<tr>
<td>7</td>
<td>Submit a proposal for a Single Digital Gateway</td>
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<tr>
<td>9</td>
<td>Set up, in cooperation with the Member States, the mandatory interconnection of all Member States' business registers (future BRIS)</td>
<td>Directive 2012/17</td>
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<td>10</td>
<td>Further develop the electronic interconnection of insolvency registers</td>
<td>Regulation 2015/848</td>
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<tr>
<td>11</td>
<td>Present an initiative to facilitate the use of digital solutions throughout a company’s lifecycle</td>
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</tr>
<tr>
<td>13</td>
<td>Launch a pilot on the ’once-only’ principle for business</td>
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Source: ECA.
The actions envisaged were different in nature and included the submission of legal acts, the development of technical solutions or support to Member States. The Digitalisation Directive, which was one of them, would be meaningful only when the other actions – or at least some of them – had been completed as well.

Without entering into details, a few remarks from the report are worth highlighting. The report indicated that all six actions were implemented to some extent; the Commission did what was required, even though some actions are affected by ongoing changes (for instance, COVID or technological developments) or require further development. At Member State level, complementary actions, although not mandatory, were needed but not systematically taken. In fact, levels of commitment and technological development vary from one Member State to the other.

On action 2, the report recalled that the 2021 evaluation of the eIDAS Regulation noted that the limited scope, together with technological weaknesses and legal loopholes, hampered a fully functional system fit for the purpose for which the regulation was designed. In addition, nine Member States are still not part of the framework; this is a significant number and impedes electronic interaction on a broader level.

On action 7 on the Single Digital Gateway, the ECA noted that the Commission has developed the interface, i.e. the single point of entry, which is the Your Europe portal. Through the portal, users will be connected to the relevant national webpages. The ECA also noted that action 13 was implemented through the design and execution of an OOP pilot project whose results served to improve the Single Digital Gateway technologically.

On actions 9 and 10 (BRIS), the report concluded that technological steps had been taken to enable the setting up and updating of the core service platform and interface, while Member States had to digitalise their national registers and connect them to the system; BRIS has been operational since 8 June 2017. Users can search for information on companies registered in any EU country (plus Liechtenstein and Norway); the search function and basic information is translated into all EU official languages. Six Member States experienced delays in connecting, with the last one connecting in March 2022, while delays persist regarding the interconnection of insolvency registers: in July 2022, only 17 out of 26 Member States were connected. Until the remaining nine Member States are connected, users cannot search via a uniform multilingual search engine for insolvent entities registered in these Member States.

With regard to action 11 and the initiative to facilitate use of digital solutions throughout a company's lifecycle, the report noted that, at the time of the audit, 17 Member States had notified the Commission that they were applying for a one-year extension for the transposition of Directive 2019/1151/EU. This means that companies in a majority of Member States cannot yet use digital tools and processes to create companies, register branches and file documents and information online.

The ECA concluded that the Commission’s actions have been only partially effective in fostering both the implementation and the take-up of eGovernment processes by Member States. Consequently, not all public digital services are currently available throughout the EU and there are still delays in achieving the full implementation of some of the actions, including the full use of online digital tools and processes in company law and access to BRIS. The ECA recommended, firstly, to strengthen the implementation framework, with Member States being urged to complete eGovernment services, and, secondly, to develop a comprehensive strategy to promote eGovernment services among users.
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ENDNOTES

1 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Upgrading the single market: more opportunities for people and business, COM(2015) 550 final.

2 The Commission will consider further ways of achieving simpler and less burdensome rules for companies, including making digital solutions available throughout a company’s lifecycle, particularly in relation to their registration and to the filing of company documents and information (p. 5).

3 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Europe’s next leaders: the Start-up and Scale-up Initiative, COM(2016) 733 final.

4 See the Council positions below for further details.

5 In its 2018 impact assessment, the Commission noted that, while its proposal on the establishment of a Single Digital Gateway covers the general registration of business activity via online means, the constitution of limited liability companies is carved out from the proposal because it necessitates a comprehensive approach to be addressed in the company law acquis. The Commission committed to proposing specific rules for this area without delay.

6 On 25 April 2018, two legislative proposals on company law were published by the Commission; they are referred to as the ‘Company Law Package’. The second proposal from the package, aimed at amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions to facilitate cross-border corporate transactions within the internal market, is known as the Mobility Directive and was adopted on 27 November 2019.

7 Most of the new amendments are inserted under Chapter III of Title 1, which is renamed ‘online procedures (formation, registration and filing), disclosure and registers’.


9 Title 1, Chapter III.

10 For further explanation, see the eIDAS Regulation and ENISA’s Standardisation in the field of Electronic Identities and Trust Service Providers.

11 The existing rules are necessary, on the one hand, to enable effective online procedures that guarantee company law requirements, and, on the other hand, for a consistent approach towards digitalisation.

12 In each Member State, such requirements exist for authorities in charge of and procedures and documents envisaged for the formation of companies, registration of branches and filing of documents.

13 See recital 13 for other details.

14 The Digital Single Gateway is a platform which facilitates online access to information, administrative procedures and assistance services that EU citizens and businesses may need in another EU country. Access to the Gateway is via a search function in the Your Europe portal.

15 The European Court of Justice provided some clarification in its 2020 All in One Star Ltd preliminary ruling. The Court specified that ‘the basic premise of Directive 2019/1151 is that, under that legal framework, it is in the Member State where the company is established that abusive or fraudulent conduct consisting of forming a company in another Member State in order to circumvent a prohibition on acting as a director can be prevented systematically and across the board. In that context, a Member State may refuse the appointment of a person as a director of a company where that person is disqualified from acting as a director in another Member State.’

16 BRIS is a European central platform which ensures access to national business registers.

17 In such cases, the register will ensure that these documents and information are sent electronically by the register to the national gazette or to a central electronic platform, thereby implementing the ‘once-only principle’ (OOP).

18 As with Article 13(d), fees must not exceed the administrative costs for their recovery.

19 See also Article 3(4): ‘Member States shall collect data on how online formation is working in practice, such information comprising the number of online formations, the number of cases in which templates were used or where physical presence was required and the average duration and costs of online formations.’

20 Such as the feasibility of their full online registration, and the need for and feasibility of making more information available free of charge than that required in Article 19(2).

21 According to the ‘once-only principle’, citizens and businesses should have the possibility to provide any given piece of information only once to administrations in due respect of data protection rules.

22 This group – consisting of company law professors and professionals – advises the Commission in the preparation of company law initiatives. The group was set up in 2014 and renewed its membership in 2019.
Virtually registered offices are different from letterbox companies, which are understood as companies incorporated in one Member State but which do not perform any activity in that Member State or anywhere else (see letterbox companies).

In 2018, questions around verification of the founder’s identity and signing of documents were the main concerns. However, the report noted that technologies such as encryption, eID and blockchain were increasingly secure and tamper-proof.

The MEP refers to the SME strategy for a sustainable and digital Europe, COM(2020) 103 final.

Digital by default goes together with inclusiveness and accessibility. Digital inclusion is the act of making the web and other digital technologies barrier-free for everyone who wants to use them. The main obstacles preventing certain groups from enjoying equal access to the internet and digital technologies are: (a) connectivity, i.e. the ability to reliably connect to the web using the internet and connected devices (no physical access to the internet, prohibitive costs of getting online, or being limited by a sub-par internet connection); (b) digital skills, i.e. not having the basic skills and capabilities required to confidently use the web; and (c) web accessibility, i.e. digital content should be designed to meet all visitors’ needs, including those who are dependent on assistive technology to access your content.

On 3 June 2021, the Commission published its proposal regarding European digital identity (EUid).

It referred to OECD (2015) data showing that eGovernment services are of greater relevance for businesses than for individuals.

While actions 9 and 10 were implemented, the developed systems lacked a payment processing tool. As a result, users were forced to revert to national platforms if they needed information or documents for which a fee is due.

See details in points 54 to 56 of the ECA special report.

Since the entering into force of the eID part of the regulation in September 2017, 14 Member States have notified at least one eID scheme and four Member States have already notified multiple schemes (see 2021 evaluation).

See above the formal notice sent by the Commission as a result of Member States’ failure to transpose the directive.