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DIGITALNI AKADEMSKI ARHIVI I REPOZITORIJI

CHAPTER 4

Online Formation of Limited Liability Companies

Dionis Jurić¹, Antonija Zubović²

Abstract

Digitalization of the registration procedure enables lower initial costs for formation of companies in EU Member States. It is especially important for small and medium-sized enterprises (SMEs) which perform their business activities on national and cross-border level. Potential abuses of the registration procedure are prevented by the notary certification or by the registration authority checking of the authenticity and validity of the company information. Some Member States already introduced online formation of limited liability companies (LLCs), which are the most common form of companies in business practice. The European Parliament and the Council enacted Directive (EU) 2019/1151 which amends Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law in June 2019 (Digitalization Directive). Its purpose is harmonisation of Member States national provisions on online formation of companies, on online registration of branches and on online filing of documents and information by companies and branches. Member States must harmonise their national provisions with the Digitalization Directive by 1 August 2021. This period may be extended up to one year if a Member State encounters particular difficulties in transposition of the Directive. In Croatian Law the online formation of LLCs is introduced in 2019. Such formation is limited to LLCs and simple LLCs with share capital entirely paid in cash.

Key words: *online formation, limited liability company, European Union, Croatia*

JEL classification: *K20, K22, K40*

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1. Introduction

Small and medium-sized enterprises (SMEs)³ represent 99% of all businesses in the EU. They employ around 100 million people and account for more than half of Europe's GDP. SMEs are predominantly organized as limited liability companies (LLCs) (European Commission, 2018: 5).⁴ **With regard to SMEs, number they have important role in economic growth, job creation and attracting investments in the EU. National provisions of Member States have different approaches on starting up of business activities and cross-border expanding of existing business activities of the LLCs. The LLCs formation may be costly and time consuming for national and foreign entrepreneurs. These problems are especially pronounced in relation to foreign founders of LLCs (European Commission, 2014: 14-15).**⁵ Member States reformed their national provisions to reduce these costs and simplify LLCs formation procedures by introduction of the online registrations (European Commission, 2018: 14)⁶ and by decrease of minimum capital requirements for LLCs (European Commission, 2014: 20-22, 27, 34, 44).⁷ Reforms in different Member States have had similar objectives, but the end results still differ significantly. Denmark and Estonia allow only online registration of LLCs. Some Member States only allow face-to-face

3 The category of micro, small and medium-sized enterprises (SMEs) consists of enterprises which employ fewer than 250 persons and have either an annual turnover not exceeding 50 million euros or an annual balance sheet total not exceeding 43 million euros.

4 There are around 24 million companies in the EU, out of which approximately 80% are limited liability companies. Around 98-99% of limited liability companies are SMEs.

5 The costs can be direct and indirect. The direct costs are set-up costs primarily being generated by mandatory national legal and administrative requirements when forming a company in a given country. These costs usually include administrative costs, notary fees and minimum capital requirements. The direct costs apply equally to national and foreign founders of LLCs, but vary across Member States. Therefore these costs can be barriers for cross-border investments, if they are significantly higher than what the founders of LLCs pay in their own country. The indirect costs are those which are predominantly connected with the differences between Member States provisions with regard to set-up and operational requirements on the articles of association, organization and structure of LLCs, compulsory annual meetings, reporting requirements, etc. These issues often necessitate legal advice and translation and would usually have more impact on foreign than national founders of LLCs. Lengthy registration procedures also result in costs for the LLCs foreign founders, especially if they travel from foreign countries to comply with formalities in Member States of registration.

6 There are 17 Member States which provide a procedure for the fully online registration of LLCs (Bulgaria, Denmark, Estonia, Finland, France, Italy, Ireland, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden, Croatia).

7 There are 16 Member States in which it is possible to establish a LLC with minimum capital/share value of €1 or less (Belgium, Bulgaria, Czech Republic, Denmark, Germany, Greece, Estonia, Ireland, France, Italy, Cyprus, Latvia, Netherlands, Portugal, Croatia, Slovakia).

registration procedure (e.g. Belgium, Germany, Spain)⁸ and others allow both face-to-face and online registration procedure (e.g. Cyprus, Finland, Croatia). Those Member States which allow online formations of LLCs have different solutions for electronic identification (eID) of LLCs founders and availability of digital portals for cross-border registrations (European Commission, 2017: 27-29).⁹ This creates inefficiencies and an uneven playing field for companies (European Commission, 2018: 14). There is a need for harmonization of Member States' national provisions on online formation of LLCs on the EU level. This will ease realization of the freedom of establishment for SMEs on the Single Market.

2. EU legislative initiatives for online formation of LLCs

The European Commission prepared proposal for a Regulation on the Statute of the European Private Company (SPE) in 2008. This proposal was intended to offer SMEs an instrument facilitating their cross-border activities, which would be simple, flexible and uniform in all Member States. The SPE would be a supranational form of a LLC with minimum capital requirement of 1 euro and with availability of online registration of the SPE. Its registered office and its central administration or principal place of business would be in the territory of the Member States. However, it was possible to split the SPE's registered office and central administration or principal place of business in different Member States. Despite strong support from the business community it has not been, however, possible to find a compromise allowing for the unanimous adoption of the Regulation among Member States. The Commission decided that it would withdraw the SPE proposal in 2013 and instead announced to come up with the proposal of an alternative measure designed to address at least some of the problems addressed by the SPE (Jurić and Marinac, 2015: 437, 442-443).

In 2014 the Commission prepared proposal for a new Directive on single-member LLCs which introduced *Societas Unius Personae* (SUP) as a subtype of the single-member LLC. The proposal would facilitate cross-border activities of companies, by asking Member States to provide in their legal systems for a national company law form that would follow the same rules in all Member States and would have an EU-wide abbreviation SUP. It would be formed and operate in compliance with the harmonized rules in all Member States which should diminish formation and operational costs. These costs would be reduced by the harmonized registration procedure, a possibility of on-line registration with a uniform template of the instrument of constitution of a company and a low capital requirement for the SUP formation. The

8 Face-to-face registration means involvement of intermediaries in the registration procedure (e.g. notaries, legal professionals).

9 A national digital platform for online formation of LLCs is only available with use of eID cards and certificates issued by competent authorities of a relevant Member State. Estonia, Portugal and Spain offer limited availability of their national digital platforms for cross-border registrations of LLCs in accordance with bilateral agreements.

creditors would be protected by the duty imposed on the SUP directors (and in some cases on the SUP single-member) to control distributions. Member States should not require that an SUP's registered office and its central administration be necessarily located in the same Member State. Unfortunately, the Commission has met with opposition of Member States to the proposal and decided to withdraw it in 2018 (Jurić and Marinac, 2015: 437-438).

3. Digitalization Directive

The Commission took different approach on this topic, taking in account its failure to introduce new legal forms of companies for cross-border activities of SMEs. It decided to harmonize existing national provisions of Member States with regard to online formation of LLCs by promotion of further digitalization of the company law. At the same time the company law traditions of the individual Member States are preserved by such approach.

The Commission in its Communication on the Start-up and Scale-up Initiative from 2016 stressed the need to remove obstacles for start-ups to develop in the Single Market and repeated the call for measures in the area of company law. Furthermore, both in the Digital Single Market Strategy from 2015 and in the e-Government Action Plan from 2016 stressed the role of public administrations in helping entrepreneurs to easily start business, operate online and expand across borders. The e-Government Action Plan specifically recognised the importance of improving the use of digital tools when complying with company law related requirements. In addition, the Single Digital Gateway included a commitment to come forward with online registration of LLCs in the context of the digitalization of company law. Against this background, the Commission Work Programme from 2017 included a legislative initiative to facilitate the use of digital tools throughout a company's lifecycle. These activities were supported by relevant resolutions of the European Parliament and conclusions of the Council (European Commission, 2018: 7-8).

The Commission prepared a Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law (Digitalization Directive) in April 2018. The European Economic and Social Committee gave opinion on the Proposal for a Digitalization Directive in October 2018. The European Parliament took position at first reading on the Proposal in April 2019. The Council discussed on the Proposal since May 2018 to June 2019. Finally, the European Parliament and European Council enacted the Directive (EU) 2019/1151 amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law¹⁰ on 20 June 2019. The Digitalization

¹⁰ 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 (Text with EEA relevance), *OJ L 186*, 11.7.2019, p. 80–104.

Directive has entered into force on 31 July 2019.

The Digitalization Directive amends existing Directive relating to certain aspects of company law from 2017 (Codification Directive). The Codification Directive regulates the establishment and functioning of joint stock corporations and limited liability companies¹¹ and their mergers and divisions. Aims of the Digitalization Directive are to ensure a simpler, faster and more efficient company formation, to provide comprehensive information without obstacles and to effectively prevent abuses. At the same time, the traditional company law principles of the Member States shall be taken into account. The Directive covers four topics: a) online formation of companies, b) online registration of branches, c) online filing of documents and information by companies and branches and d) disclosure in the register and access to disclosed information.

Member States must ensure that applicants who are EU citizens in the online procedures can use electronic identification means issued by their own Member State and electronic identification means issued in another Member State and recognised for the purpose of cross-border authentication in accordance with the eIDAS Regulation.¹² This will ease cross-border use of the online formations of companies in the EU. 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 the eIDAS Regulation.¹³ All identification means recognised by Member States shall be made publicly available.¹⁴ Member States may, for the purposes of verifying an applicant's identity, require his physical presence before any national authority or person competent for the online procedures in preventing identity misuse or alteration. They shall ensure that the physical presence of an applicant may only be required on a case-by-case basis where there are reasons to suspect identity falsification, and that any other steps of the procedure can be completed online.¹⁵

Member States must ensure that the rules on fees applicable to the online procedures are transparent and are applied in a non-discriminatory manner.¹⁶ They shall make available concise and user-friendly information, provided free of charge and at least in a language broadly understood by the largest possible number of cross-border users on registration portals or websites that are accessible by means of the Single Digital Gateway to assist in the formation of companies. The information shall cover at least: a) the rules on the formation of companies, including online procedures, and requirements relating to the use of templates and to other formation documents, identification of persons, the use of languages and to applicable fees, b) an outline of the applicable

11 E.g. incorporation and nullity of the company and validity of its obligations, disclosure and interconnection of central, commercial and companies' registers and capital maintenance and alteration.

12 Article 13b paragraph 1 of the Codification Directive.

13 Article 13b paragraph 2 of the Codification Directive.

14 Article 13b paragraph 3 of the Codification Directive.

15 Article 13b paragraph 4 of the Codification Directive.

16 Article 13d paragraph 1 of the Codification Directive.

rules on becoming a member of the management body or the supervisory body of a company, including of the rules on disqualification of directors, and on the authorities or bodies responsible for keeping information about disqualified directors and c) an outline of the powers and responsibilities of the management body and the supervisory body of a company, including the authority to represent a company in dealings with third parties.¹⁷

Member States shall ensure that the online formation of companies may be carried out by applicants fully online without their physical presence before any national authority or person competent for the online formation of companies, including drawing up the instrument of constitution of a company (end-to-end formation).¹⁸ Such online procedure is mandatory for LLCs.¹⁹

Member States must lay down detailed rules for the online formation of companies, including rules on the use of templates, and on the documents and information required for the formation of a company. They must enable that these documents and information may be submitted in electronic form, including electronic copies of the documents and information provided by registers.²⁰

Member States shall not make the online formation of a company conditional on obtaining a licence or authorisation before the company is registered, unless such a condition is required for the proper oversight laid down in national law of certain activities (e.g. providers of financial services).²¹

Member States must ensure that where the payment of share capital is required as part of the procedure to form a company, such payment can be made online to a bank account of a bank operating in the EU. In addition, they shall ensure that proof of such payments can also be provided online.²² Online formation of company is possible with payment of cash contributions and contributions in kind in the share capital of a company according to the Directive.

Member States must ensure that the online formation is completed within five working days where a company is formed exclusively by natural persons who use the templates, or within ten working days in other cases. Where it is not possible to complete the procedure within the aforementioned deadlines, the applicant must be notified of the reasons for the delay.²³

Any national authority or person competent for the online formation of a

17 Article 13f of the Codification Directive.

18 Member States may decide not to provide for online formation procedures for certain types of companies.

19 Article 13g Paragraph 1 of the Codification Directive.

20 Article 13g paragraph 2-4 of the Codification Directive. The Directive sets mandatory and optional content of these rules.

21 Article 13g paragraph 5 of the Codification Directive.

22 Article 13g paragraph 6 of the Codification Directive.

23 Article 13g paragraph 7 of the Codification Directive. These deadlines are counted from the date of the completion of all formalities required for the online formation and payment of a registration fee and capital contributions, as provided for under national law.

company may request the physical presence of the applicant in ensuring compliance with the rules on legal capacity and on the authority of applicants to represent a company. Member States must ensure that, in such cases, the physical presence of an applicant may only be required on a case-by-case basis where there are reasons to suspect non-compliance with aforementioned rules. Any other steps of the procedure can nonetheless be completed online.²⁴

Member States shall make templates available on registration portals or websites that are accessible by means of the Single Digital Gateway for the formation of LLCs.²⁵ They shall ensure that those templates may be used by applicants as part of the online formation procedure of companies. The templates should be available at least in one official EU language broadly understood by the largest possible number of cross-border users.²⁶

Member States must ensure that they have rules on disqualification of directors. Member State may take into account any disqualification that is in force or information relevant for disqualification, in another Member State.²⁷ Member States may require that persons applying to become directors declare whether they are aware of any circumstances which could lead to a disqualification in the Member State concerned. They may refuse the appointment of a person as a director of a company where that person is currently disqualified from acting as a director in another Member State.²⁸ Member States shall ensure that they are able to reply to a request from another Member State for information relevant for the disqualification of directors under the law of the Member State replying to the request.²⁹ They should establish databases on disqualified directors for this purpose.

Member States must enact the laws, regulations and administrative provisions necessary to comply with the Digitalization Directive by 1 August 2021. Member States which encounter particular difficulties in transposing this Directive may require extension of the deadline for one year. They must provide objective reasons for that and notify the Commission of their intention

24 Article 13g paragraph 8 of the Codification Directive.

25 Member States may also make templates available online for the formation of other types of companies.

26 Article 13h of the Codification Directive.

27 Article 13i paragraph 1 of the Codification Directive.

28 Article 13j paragraph 2 of the Codification Directive.

29 Article 13i paragraph 3 of the Codification Directive. In order to reply to a request, Member States shall at least make the necessary arrangements to ensure that they are able to provide without delay information on whether a given person is disqualified or is recorded in any of their registers that contain information relevant for disqualification of directors, by means of the Business Registers Interconnection System (BRIS) (Article 13i paragraph 4 of the Codification Directive). They may also exchange further information, such as on the period and grounds of disqualification. Such exchange shall be governed by national law. The personal data of persons applying to become directors shall be processed in accordance with General Data Protection Regulation (GDPR) and national law (Article 13i paragraph 7 of the Codification Directive).

to avail the extension by 1 February 2021.³⁰

4. Online formation of LLC in Croatian Law

After the amendments to the Companies Act from 2019, LLC in Croatia can be established in three ways: in person, by information system START and by use of services of HITRO.HR offices. It has to be emphasised that only LLC and simple LLC³¹ with share capital entirely paid in cash can be established by START system and through HITRO.HR offices.

The LLC formation procedure may be carried out by use of services of HITRO.HR offices that operate in FINA branches. However, these offices only mediate between the founders of the company and the Court Register, and the founders must take certain actions in person in front of a notary (Jakupak and Bregeš, 2020: 212).³²

Amendments to the Companies Act from 2019 introduced the possibility of establishing LLC and simple LLC without a proxy and a notary (online formation).³³ The introduction of a new way of formation of these two types of companies eliminated the need to take actions of the founder in front of a notary. These companies can be established through the Court Register website or the Court Register website within the START system by using an authentication system that guarantees significant or high security regarding

30 Article 2 of the Digitalization Directive.

31 In response to regulatory competition between Member States in 2012, a simple LLC was introduced into Croatian Company Law. The simple LLC can only be formed under a simplified procedure if it has less than five shareholders and one director. The introduction of a simple LLC has significantly reduced formation costs. Minimum amount of share capital is only 10,00 HRK (ca. 1.32 EUR) and the nominal value of each share must not be lower than 1,00 HRK (ca. 0.14 EUR). Capital contributions must be cash only and paid in full prior to filing the application to register the company. Contributions in kind are not allowed pursuant to Art. 390a of the CA. (Jurić, 2020: 390-400; Barbić, 2010: 7; Jurić, Braut Filipović, 2020: 70-71; Jakšić, Petrović, 2016: 1111-1112). According to the official statistics in March 2021 LLCs were markedly predominant in the structure of trade companies by legal organizational forms, with a share of 72.7% of registered and 72.9% of active ones. Simple LLCs held the second place by their number, with a share of 26.0% of registered and 25.9% of active companies. Other legal forms of companies constituted the remaining share of 1.4% (Croatian Bureau of Statistics, May 2021).

32 Rules on the method of entry in the Court Register, Official Gazette, No 22/2012. The documents must be signed and certified by a notary who files an electronic application through e-Company service (if a notary uses one). After that, all necessary documents can be submitted to HITRO.HR office through e-Company service or can be brought personally. In the case of a LLC establishment through HITRO.HR office all founders and other persons whose signatures are to be verified must be present.

33 In order to establish a company without a proxy and a notary, the provisions of the Court Register Act have also been amended by adding Articles 52.a to 52.f. Furthermore, Rules on taking actions in the procedure of establishing companies without proxies was adopted and entered into force on 13 July 2019.

the identity of the person accessing the system.³⁴ START is an information system providing services as a one-stop-shop. The founders access the START system in person with authentication certificates (eID card or FinaCertRDC certificate).³⁵ It has to be emphasised that it is not important whether someone will help them professionally. This lack of professional assistance stands out as one of the shortcomings of the new regulatory regime.

In the process of online formation of LLC by using the START system, one of templates of the articles of association or the statement of incorporation in electronic form is used, which are attached to the Companies Act. Therefore, if the company is founded by more than one person it will be established by accepting the completed template of articles of association, and if the company is founded by one person the company is established by accepting the completed template of the statement of incorporation. These templates list only a few data that must be filled in and options among which the founder or founders can choose solutions only in certain matters. Opting for one solution excludes the possibility of choosing another. This prevents misunderstandings and contradictions. Also, attachments to the application for entry in the court register (documents or its copies) should also be attached in electronic form.³⁶ Furthermore, the articles of association and the statement of incorporation does not have to be concluded in a notarial form (Jurić, 2020: 405). According to the Article 397.c paragraph 3 of the Companies Act the articles of association are concluded when the Court Register system records that all founders have confirmed its acceptance, and the day of conclusion is considered to be the day when the last confirmation of acceptance was recorded.³⁷ It follows that when establishing a company by the START system, the autonomy of the founders for regulating their internal relations in the company is practically excluded (Barbić, 2019: 50). If they want to regulate the internal relations by deviating from legal solutions when possible, or to include formal elements in the articles of association, they will have to establish the LLC by concluding the articles of association with the participation of a notary.

The founders of the LLC can only be those persons who have a valid credential

34 Authentication certificates of the fourth level of the National Identification and Authentication System (Article 52.a of the Court Register Act, Article 3 of the Rules on taking actions in the procedure of establishing companies without proxies)

35 Companies Act prescribes criminal liability of persons who unauthorized access or take actions in the Court Register system in accordance with the Criminal Code.

36 For giving incomplete or untrue information or documents in the procedure of online formation of a company the founder is liable for criminal offence of giving a false statement in the court procedure in accordance with the Criminal Code (Article 397.b paragraph 3 of the Companies Act).

37 The CA prescribes the presumption that the founder who confirmed the completed template of the articles of association agrees with its content, that the articles of association was composed in accordance with his right will and that he understands the meaning and consequences of its acceptance (Article 397.c paragraph 4 of the Companies Act).

which can be used to access the Court Register system, if they confirm that the data with which they applied to the system are accurate and complete, or that they have not been subsequently changed (Article 397.d paragraph 1 of the Companies Act). The name of the company in the articles of association is entered by one of the founders, and accepted by other founders. Also, the indication of the company's business activities may not exceed twenty words (Article 397.d paragraph 2 of the Companies Act). According to the regulatory regime in force, in a company established by the START system, it is not possible to provide a procurator in the prescribed form of the articles of association or the statement of incorporation. Furthermore, it is not possible to have branches in a company established in such way.

According to the Article 397.e paragraph 1 and 2 of the Companies Act contributions for shares can be paid only in cash and are paid on escrow account of the State Budget. Each founder can take only one share. When establishing a simple LLC, the contributions for shares must be paid in cash only and paid in full prior the company is entered into the Court Register. If establishing LLC with share capital paid only in cash, contributions for shares shall be paid in the amount of at least one quarter of the cash contributions (5.000,00 HRK) before the entry of the company in the court register, while the rest (up to 20.000,00 HRK) needs to be paid in full within a year after the company has been registered. The contributions must be paid in a way that the company can freely dispose of it. The founder who has not paid the contribution for a share shall be jointly and severally liable with all other founders who have not paid the contributions for the company's obligations up to the amount of unpaid share capital (Article 390 paragraph 2 of the Companies Act).

The law prescribes the content of the application for the online registration of the establishment of the LLC.³⁸ As pointed out above, it is submitted exclusively in electronic form via the Court Register's website, and the prescribed documents or its copies are attached to it in the same form.³⁹ These data and attachments are generated in the Court Register system (Jurić, Braut Filipović, 2020: 83). The application for registration of the company must be confirmed by all founders and directors (Article 397.e paragraph 6 of the Companies Act). It is confirmed when the Court Register system records that the said persons have confirmed the application for registration of the company, and the day of confirmation is the day when the last confirmation of acceptance was recorded (Article 397.e paragraph 7 of the Companies Act) (Jurić, 2020: 407). If the application is complete, the court will issue a decision and enter the company in the Court Register within five working days.

There are different views in Croatian legal doctrine regarding the possibility of establishing LLC and simple LLC without a proxy and a notary. Proponents of disapproval of the adoption of this new regulatory regime point out that "the establishment of a company without a proxy does not gain anything significant at the promptness of the establishment" (Barbić, 2019: 48). The

38 Article 397.e paragraph 3 of the Companies Act.

39 Article 397.e paragraph 4 of the Companies Act.

issues of the possibility of illegal use of personal data, possible identity abuse and money laundering are further emphasized (Jurić, Braut Filipović, 2020: 83). Regarding the question of whether it is money laundering issue, it should be noted that now there will be no verifications that must be performed by notaries who in case of doubt must notify the competent authority, so it is possible to circumvent the purpose of the regulation (Barbić, 2019: 49). It is pointed out that it would be beneficial for the founders to use professional assistance in case of such establishment. It even goes so far as to point out that the application of such model of the LLC founding could lead to the emergence of financial terrorism and thus endanger national security (Grbac and Grbac, 2017: 19-31). Therefore, the provisions on verifying the identity of the company's founders are particularly important (Petrović et al., 2015: 18-27).

It is further argued that due to mandatory use of templates, the autonomy of the founders is practically reduced to filling out the electronic form in which the mandatory elements of the articles of association or statements of incorporation are material nature, while formal elements are excluded. It is possible to subsequently include a formal element in the articles of association and to deviate from dispositive legal solutions only with the participation of a notary (Ivkošić, 2020: 574). If the business venture is to be adjusted to needs of founders by adopting into the articles of association certain material elements that specifically regulate the internal relations in a company, the online formation of a company is excluded. The reason is complete standardization and duty to use only predefined templates and attachments. Thus, modification of any provision of the articles of association is possible only with the participation of a notary (Ivkošić, 2020: 575).

On the other hand, authors who advocate this way of LLCs formation point out its advantages. It is emphasized that such formation of a company simplifies the procedure, shortens its duration and significantly reduces formation costs (Jakšić and Petrović, 2016: 1112-1114). All necessary operations for formation of a company are taken at one place. There are no more costs for services of notaries and proxies, neither fee payments nor use of seals. The court fee is 50% lower if it is paid electronically. There is no separate fee for using of the START system and no fees to the banks or institutions for different approvals that are required for other ways of LLCs formation. The company may start its business activities within a few days. The founders may be dislocated and everyone may fill out templates from their own address and city (Jakupak and Bregeš, 2020: 213-214).

In 2020, 866 companies were established through the EOS/START system, 7270 companies were established through the HITRO.HR offices and 4116 companies were founded in person. However, it should be noted that a START portal is available so far only for Croatian citizens. Therefore, all other persons (EU/EEA citizens and third country citizens) need to register a LLC via HITRO.HR offices or with assistance of a notary. Furthermore, before LLC registration through the HITRO.HR office or directly to the commercial court, notary authentication of the registration application is still required. Croatian citizens need to possess an eID card and must activate personal user box within the e-Citizens system for use of the START portal.

5. Conclusions

National provisions of Member States of the EU have different approaches on starting up of business activities and cross-border expanding of existing business activities of the LLCs. The LLCs formation may be costly and time consuming for national and foreign entrepreneurs. Member States reformed their national provisions to reduce these costs and simplify LLCs formation procedures by introduction of the online registrations and by decrease of minimum capital requirements for LLCs. There are still significant differences between national provisions on this subject. Online formation of LLCs became even more important due to COVID-19 pandemic and imposed restrictions on movement of persons. Digitalization Directive from 2019 introduces wide application of digital tools and processes in formation of companies, registration of branches, filing of documents and information by companies and branches and disclosure in the register and access to disclosed information. Its goal is to harmonize existing national provisions of Member States on these topics.

According to Digitalization Directive, Member States must introduce online formation of LLCs without physical presence of applicants before any national authority or person competent for the formation of companies. Physical presence of applicants may be requested only for prevention of identity falsification or in ensuring compliance with the rules on legal capacity and on the authority of applicants to represent a company. Such exceptions may be used only on case-by-case basis and that any other steps of the procedure can be completed online. National registration portals or websites for online formation of LLCs must be available to applicants who are EU citizens with use of electronic identification means issued by their own Member State and recognised for the purpose of cross-border authentication. The Directive standardises the content of the national registration portals or websites for online formation of companies (publication of prescribed information, templates and rules for online formation which are provided free of charge and translated in a language broadly understood by cross-border users to assist in the formation of LLCs). Documents and information required for the formation of a company may be submitted in electronic form. Where the payment of share capital is required as part of the procedure to form a company, such payment can be made online to a bank account of a bank operating in the EU. Proof of such payments can also be provided online. Online formation must be completed within five working days where a company is formed by natural persons who use the templates, or within ten working days in other cases. Member States must ensure that they have rules on disqualification of directors. Member State may take into account any disqualification that is in force or information relevant for disqualification, in another Member State. Member States must cooperate in sharing of information on disqualification of directors and establish databases on disqualified directors for this purpose.

In Croatia online formation of LLCs is introduced in April 2019. Such registration is limited to formation of LLCs and simple LLCs with share capital entirely paid in cash through national registration portal START. START is an information system which provides services for starting up of business

activities as a one-stop-shop. It is available for applicants who use Croatian eID cards or FinaCertRDC certificates on QSCD crypto devices. They must activate their personal user box within the e-Citizens system. START system cannot be used by persons who use electronic identification means issued by other Member States or third countries. Through START system applicants submit the application for registration of a LLC and prescribed documents, draw up the instrument of constitution of a LLC by use of templates, pay fees and cash contributions in the share capital of a LLC and communicate with the Court Register. Use of START portal lowers formation costs and shortens time for registration of a LLC on five days. In 2020 there were 866 LLCs formed through START portal which constitutes 7 % of all LLCs formations in that year.

Croatian Parliament must harmonize existing national provisions on the online formation of a LLC with provisions of the Directive. For that purpose Croatian Government prepared a proposal on amendments of the Companies Act and the Act on the Court Register in April 2021. According to the proposal following amendments will be introduced: a) translation of templates of the instrument of constitution of a LLC in English language, b) physical presence of applicants in front of notaries for prevention of identity falsification or in ensuring compliance with the rules on legal capacity and on the authority of applicants to represent a company on request of the Court Register, c) introduction of the online formation of a LLC with participation of notaries, d) establishment of the database on disqualified directors and e) Court Register takes into account any disqualification that is in force or information relevant for disqualification, in another Member State (BRIS system will be used for sharing of such information).

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