

LUXEMBOURG TRANSPOSES THE DIGITALISATION DIRECTIVE

On 15 June 2023, the Luxembourg Parliament adopted the bill n°7968 aiming to transpose the Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 (the "**Directive**") amending Directive (EU) 2017/1132 on the use of digital tools and processes in company law and to implement the digitalisation of the notarial profession (the "**Bill**").

SCOPE

The Bill establishes a legal framework enabling the use of digital technologies, amongst others, in companies' processes, by modifying:

- the Civil Code;
- the law of 9 December 1976 on the organization of the notarial profession, as amended (the "**Notarial Law**");
- the law of 10 August 1915 on commercial companies, as amended (the "**Company Law**"); and
- the law of 19 December 2002 on the Trade and Companies Register ("**RCS**") as well as the accounting and annual accounts of companies (the "**RCS Law**").

Authentic instruments in electronic format

As part of the digitalisation of the notarial profession, the Bill introduces changes to the Company Law, the Civil Code and Notarial Law to create a legal basis for authentic instruments to be drawn up in electronic format and set the terms and conditions they must comply with to be valid. All authentic instruments may be drawn-up in electronic format, except for testaments.

When authentic instruments are drawn-up remotely:

- with the consent of the notary, the parties connect to the notary's electronic exchange platform, using an electronic means of identification that allows the parties to be identified;
- notaries may require the use of audio-visual means of communication, to fulfil their verification and advisory duties;

Key points

- Authentic instruments in electronic format
- Notarial electronic exchange platform
- Online incorporation of SA, SCA, SARL and establishment of branches

- notaries may choose the type of electronic signature to be used, e.g. a qualified electronic signature within the meaning of the eIDAS Regulation¹;
- certification of the identity of the parties remains in any event the responsibility of the notary.

Notaries may refuse to pass an authentic instrument remotely and require the physical presence of a party in two instances:

- when the notary has reasons to suspect falsification or usurpation of identity, non-compliance with the rules relating to the legal capacity of a party or the power of representation of a company by a party to the authentic instrument;
- when a part or all of the share capital of a company is paid up in kind.

All authentic instruments drawn-up in electronic format must also be archived in paper format in their register (*répertoire*) with the mention "*acte authentique électronique*". The printed document must state that it replaces the electronic original and bears the notary's seal and signature.

The Bill does however not impact the general principle of the notary's responsibility and the involvement of the notary as a trusted third party, constituting the basis of the authenticity of authentic instruments.

Electronic notarial exchange platform

The Bill establishes the electronic notarial exchange platform to ensure the uniformity of documents and facilitate digital communication with third parties, in particular with public authorities. Authentic instruments in electronic format passed without the physical presence of the parties, shall be drawn-up exclusively on the electronic notarial exchange platform, subject to nullity. When a party electronically signs an authentic instrument in person at the notary's office, access to the electronic notarial exchange platform is not necessary.

The platform enables notaries to draw up authentic instruments in electronic format, collect electronic signatures from the parties, obtain data from and transmit data to public bodies and authorities. Authentic instruments drawn-up on the electronic notarial exchange platform are deemed to be passed in the notary's office.

Online incorporation of companies & establishment of branches

The Company Law in its current version requires, subject to nullity, that SA, SCA and SARL type companies, are incorporated by means of a special notarial deed², which requires the presence of the parties (attending in person or being represented via a power of attorney).

The Bill introduces the possibility to incorporate these types of companies and to establish branches online without any physical presence. The online incorporation of companies is also possible using standard articles of association made available free of charge by the Chamber of Notaries.

¹ Regulation (EU) 910/2014

² Article 100-4 paragraph 2 of the Company Law

The share capital of the companies incorporated online may also be paid up in cash online into an account opened in the name of the company.

Strengthening the exchange of information between European commercial registers

The Bill introduces in the RCS Law a registration requirement for Luxembourg branches of commercial and civil companies, economic interest groupings and European economic interest groupings, for a specific file and registration number to be created for them with the RCS. The impact of this change is purely administrative and involves additional obligations for the RCS administrator only.

Branches opened by SA, SCA and SARL companies in the territory of another Member State shall also be registered with the RCS. A specific transitional provision has been introduced for the procedure for including branches that are already registered with the RCS and do not have their own file or registration number.

ENTRY INTO FORCE

It is foreseen that the law implementing the Bill will come into force on the first day of the month following the publication of the law, except for the rules on the RCS filing and signature, which should be effective as of 1 August 2023.

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