The Informal Company Law Expert Group (ICLEG)

Report on digitalisation in company law

March 2016

ICLEG was established by the European Commission (EC) in May 2014 to assist it with expert advice on issues of company law and it held its first meeting on 26 June 2014. The agendas of its meetings are available online at the webpage maintained by the European Commission.

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On 26 January 2015, the European Commission requested ICLEG to consider the issue of digitalisation of company law and two members, Vanessa Knapp and Jesper Lau Hansen, were charged with producing a response on behalf of the Group. After consultation within the Group, this report reflects the advice of ICLEG to the European Commission as to matters that ICLEG believe merit further consideration.

The report begins with some general observations on whether there is a need for digitalisation in the company law area, what the current issues are, the current situation and initiatives that have already been taken, what might be achieved by EU intervention in these issues and some areas outside company law which are relevant to the issue. It then presents various recommendations relating to digitalisation.

Disclaimer: As this paper has been drafted by ICLEG, it solely reflects the views of the Group. It should not in any way be interpreted as representing the views of the European Commission. It should also be noted that the report purports to present a range of ideas that can inspire the European Commission in its further possible work on digitalisation of company law. We have not considered whether these ideas are politically feasible and the range of ideas, opinions and recommendations are not necessarily supported by each and every member of the Group, although in general we believe that they are worthy of serious consideration and further consultation with other interested parties. We generally believe that it is important to prepare any legislative initiative by detailed consultation with the affected parties, notably companies, investors and public authorities, and we recommend that this be done to the greatest extent possible both on the general principles and, once the general principles have been established, on detailed proposals for any action.

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PART I. INTRODUCTION AND EXISTING PROVISIONS

1. Introduction

1.1. This report looks at the issue of digitalisation in company law in the EU. By »digitalisation« we mean the representation of communication in writing or sound by electronic means and the concept thus concerns electronic communication including the transmission of information and the storage of such communication electronically and electronic access and retrieval from such storage. When we refer to company law, this includes the process by which a company is formed, the obligations on a company to register certain information and publish it and certain corporate governance aspects, such as the ways in which companies and their shareholders communicate with each other. By corporate governance we mean the structures by which the management of a company is organised and the distribution of powers that this structure represents, which we see as an inherent and important part of national company law.

1.2. Although electronic communication predates digitalisation, which is most often thought of as electronic computer language in binary codes, these earlier forms – telephone, telegraph, radio and television broadcasts, and movie reels – are nowadays often substituted by digitalisation and are here included in the term »electronic communication« for convenience.

1.3. Electronic communication has existed for some time, and the advent of the internet brought a significant development, especially when it became accessible through a simple general mode (World Wide Web, WWW). The internet now allows a wide variety of people to access, create, share and store information easily.

1.4. There can be no doubt that digitalisation has changed not only *how* we communicate, for example by email, text and social media rather than writing a paper letter, but also *what* we communicate. Electronic communication has made it easier for us to create and share information quickly and inexpensively among a large number of people in different places. Thus, when considering the possibilities that digitalisation offers, it is important not simply to see it as a change of how we can communicate, exchanging paper with bytes, but also as a profound change of what we can communicate about and what we can achieve.

2. What are the issues relating to digitalisation in company law?

2.1. Member states' company law was written before the advent of digitalisation. The original requirements relating to the formation of companies and providing updated information to business registries were first formulated when this was done in hard copy form. Similarly, companies' communications with their shareholders and other interested stakeholders was done by providing physical paper and it was assumed that shareholders would meet in person to take decisions.

2.2. Now it is possible for companies to be formed online and for filing requirements to be met online. Companies and shareholders can communicate electronically and decisions can be taken electronically without physical presence being needed. However, in many cases, the relevant com-

pany law provisions need to be changed to allow this to happen. In recent years it has become more usual for the shareholders of companies to come from a jurisdiction other than that of the company and for companies to operate internationally so that they deal with more stakeholders from different jurisdictions who have an interest in checking information on that company. This is a beneficial development and can be seen as a positive consequence of the ambition within EU law to create a borderless internal market. However, these cross border elements mean that the ability to provide and access information about companies electronically and companies' ability to take decisions electronically has become more important. In an age when it is assumed that things can be done online, it is important that company law does not act as an impediment to this.

2.3. The EU has already taken some steps to make use of digitalisation in company law. We set out the main ways in which it has done this in point 5 below. Many member states have already taken some steps to facilitate the use of electronic communications between companies and shareholders, not just for companies whose shares are admitted to trading on a regulated market but also for smaller companies. They have also taken steps to allow some companies to be formed online, subject to various safeguards. The steps taken by different member states differ, so that in some member states use of digitalisation is fairly fully enabled, whilst in others that is not the case.

2.4. The result of the differences of approach to digitalisation is that companies in the EU, their shareholders and those that deal with them are not always able to take full advantage of the benefits of digitalisation. In some cases, where companies cannot provide information to business registries electronically it is more burdensome and costly for companies, it takes business registries longer to deal with the information received and so to make it available to the public. It may also be harder for a business registry and the public to find information about a company they are looking for as it is harder to search if it is not digitally available.

2.5. For companies communicating with shareholders electronically or vice versa, it is easier and less costly to communicate, because writing an electronic message is quicker, correction of errors easier, and distribution almost costless even to recipients that are many or far away. Use of digital technology can also enable those who are shareholders in a company in another country to engage more easily with that company through receipt of information and participate in decision making. It can also make it easier for someone to set up a company in another country without a physical presence in the relevant country and meet the filing obligations. It can also assist those dealing with a company from another country to access information about that company.

3. Are there problems that could be alleviated by EU intervention?

3.1. The different approaches adopted by different member states mean that there is no common approach across the EU to enable persons to set up a company online, to use digital technology to provide further information about the company or to enable companies to use digital technology to communicate with shareholders or provide information to others. In Parts II, III and IV we make various suggestions as to areas where EU intervention could be considered.

3.2. However, in considering any EU intervention there is a number of factors that must also be considered. The principle of subsidiarity means that the EU may only intervene if it is able to act

more effectively than member states. The Protocol on the application of the principles of subsidiarity and proportionality lays down three criteria aimed at establishing the desirability of intervention at European level:

- Does the action have transnational aspects that cannot be resolved by member states?
- Would national action or an absence of action be contrary to the requirements of the Treaty?
- Does action at European level have clear advantages?

3.3. This affects what the EU should do and, if it should take action, the way in which it does so. There are various aspects of digitalisation. One area concerns a company's ability to communicate with its shareholders and others and to take decisions taking advantage of digitalisation. The other area concerns the ability to form a company and provide further required information digitally to the relevant business registry. For each area, there is a question as to which companies, if any, should be the subject of any action and also what the extent of any action should be. This can range from taking no action, to an enabling approach in certain areas, e.g. so member states are required to allow companies to take certain actions, to a mandatory approach where member states must require companies and/or regulators and/or others to take certain actions. In the possible solutions set out below, we have made suggestions as to the approaches the Commission should consider.

3.4. There are obviously costs involved in requiring business registries to move to a system of full digitalisation. There may also be costs for companies and shareholders in using digitalisation. We do not have sufficient evidence available to us about the relevant costs and benefits of the suggestions we are making. The experience of member states that have moved to using digital technology to a large extent will be very helpful in making an assessment of the costs, how long it takes to reap the benefits of the initial investment and other benefits that may flow from use of digital technology. We understand that some business registries believe that a move to digitalisation can lead to better quality of filings, because the IT systems can help ensure that all necessary information is provided and all documentation required is attached. They also believe that IT systems can lead to more efficient control by the authority, fewer queries/calls from the public, as IT systems can help answer many questions connected to filings, and the release of manpower to do other work as the IT systems can handle the more routine work. The results of the work being undertaken through the Business Registries Interconnection System (BRIS) are not yet fully apparent and there may be scope for business registries to cooperate further in sharing best practice.

3.5. In assessing what form any EU intervention might take, ICLEG believes it is important to recognise that there are considerable differences between the general proficiency and level of engagement with digitalisation of the individual member states, their authorities and citizens. Also, within a member state, there can be significant differences between the ways in which different individuals use digital technology. In some cases the EU can undertake work to determine what the true current state of play is and to identify whether there are common problems throughout the EU which can be dealt with by action at EU level. This action could then take the form of a Recommendation or a Directive. At the same time, in parallel to legislative changes or, in some cases, instead, we believe that there is also an important role for bringing groups of interested stakeholders to-

gether, for example companies, investors, those that provide services to them and national companies registries, to see how much could be achieved by private action initiatives, for example agreeing common standards and publicising best practice. Considering the complexities involved and how rapidly technology changes, such bottom-up initiatives may prove helpful and may lay the foundation for later harmonisation efforts.

4. Are there areas outside company law which should also be considered?

4.1. The delineation of company law from other areas of law can vary among the jurisdictions of the member states and other areas of law are often of great importance to companies and their stakeholders even if not traditionally regarded as part of company law. In this report, we focus mainly on the digitalisation of company law, but we would also like to point out related areas of law that we think are relevant to the question of digitalisation and its impact on company law.

4.2. These areas are addressed in points 10 – 11 below and cover procedural law in respect of the admissibility of electronic documents, money laundering, and insolvency law. Another relevant area is data protection law, which is addressed in point 23 below.

5. Existing provisions

The EU has already taken some steps to facilitate the use of digital technologies and electronic communications in the company law area and these initiatives form the background to the further initiatives that we propose in this report.

5.1. Shareholder Rights Directive (SRD)

This Directive 2007/36 establishes requirements in relation to the exercise of certain shareholder rights attaching to voting shares of companies with a registered office in a member state with shares admitted to trading on a regulated market situated or operating in a member state (publicly traded companies). It sets out various measures to facilitate the use of electronic communications.

From the SRD we note:

- There is an obligation to make certain information available to shareholders on the company's website;
- Member states must ensure that shareholders have the right to put items on the agenda of the general meeting and to table draft resolutions in writing which may be submitted by post or electronic means;
- Member states must permit companies to offer shareholders any form of participation in the general meeting by electronic means, including by real-time transmission of the general meeting, real-time two-way communication enabling shareholders to address the meeting from a remote location and a mechanism for casting votes before or during the general meeting without the need to appoint a proxy who is physically present. In this latter case the use of electronic means may be made subject only to such requirements and constraints as are necessary to ensure the identification of shareholders and the security

of the electronic communication and only to the extent that they are proportionate to achieving those objectives. This is without prejudice to any legal rules which member states have adopted or may adopt concerning the decision-making process within the company for the introduction or implementation of any form of participation by electronic means;

- Member states must permit shareholders to appoint a proxy and revoke an appointment by electronic means and permit companies to accept the notification and revocation of the appointment by electronic means and must ensure that every company offers at least one effective method of notification and revocation by electronic means; and
- The company must publish voting results on its internet site.

The European Commission published a proposal to amend the SRD in 2014, which is still being negotiated. This includes a proposal that member states shall ensure that publicly traded companies have the right to identify their shareholders, that intermediaries communicate information about the identity of shareholders to the company, that intermediaries communicate information from the company to shareholders without delay and transmit information from shareholders necessary to exercise their rights to the company without delay and facilitate the exercise of shareholder rights, including the right to participate and vote in shareholder meetings.

5.2. Transparency Directive as amended

This Directive 2004/109 as amended by Directive 2013/50 sets out transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market. It contains information requirements for issuers and requires member states to allow issuers the use of electronic means provided a decision is taken in general meeting and meets certain conditions, including that the use of electronic means shall in no way depend on the location of the seat or residence of the shareholder and shareholders must be contacted in writing to request their consent for the use of electronic means for conveying information and, if they do not object within a reasonable period of time, their consent shall be deemed given subject to their right to request, at any time in the future, that information be conveyed in writing.

Article 4.7 of the amended Transparency Directive requires issuers to prepare the annual financial report required by the Transparency Directive in European Single Electronic Format (ESEF) with effect from 1 January 2020 provided the European Securities and Markets Authority (ESMA) has conducted a cost benefit analysis. ESMA must develop draft regulatory technical standards to specify the electronic reporting format, with due reference to current and future technological options. Before the adoption of the draft regulatory technical standards, ESMA must carry out an adequate assessment of possible electronic reporting formats and conduct appropriate field tests. ESMA must submit those draft regulatory technical standards to the Commission at the latest by 31 December 2016. Power is delegated to the Commission to adopt those regulatory technical standards. On 25

September 2015 ESMA issued a consultation paper on the regulatory technical standards in the European Single Electronic Format.[1]

5.3. Electronic filing of certain documents and interconnection of registries

Directive 2009/101 replaced and repealed the First Company Law Directive. The Directive states that "Member states shall ensure that the filing by companies, as well as by other persons and bodies required to make or assist in making notifications, of all documents and particulars which must be disclosed pursuant to Article 2 is possible by electronic means". These are the company's constitution, changes to the constitution, the complete text of the constitution as amended, details of those authorised to represent the company in dealings with third parties and legal proceedings and those who administer, supervise and control the company, the capital subscribed at least once a year, accounting documents, changes to the registered office, whether the company is being wound up, the appointment of a liquidator, termination of a liquidation and striking off of the company and any declaration of nullity by the courts. Member states must ensure that certification of electronic copies guarantees both the authenticity of origin and the integrity of their contents by at least an advanced electronic signature. Electronic copies supplied are not certified as true copies unless an applicant explicitly requests such a certification. Member states must prescribe that letters and order forms, whether in paper form or any other medium, must contain certain information, i.e. the registry where information is kept, the company number, the legal form of the company, the registered office, if appropriate, that the company is being wound up and, if mention is made of the company's capital, the subscribed and paid up capital. Company websites must also have this information on them.

The Directive, as amended by Directive 2012/17, amongst other things requires a Business Registries Interconnection System (BRIS) to be established. When the Directive is fully transposed, BRIS will make it easy to access information on EU companies via the e-Justice or other national portals. In addition, it will facilitate electronic communication between registries in relation to cross-border mergers and branches of companies registered in other member states. Commission Implementing Regulation 2015/884[2] was adopted in June 2015. It sets technical specifications and procedures for the system of interconnection of business registries, security standards, data to be exchanged relating to branch disclosure notification and cross border merger notification. It also requires the systems to allow users to pay online by using widely used payment modalities such as credit and debit cards. It also provides for harmonised criteria when running a search.

[1] https://www.esma.europa.eu/databases-library/esma-library
[2] http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015R0884&from=EN

5.4. Proposed Directive on single-member private limited liability companies (SUP)

This proposed Directive[3] on single-member private limited companies, if adopted, will require member states to provide for an SUP to be registered online. Member states will need to then provide a template of the instruments of the constitution online and may only require certain limited information to be provided for use in the template.

5.5. eIDAS Regulation

Directive 1999/93 on a Community framework for electronic signatures was designed to help the proper functioning of the internal market by ensuring the free movement of electronic signatures and supporting services and products. The Directive is repealed by Regulation (EU) N°910/2014[4] on electronic identification and trust services for electronic transactions in the internal market (eIDAS Regulation) adopted on 23 July 2014 which will provide a predictable regulatory environment to enable secure and seamless electronic interactions between businesses, citizens and public authorities. It ensures that people and businesses can use their own national electronic identification schemes (eIDs) to access public services in other EU countries where eIDs are available and creates an European internal market for electronic trust services (eTS) by ensuring that they will work across borders and have the same legal status as traditional paper based processes. Only by providing certainty on the legal validity of all these services, will businesses and citizens use the digital interactions as their natural way of interaction. The Regulation is already in force but provisions on trust services will apply as from 1 July 2016. Member states have been able to choose to apply the provisions on the mutual recognition of notified eID means since 29 September 2015 and these provisions will apply mandatorily as from 29 September 2018.

5.6. Actions taken by member states already

As stated above, many member states have already taken steps to facilitate the use of electronic communications between companies and shareholders, not just for companies whose shares are admitted to trading on a regulated market but also for smaller companies. They have also taken steps to allow certain companies to be formed online, subject to various safeguards. A number of examples of such measures, based on information provided by members of our Group, are set out in Annex A.

Against this background, we explore in Parts II, III and IV where there is potential action for consideration.

[3] Commission proposal COM(2014) 212, 9 April 2014. A revised proposal was adopted at the Council (Competitiveness) on 28 May 2015 http://www.consilium.europa.eu/en/press/press-releases/2015/05/28-29-compet-single-member-private-companies/

[4] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2014.257.01.0073.01.ENG

PART II. GENERAL PRINCIPLES

6. General principles

6.1. This Part II presents some general principles that should inform the approach to company law and the question of digitalisation by legislators and public authorities.

6.2. Several expert groups working on behalf of the European Commission – the Reflection Group on the Future of EU Company Law being the most recent – have observed that the different corporate governance models (which are part of company law) in the different member states of the Union are not an impediment to the functioning of the internal market, but a treasure trove of opportunities developed over generations, tested by time and closely integrated with private law in the individual member states. As it has been often stated there is no single model that fits all. To the extent that digitalisation provides more efficient or costless ways to communicate or opens up new ways of interaction between authorities, companies and their stakeholders, this should be made to dovetail with existing corporate governance regimes respecting their peculiarities.

***Recommendation 1**: Digitalisation should respect and dovetail with existing corporate governance regimes of the individual member states.*

6.3. The rapid development of technology and the resulting possibilities for digitalisation mean that the law and the authorities administering the law should not favour any one technology, but should remain technology neutral. The law should allow companies and others to decide for themselves which technology they find suitable from time to time to satisfy the requirements of the law. Thus, national legislation should only prescribe the intended functionalities of certain digitalisation measures, but should not prefer one technology over another.

6.4. Where it is deemed necessary to describe functionalities or perhaps indicate certain technical solutions to promote harmonisation, advantage should be taken of the possibility under articles 290 – 291 of the Treaty on the Functioning of the European Union to regulate these more technical issues at level 2, which would make it easier to readdress them at any given time if circumstances or the technological development so requires.

6.5. Where it is deemed necessary to indicate certain technical solutions to promote harmonisation, preference should be given to open-source technology and to avoid proprietary systems that could entrench incumbent technologies and generally it is important to avoid measures that may establish barriers to entry or otherwise reduce competition.

***Recommendation 2**: The law should at all times remain technology neutral and abstain from mandating or favouring any specific technology. When in the interest of harmonisation it is deemed necessary to describe functionalities or technology, this should be done at level 2 according to Art. 290 – 291 TFEU, and preference should be given to open-source technology with due consideration to maintaining competition as far as possible.*

6.6. While there exists a plethora of different systems of company laws, including different corporate governance systems, that the citizens of the Union can avail themselves of, the promise of the

Union is to allow its citizens to enjoy the four fundamental freedoms enshrined in the founding treaties: the freedom to work anywhere in the Union; the freedom to establish oneself anywhere in the Union; the freedom to provide services across the Union; and the freedom to invest across the Union.

6.7. All of these freedoms would be rendered obsolete if not protected against discrimination, direct or indirect as the case may be. We observe that the protection against discrimination, so fundamental to the pursuit of the treaty freedoms, does not always require harmonisation of the laws of the member states, but may just as often be achieved by member states accepting foreign approaches in their territory. Thus, the *principle of mutual recognition* that came to prominence with the introduction of the Single Market by the end of 1992 has also contributed significantly to a more efficient Union and in many cases is easier for member states to accept than detailed harmonisation.

6.8.This development has also been promoted by the Court of Justice of the EU which, in its case law, has emphasised the obligation of member states to remain proportionate in their requirements and to accept declarations and certificates from other member states as being on a par with those of their own authorities and to cooperate with the authorities of other member states where possible and not require citizens or companies to conform to national law and use national documents where the use of documents from other member states or cooperation with authorities of other member states may achieve the same.

6.9. Among this extensive case law that covers many different areas of law, because what is at issue here is a general principle of primary EU law, one could point out as relevant to the area of company law the Court's decision of 6 June 1996 in case C-101/94, Commission v Italian Republic. In that case, Italian law restricted dealing in securities to companies organised under Italian law, known as *società di intermediazione mobiliare* (SIM). The Italian Government did not dispute that this requirement of national law was an impediment to dealers wishing to trade securities in Italy by use of other forms of secondary establishment, but it maintained that this was justified by the societal need to protect investors when trading securities and that the requirement of using an Italian SIM was objectively justified because it was not possible to compare the conditions laid down by the Italian legislation with those laid down by the other Member States. The Court accepted the need for protection, but rejected the arguments of the Italian Government pointing out, inter alia, the obligation of member states and their authorities to compare their own systems with that of other member states to establish whether equivalent protection is available, and the possibility to cooperate with the authorities of the home member state. This decision was made at a time when digitalisation was less advanced and must surely apply even more today, where cooperation among authorities and the provision of data deemed necessary for supervision can be transferred easily by electronic means.

6.10. We believe that the principle of mutual recognition is an important and practical supplement to *de jure* harmonisation. In some cases, for example when setting standards to ensure the interoperability of messaging systems, it is justified to strive for harmonisation to achieve a level playing field and avoid discrimination and to that end to use the Treaty's instruments of recommendations, directives and regulations to achieve it. But the principle of subsidiarity and the principle of

proportionality rest on the premise that not everything should be harmonised and that the Union can thrive with diversity, which, at least at this point in the development of EU company law, is the case in respect of the different corporate governance systems adopted in member states.

6.11. That being so, it is important that the Commission remains vigilant in its task as the enforcer and protector of the Treaty's freedoms and ensures that the principle of mutual recognition is observed by all member states and their authorities. It should not be acceptable for national competent authorities to require companies to provide certificates, documents or other information that is already available from their home member state or to require them to conform to national requirements if they have already observed equivalent standards at home, unless clearly, proportionately and objectively justified by societal needs. To enable it to perform this important task, the Commission should continue to make itself available for complaints from companies and their stakeholders and consult with national competent authorities to ensure the observance of this important principle. The Commission might want to consider whether it would be helpful if national competent authorities were required to have details of the principle of mutual recognition on their website together with details of how to complain (for example through the SOLVIT network or by notifying a complaint to the Commission (http://ec.europa.eu/atwork/applying-eu-law/complaints_en.htm)) if a company or other person believes a requirement to provide certificates, documents or other information that is already available from their home member state or to conform to national requirements when they have already observed equivalent standards at home does not respect the principle of mutual recognition.

Recommendation 3: *The Commission should consider taking action to remind member states of the principle of mutual recognition and of the requirement to apply it wherever possible in the context of cross-border activity and to the greatest extent possible in respect of the standards, protocols, certificates, etc., applied by member states in respect of digitalisation of company law and the technologies involved in that and respond to any violations of the principle in this area. The Commission could also consider whether it would be helpful if national competent authorities were required to have details of the principle of mutual recognition on their website together with details of how to complain if a company or other person believes a requirement to provide certificates, documents or other information that is already available from their home member state or to conform to national requirements when they have already observed equivalent standards at home does not respect the principle of mutual recognition.*

PART III. DIGITALISATION OF COMMUNICATIONS BETWEEN A COMPANY AND THE STATE

7. Interaction between national systems

7.1. This Part III concerns digitalisation in respect of the national competent authorities (NCAs) that are engaged with company law, notably the national business registries. While each member state should be entitled to maintain its system of company law and any corporate governance model inherent in it, member states should recognise that they form the building blocks of a greater Union

and that in order for their citizens to enjoy the freedoms described in point 6.6 above the member states must cooperate to remove unnecessary boundaries between them.

7.2. The Union cannot enjoy a coherent internal market, unless information flows freely within the Union and it is possible for all its citizens to avail themselves of the possibilities of electronic communication irrespective of national borders. For example, the Capital Markets Union envisaged by the current Commission rests upon the assumption that an investor in any member state can safely and easily invest in any company no matter its location within the Union.

7.3. Thus, it is important to ensure common interfaces so that different systems applied by national authorities can interact. Just as the BRIS project envisages an integrated system of business registries across the Union, there would be a significant benefit for companies and those seeking information about them if all other digitalisation systems operated by member states were compatible with each other. It is important to note that not all information gathered by a member state should be available to the public at large. There are justified concerns of privacy that may restrict the availability of information. But where information is available to the public of a member state, it should be available to the public of the Union at large; free to access and available online.

7.4. The BRIS project concerns business registries and mostly applies to the information provided according to Directive 2009/101. It is specifically targeted – in line with the scope of Directive 2012/17 – to achieve EU-wide availability of information on limited liability companies which needs to be mandatorily disclosed. However, member states may operate other registries of relevance to companies, their stakeholders, investors or the public at large. There may be central and public registries that go beyond the requirements of Directive 2009/101 and other registries may be kept by national competent authorities different from business registries because their legal basis is seen as different from company law, e.g. because they concern financial market law. Such registries may deal with major shareholdings or the filings made by insiders of publicly traded companies or concern public takeover bids, etc. In a Union without borders for the flow of information available to all its citizens, ideally, all national registries that are publicly available should be available for all throughout the Union by online access. This may be a faraway goal and so it is important to build upon the BRIS project and expand it to other areas more closely related to companies, irrespective of whether the information has its basis in company law or not. To promote this pan-European cooperation, the Commission should play a coordinating and active role.

Recommendation 4: *The Commission should consider taking action so that all member states cooperate, with the assistance of the Commission, so that their national systems can interact across borders and to secure the pan-European interoperability and compatibility of their systems with similar systems of other member states to achieve the overall goal of providing each citizen easy online access to all public systems and all publicly stored relevant information across the Union, irrespective of the location of the citizen and the information sought by that citizen. This could be done, for example, by using the BRIS platform to interconnect registers, including those relating to insolvency, disqualification of directors information and sole traders. As a first step, we suggest that all member states be asked to identify where information dealing with major shareholdings, filings made by in-*

siders of publicly traded companies or concerning public takeover bids is kept and whether access to this information could be made available through the BRIS project.

8. Online formation of a company

8.1. The proposal for an SUP, if adopted, will allow a single member company to be formed online without the founder needing to be physical present before the national competence authority (NCA) of the relevant member state.

8.2. We believe that it is generally possible to use technology to establish the identity of the founders of a company online to a sufficient degree. We recognise that fraud will always be possible as indeed it is with any existing non-electronic system and that the processes adopted need to be designed to minimise this as far as possible.

8.3. Various member states already allow companies to be formed online and have various safeguards in place. We believe that member states should be free to maintain their traditional systems connected with the formation of companies, e.g. the mandated use of notaries as part of the process, but that they should integrate an online approach to such national systems and recognise electronic forms of identification so that physical presence in the territory of the member state where the company is to be formed becomes unnecessary.

8.4. To provide a genuine possibility of online formation of a company, the member state must also allow all the relevant requirements to be met digitally, including the representation in electronic form of all relevant documentation, e.g. confirmation of payment into an account designated to the new company.

8.5. We believe that online formation of national companies will provide efficiency, ease and a reduction of costs for both the nationals of the individual member states seeking to establish new companies in their own country and those from other member states seeking to use their treaty right to establish a company abroad.

8.6. There would obviously be advantages if the systems used in member states for online creation of companies were to follow common standards, as discussed below.

8.7. The information required by NCAs to form different types of company varies. In some member states, the NCA only allows certain companies to be formed online. It would be helpful to understand why the NCA has adopted this approach and whether or not it relates to the type of information needed to form the company and/or that where a particular form of company is not used frequently it is harder to justify the cost of moving to online formation. Action by the Commission should be preceded by consultation with the NCAs of member states to gather experience. Based on this consultation, the Commission may decide which instrument of harmonisation is relevant. If harmonisation is as a first step limited to limited liability companies subject to Directive 2009/101, then harmonisation could be achieved by an amendment of that directive.

Recommendation 5: *The Commission should consider taking action so that the member states allow online formation of all national companies formed under their laws and subject to registration in their business registries and dispense with all requirements that necessitate the physical presence of founders or others in their territory.*

8.8. Online formation of companies, particularly for those establishing a company in another member state, would be greatly assisted if member states would provide a standard set of articles or other constitutional document that would apply to a newly formed company unless changed by the founders or shareholders, either on formation or at a later date. These should be made available electronically via the relevant business registry. Ideally this would be the case for all types of companies, especially the limited liability companies covered by Directive 2009/101. However, it may be that there are particular reasons why a standard form of default articles or other constitutional document is inappropriate for a particular type of company and, if so, it would be helpful for the reasons for this to be explained and scrutinised. While there may, in time, be a case for setting certain minimum standards at EU level as to what the documents should cover or for requiring member states to provide the set of articles or other constitutional documents for certain companies that would apply by default unless changed by the founders or shareholders, e.g. by amendment of Directive 2009/101, at present we believe it is too early to require this and it would be sufficient to rely on voluntary cooperation among member states to make these documents available, possibly supported by a recommendation from the Commission. We suggest that, if a voluntary cooperation approach is adopted, the documents should be made available electronically via the relevant business registry.

8.9. As the standard set of articles or other constitutional document for a particular company made available by the member state (as referred to in paragraph 8.8) is likely to include certain specific information, e.g. company name and registered seat, the business registry would have to allow for online electronic communication of these details so that founders or shareholders may insert their choices into the standard online. Subsequent changes of the standard articles would follow national company law as to the way in which such changes must be approved. It should also be possible for such changes to be notified online.

Recommendation 6: *The Commission should consider encouraging member states to make available electronically via the relevant business registry a standard set of articles or other constitutional document applicable to each of the company forms that are recognised by national law and can be registered in the national business registry. Founders should be able to use and adopt these online and shareholders should be able, subsequently, to amend these online after complying with the relevant national law requirements for making such changes.*

8.10. A company may need to contact its national business registry from time to time to register various new developments, for example, to file financial accounts, to register appointments or dismissals of directors, auditors, etc. As set out in point 5.3 above, member states are already required to allow the electronic filing of certain prescribed documents under Directive 2009/101. The Directive states that member states must ensure that the filing by companies and other persons and bodies required to make or assist in making notifications is possible by electronic means. Our un-

derstanding is that this provision is implemented differently in different member states. In some member states, companies can file all documents and particulars which must be disclosed electronically and other persons and bodies required to make or assist in making such disclosures are also able to file all such documents electronically, effectively permitting companies to make all filings electronically and on their own if they so prefer. In other member states, we understand that some documents and particulars must be notarial deeds and that it is therefore necessary for a company to involve a notary in some filings. The filing may need to be made by a notary or may, in practice, be made by a notary. Whichever approach is adopted, we think it should be made easy for a company to be in a position to meet any filing requirements without having to be present before a notary in a member state. If certain documents and particulars must be filed by someone other than a company, it should be possible for the company to meet the relevant requirements eg to provide a notarial deed, electronically without having to appear in person before a notary in the relevant member state. NCAs may require companies to file information in addition to the documents and particulars required by Article 2 of the Directive as well and are not currently required to allow this information to be filed electronically. This might, for example, extend to details of mortgages or charges of property. To minimise inconvenience and costs for the company and similarly to reduce administrative work for the NCA, all filings which a company is required to make at an NCA (and not just those required by Article 2) should be capable of being made electronically if the company so chooses. If any of these documents or particulars involve notarial deeds, again we think a company should be able to meet the requirement to provide a notarial deed electronically without having to appear in person before a notary in the relevant member state.

8.11. It is of course important that the NCA operates a system that can guarantee the identity of the person making the filing on behalf of the company and establish that person's authority to act on behalf of the company.

8.12. Safeguards may include use of password or pin, etc. As a further safeguard, any such filing, for example a filing to change the details of a director, should automatically trigger a notification by the NCA to the company and, where the filing concerns physical persons, these persons, to give the persons concerned notice of the change and time to confirm or otherwise respond to the change. So, for example, if a change is made to the details of a director of a company an email could be sent to a person nominated by the company to act on behalf of the company and to the director to inform them of the change that has been made. Consideration should also be given to the best way to deal with a filing that has been made incorrectly or without the requisite authority, including in cases of fraud. This could, for example, involve:

- the NCA having a process for the company and/or the physical person to correct the change if it has been inappropriately made or
- for publication of the electronic registration to be delayed until either a confirmation has been obtained or a time period for notifying that the change has been made incorrectly has expired.

Some member states already operate their business registries in this way.

8.13. There could be benefits in the NCAs of the member states sharing their experience of allowing online filing of changes to required documents and the processes adopted to prevent, identify and deal with any problems of online filing of changes. It might be possible to identify certain minimum standards that all NCAs could adopt for such processes. It would be important to make sure that the system users, both companies and those searching the information, have an opportunity to input into any proposals as to best practice.

***Recommendation 7**: The Commission should consider (i) how to ensure that companies can meet the relevant filing requirements under Directive 2009/101 without having to be present physically in a member state and (ii) taking action so that each member state allows their national companies to make **all** filings (not just those required by Article 2) with the national business registry electronically (online) subject only to safeguards concerning identity, authority of the person acting on behalf of the company and the integrity of the filing and that the requirements can be met without the company having to be physically present in the member state. The Commission should consider taking action to see if there would be benefits in NCAs sharing the approach they adopt to dealing with the potential problems of online filings and to see whether it would be possible to identify minimum standards that all NCAs would adopt for such processes.*

8.14. At present, where electronic copies of information recorded about a company by an NCA are supplied under Directive 2009/101 they need not be certified as »true copies« unless the applicant explicitly requests such a certification. We believe that now that electronic communication is used so widely, applicants are likely to assume that electronic copies of such information will be »true copies«. We suggest that this provision should be reconsidered.

***Recommendation 8:** The Commission should consider taking action so that where electronic copies of information about a company are provided they are certified as »true copies« without an applicant needing to request this explicitly.*

8.15. According to Directive 89/666 on branches, branches have to make certain filings with the business registry of their host member state. Once the BRIS becomes fully operational, the Commission should take action to change the directive to allow a company with a branch to make its filings with the business registry of the member state where the company is incorporated if it so chooses, with the business registry then making that information available to the business registry of the member state where the branch is established. A similar approach could then be adopted for any changes to the information applicable to a branch. For such an approach to be workable, it will be necessary to establish whether member states impose any additional requirements as to the information to be filed about a branch, beyond that required by Directive 89/666. This may be an opportunity to consider whether any such additional requirements are justified taking into account the Court's decision of 30 September 2003 in case C-167/01, Inspire Art Ltd.

Recommendation 9: *The Commission should consider taking action to amend Directive 89/666 on branches, once BRIS is fully operational, to allow for a company to make all filings relating to a branch in another member state with the business registry of its home member state. The Commission should consider taking action to see if any requirements imposed on branches to file information which are additional to those imposed by the Directive are justified.*

9. Single point delivery principle

9.1. The availability of information in digitalised systems enables easy, quick and low cost retrieval. The member states and their national competent authorities (NCAs) should make full use of these opportunities to make information to the public available for free or at a low cost and in a way that can easily be accessed by both nationals and those from other member states. They should ensure that their digitalised systems work among NCAs in a particular member state and between their NCAs and NCAs of other member states in the area of company law.

9.2. It would also be desirable if a citizen or a company were only required to file information with one NCA and when other NCAs require the same information, the information would be pushed automatically to those NCAs from the NCA in possession of the information. For this approach to work, NCAs would need to identify what sorts of information have to be provided to more than one NCA, e.g. changes to details of directors, disqualification of directors or restrictions imposed on directors, and arrange for filing of that information to be automatically transmitted to all NCAs who need to receive it. This principle of single point delivery of information to public authorities within a member state should also apply among member states.

9.3. As the delimitation between company law and financial markets law, i.e. the regulation of publicly traded companies, is vague, the principle of single point delivery might also apply in respect of information provided by the company, its officers and shareholders as a matter of financial markets law.

9.4. We suggest that the NCAs of member states and any other bodies to which a company is required to provide information as a matter of company law or financial markets law (Relevant Bodies) should consider whether it would be possible to create a system that would work in this way to push information received by one NCA or other Relevant Body to all other NCAs or other Relevant Body to which the information would otherwise need to be provided.

Recommendation 10: *The Commission should consider taking action so that member states enable their digitalised systems to interface and make retrieval of company law information between their national NCAs and Relevant Bodies possible in such a way that a citizen or a company would only be required to deliver information at a single point after which it would be provided automatically to all other national NCAs and Relevant Bodies which also need that information from that entry point without the citizen or company needing to take further action (single point delivery principle). This principle should also apply among member states and apply to information required to be provided under financial markets laws irrespective of the character of the entity receiving the company law or financial markets law information mandated by law. At a later date, member states should consider*

whether it is possible to extend this to other regulatory authorities in the member state or another member state, such as tax authorities.

10. Acceptability of electronic documents as evidence

10.1. If we are to move to a position where information is provided and accessed digitally, it is important that all courts and others who rely on information or use it will recognise the information in digital form and treat it as admissible evidence for the purpose of court and other proceedings. Many member states already accept information in digital form in some instances. Article 46 of Regulation No 910/2014 provides that "An electronic document shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in electronic form ".

10.2 Regulation (EC) No 1393/2007[5] on the service in the member states of judicial and extrajudicial documents in civil or commercial matters (service of documents) applies to civil or commercial matters where it is necessary to transmit judicial or extrajudicial documents for service from one member state to another. Documents must be transmitted directly and as soon as possible between the agencies by any appropriate means of transmission, as long as they are legible and faithful to the original.

10.3. It would be worth carrying out a systematic review of the position in practice and whether, in practice, there are any difficulties in courts or other bodies accepting information in digital form as having legal effect and as being admissible as evidence. If there are discovered to be significant differences of approach, it would be worth consulting on whether it would be desirable to introduce some minimum standards which all member states would accept as constituting acceptable evidence in cases not confined to legal proceedings.

Recommendation 11: *The Commission should consider taking action so that the status of the acceptability of electronic documents as evidence in practice in legal and other proceedings should be reviewed and, if there are significant differences between the approach adopted by member states, consideration is given to setting minimum standards which member states would accept as constituting acceptable evidence in cases not confined to legal proceedings.*

11. Other areas with an impact on digitalisation

11.1. An area which has close links to the online formation of companies and the further information to be provided to regulatory authorities is the regulation of *money laundering*. It is important that there should be appropriate provisions to prevent and combat money laundering. At the same time, it is also important that individuals and companies are not prevented from taking advantage of digitalisation to form companies and provide further information about them. Particular attention should be paid to reconcile these goals without compromising the effectiveness of anti-money laundering measures.

[5] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007R1393:EN:HTML

11.2. Insolvency law is closely related to company law, although often ignored. It may be useful to consider the position of liquidators/receivers who take over a company in distress and, in particular whether in practice they are able to access company information which is held digitally so that they can manage and resolve the company, and whether there are any difficulties in their being bound by decisions and obligations entered into by digital means.

Recommendation 12: *The Commission should consider taking action in areas that are of relevance to company law to ensure that the benefits of digitalisation are not hampered by the traditional approach to these areas in other areas of law. It would be particularly helpful for the Commission to consider the interaction with money laundering and insolvency law.*

PART IV. ELECTRONIC COMMUNICATION BETWEEN A COMPANY AND ITS SHAREHOLDERS AND OTHER STAKEHOLDERS

12. General principles

12.1. Using electronic communication and digitalisation in general can be very beneficial to companies and their shareholders and other stakeholders such as employees and creditors. It can facilitate communication and make company relevant information available quickly and at a lower cost. The swift adoption and use of new technologies are often crucial determinants of highly effective companies and can help to ensure vigorous and healthy competition. We believe that company law, which regulates the relationship between a company and its shareholders and which may require companies to provide information to other stakeholders, should allow for such electronic communication among these private parties.

12.2. We therefore believe that member states should specifically allow all companies – whether public or private, and whether publicly traded or not – and shareholders to use electronic communications to provide information or exercise rights if they wish, subject to certain safeguards that ensure the identity of those communicating and the integrity of the communication itself. We also believe that companies should be able to use digital technology to enter into contracts and execute documents and to provide information to stakeholders.

12.3. We suggest that the Commission should consider taking action so that member states would be required to ensure that all companies are allowed to provide information to shareholders and other stakeholders by electronic means, all shareholders are allowed to provide information to companies by electronic means and to exercise their rights as shareholders by electronic means. We also suggest that the Commission should consider whether there are any provisions in national laws which would prevent companies from using digital technologies to enter into contracts and or execute documents and, if there are, should consider taking action so that companies are able, if they wish, to enter into contracts and execute documents using digital technologies. We consider below whether EU law, rather than national law, should set the more detailed requirements for a particular company to decide whether or not to take advantage of this freedom.

12.4. The difficulty involved in regulating company law springs from the fact that companies are so very different within any one jurisdiction and even within seemingly identical company forms. The sophistication and proficiency in the use of digitalisation and its possibilities vary considerably among companies for many reasons. In some companies, the small number of shareholders may enable a use of digitalisation that other companies with a larger group of shareholders cannot use or alternatively may mean that the company sees no need to use digital technology to communicate if the shareholders meet in person frequently in any case. Conversely, larger companies may be better able to afford digitalisation technology that smaller companies cannot afford. Some companies may attract investors familiar with digitalisation whereas other companies may have shareholders who find it difficult to use similar systems.

12.5. Many member states have already adopted provisions in their law that take account of such differences and also set differing requirements that companies and shareholders must observe if they want to use digital technologies. These can relate, for example, to the number of shareholders who must vote in favour of the use of digital technology and also the treatment of shareholders who do not wish to use digital technology themselves even if it has been decided that the company should be able to make use of digital technology for shareholders who do wish to use it.

12.6. The EU and member states should take care to strike an appropriate balance so as not to force digitalisation on companies that are ill-suited to handle digitalisation or that do not wish to use it whilst at the same time not preventing companies from using all the most modern possibilities that technology offers if they are so inclined. Member states should draft legislation to allow companies to use digitalisation in a technology neutral way, see recommendation no. 2, and allow individual companies to apply whichever technology they deem suitable and agreeable to their shareholders.

Recommendation 13: *The Commission should consider taking action so that member states are generally required to allow companies to decide for themselves according to their national corporate governance system whether, to which extent and how to apply digitalisation in their internal affairs and in communication and other interaction between the companies and their various stakeholders, with member states limiting their involvement to safeguard the interest of affected stakeholders such as minority shareholders, employees and creditors. The Commission should also consider taking action to determine whether there are any provisions in national laws which would prevent companies from using digital technologies to enter into contracts or execute documents and, if so, should consider taking action so that member states are generally required to allow companies to use digital technologies to enter into contracts and execute documents if they wish to do so.*

Recommendation 14: *The Commission should consider taking action so that member states should only make requirements in respect of companies' choice of technology if the requirements imposed are necessary and proportionate to ensure that shareholders and those acting on their behalf can be identified and to safeguard the integrity of the communication. Companies should be allowed to make use of any technology, domestic or foreign, without prior consent from public authorities if they assume the responsibility of safeguarding requirements in law or administrative practice per-*

taining to the identity of the parties involved in the communication and the integrity of the communication itself.

13. Electronic communication

13.1. Member states should ensure that it is possible to use electronic communication, at least in the following areas:

i. any notice of a meeting of shareholders or of a class of shareholders;
ii. any form to appoint a proxy or representative to attend a meeting or otherwise exercise the shareholder's rights or revoke their appointment;
iii. voting (both to adopt a resolution and, where this is done other than by resolution, to appoint a candidate as a director);
iv. a shareholder's right to add an item to the agenda of a meeting or add a resolution to be put at a meeting or to ask a question at a meeting;
v. a shareholder's right to participate at a meeting;
vi. the passing of a resolution other than at a meeting, for example by a written resolution;
vii. the right (if any) to receive notification of the results of a meeting;
viii. any right to receive the company's accounts, annual report or other financial information;
ix. any information provided by the company relating to the exercise of rights by a shareholder, for example to convert a share into a different class of share;
x. any exercise of rights by a shareholder by giving notice to the company or to a regulatory authority in relation to the company, for example to call for someone to be appointed to investigate the company's affairs;
xi. to communicate a takeover offer to the shareholders of the offeree company and for the offeree company to communicate to shareholders, employees and any other interested parties in connection with that takeover offer.

13.2. We believe that a company's decision whether or not to use digital technology for communications with shareholders should be a matter for national law so that it is made according to the corporate governance system applicable to the company and with the majority and safeguards deemed necessary by that legal system.

Recommendation 15: *The Commission should consider taking action so that member states ensure that their company law does not prevent any company from using electronic communication with its shareholders for all aspects of company law that involve providing information or exercising rights. In particular, member states should ensure it is possible to use electronic communication at least for the areas set out in point 13.1. The way in which the company would decide to take advantage of this freedom should be made in accordance with the national corporate governance system as decided by national law.*

14. Identification of impediments and best practices

14.1. Many publicly traded companies already make considerable use of electronic communication to provide information to shareholders and allow shareholders to exercise rights and participate in meetings. In some member states in practice there are doubts about the use of digital technologies,

for example, to allow shareholders to attend a meeting and vote if they are not present in person and what the position would be if the technology were to fail. Concerns may relate to whether a vote would be counted as valid if one or more shareholders were unable to use the voting system or whether a resolution passed at a meeting would be valid if arrangements for shareholders to participate electronically at the meeting were to fail in some way. Also, it would be helpful to consider whether rules are needed to deal with a situation where it is alleged that a person who is not entitled to vote has done so electronically.

14.2. Some member states may already have considered such potential difficulties and come up with solutions. Generally, we believe that solutions can be found to a wide extent by analogy to established outcomes from the pre-digitalised past, e.g. the failure of an electronic link that prevents some shareholders from casting their votes at an AGM may be likened to a mail delivery failure whereby proxy votes are delivered too late, whereas other problems may be more specific to digitalisation and will require special solutions.

14.3. It would be helpful to ask interested companies and shareholders to provide information about the extent to which, in practice, they are not able to make use of digital technology in relation to a company and whether there are steps that could be taken to facilitate better use of the technologies available. There may be common concerns which could be dealt with either by agreeing good practice or by changing existing legal requirements.

***Recommendation 16**: The Commission should consider taking action so that member states consider whether, in practice, there are impediments in company law or in practice to the use of digital technologies, inform the Commission of the impediments they have identified and the Commission should consider what steps could be taken to ameliorate these impediments.*

14.4. Because technology changes so quickly, it may be difficult for companies and shareholders to keep pace with the possibilities offered by technology. If the law is facilitative so companies and shareholders can choose to use technology if they wish, there may still be differences between companies and shareholders as to the use of technologies because they are unaware of the possibilities or are concerned by potential problems that may be associated with the use of a technology. There could be a role for companies and/or shareholders, with the assistance of those who have experience of using the relevant technologies, to set up groups to look at the use of technology, how to manage the risks of problems with it and to share best practice as to its use with other interested parties.

***Recommendation 17:** The Commission should consider taking action so that at least publicly traded companies, shareholders and those involved in providing services to them establish groups to identify best practice for the use of technology to facilitate meetings and other shareholder communications, and communicate it to other companies and shareholders.*

15. A company's designated homepage

15.1. Many companies have a webpage that by its appearance, design and content is understood by the public as the main web-presence of that company homepage and for that reason referred to as

its »homepage«. Companies may use their homepage to make information available for shareholders, other stakeholders or the public at large. Information on homepages can be freely accessible or access can be restricted to require a password or pin.

15.2. The differences between companies in respect of size, use of technology etc. and the purposes for which they are used, mean that we do not think it is appropriate to suggest that all companies should be required to have a homepage. In some cases, companies that are members of a group may not have their own separate homepage. For companies that do not see a need to have a homepage on the internet, we think the cost of requiring them to have a homepage is unlikely to be justified. However, the many companies that do have a homepage should be able to avail themselves of it to the greatest extent possible, especially to avoid the considerable costs connected with publishing in traditional media, e.g. newspapers.

15.3. Although many companies apply a URL that replicates its company name fully or in part, the increased competition for URLs and the many available top level domains in use can make it difficult to ascertain what the URL may be for a particular company's homepage. Also, many companies apply multiple webpages that each may resemble a homepage. Consequently, it may be difficult to determine which homepage is the relevant homepage for any given company. This is problematic if we are to allow companies to use their homepage as a legal tool to provide material or mandated information to its stakeholders or the public at large.

15.4. The BRIS project aims to enhance the efficiency of national business registries. The national business registries should help transparency by allowing national companies and branches of a company to register their homepage as their *designated homepage* among the available company details required by Directive 2009/101, whereby users of BRIS will be informed of the designated homepage from any point of use within the Union. The homepage designated by a company does not have to be the webpage that may otherwise be used by the company in its communication with the public, as this can change over time and may include multiple different webpages at any given time. Although branches are part of a company and not a legal person in their own right, branches should in this respect be treated as companies and provided the option to register a designated homepage of their own, which would include the company details of the main company. The option for companies and branches to register a designated homepage should be made available by amendment to the said directive.

15.5. While it should be an option for a company to register its homepage at the national business registry, in order to obtain clarity each company should only be allowed to register one designated homepage each as listing all webpages in current use by a company may reduce transparency, and the designated homepage should provide clear information about the specific company that it represents, e.g. by reference to the legal entity identification number assigned to the company in the national business registry.

15.6. Since the purpose of a designated homepage is to use it as a legal tool available to the company, notably for disclosure of company details (in addition to disclosure via the relevant business registry, see paragraph 15.7), it is sufficient that the designated homepage clearly identifies the

company and either provides the information required by Directive 2009/101 or provides a link to the business registry.

15.7. Once a company has registered a designated homepage with the national business registry, it should be able to use that designated homepage to provide information that is mandated by law (whether national law or EU law). However, the operation of the national business registry has priority over the designated homepage and a company would still be required to continue to make filings with the business registry irrespective of whether it has a designated homepage. Thus, the practical use of a designated homepage will mostly be to substitute more costly forms of publication which would otherwise be required by national law or EU law, such as a requirement to print an advertisement, to make a declaration or notice in a newspaper or forward it by ordinary or registered mail. We explore the possibility of having the designated homepage of a company display the same standard information as the business registry in a standard format in point 15.10 et seq. below.

15.8. It would be worth considering whether there should be an obligation for certain companies with a homepage to register it as a designated homepage and, if so, whether this should apply to all companies or only to publicly traded companies.

15.9. The position of companies which are members of a group will also need to be considered, e.g. whether the parent company of a group should be obliged to designate a homepage with information about itself and the group. The ultimate parent of a group of companies may have many members of its group and it may be too burdensome to require a parent company that has a homepage to include details of all its group members on its homepage, whereas a mere overview or graphic representation may be sufficient. This should be explored by the Commission in the context of a wider analysis of company group law and we refer to the separate report being prepared by our Group on these issues.

Recommendation 18: *The Commission should consider taking action by amendment of Directive 2009/101 so that member states must allow any company or branch registered with a national business registry in that member state that has a homepage on the internet, if it so chooses, to have its homepage registered in that national business registry along with its other publicly available information (designated homepage). The Commission could also consider whether there should be any obligation for some or all companies with a homepage to register it as their designated homepage in their national business registry.*

15.10. Some national business registries charge those using the registry to access some of the information about a company on the registry. It can be difficult for someone unfamiliar with a national business registry in their own country or another member state to access information about a company through the business registry. This should improve as the BRIS project becomes fully operational. One of the purposes of requiring certain information relating to a company to be registered at a national business registry is to allow public access to it. Where a company has a designated homepage, we think it would be helpful to require certain basic standard information about that company to be set out on the website in a standard form, so that anyone interested in that company could access that information easily and without cost. This requirement would apply only

to companies that have a designated homepage (and would not require companies to set up a homepage). The information required to be set out on the website for companies with a designated homepage would be in addition to the information filed with the registry.

15.11. The information to be set out on the website could include the information available at the national business registry, such as company's full name and registered number, where it is registered, its registered office, the names of the directors, who is authorised to enter into agreements on behalf of the company and to represent it in legal proceedings, the company's most recent accounts or if it is not required to prepare accounts, that fact, and whether the company is subject to insolvency or winding up or similar proceedings. We believe that this information should be available on the website in a standard format in addition to being available via the national business registry and the e-justice portal so that it is readily available for free to someone using that website.

15.12. As the purpose would be to provide the public easy and costless access to the information that is available at the national business registry, the company could alternatively provide some or all of this information by an internet link to the registry provided the information is available there free of charge. A company would be free to choose whether to provide information on its own website, where it has one, or whether to provide it via a link to the national business registry.

Recommendation 19: *The Commission should consider taking action so that member states require any company which has a designated homepage to make certain minimum information about itself readily available on its designated homepage, free of charge, to anyone in a standard format.*

16. Use of an email address

Where a company has decided to use electronic communications for providing information to shareholders and to receive information from shareholders it would be worth considering whether there should be a requirement for the company, at least if it is a publicly traded company, to be required to provide an email address or some other electronic address which it would be required to make public along with the information provided according to Directive 2009/101, including on its designated homepage if it has one, as the email address or other electronic method to be used by shareholders to contact the company or provide information to it. The company should be allowed to change this address or other method from time to time subject to making that public.

Recommendation 20: *The Commission should consider whether member states should require companies that have decided to use electronic communications for providing information to shareholders and to receive information from shareholders – or some companies, such as those that are publicly traded – to provide an email address or some other electronic address under Directive 2009/101 to the public and on its designated homepage if it has one, which it could change from time to time.*

17. Electronic communication – individual opt-in

17.1. Shareholders of the same company may have different views about the desirability of communicating with the company electronically. Even in cases where a company has not obtained shareholder approval to communicate electronically with shareholders generally, the company

should be able to enter into an agreement with an individual shareholder as to how they will communicate. However, if a company is willing to communicate electronically with some shareholders it is important that all shareholders are treated equally. So the company must be willing to make the same facilities available to other shareholders in the same position and any differential treatment must be justified by objective reasons, for example rights or obligations connected to the shares or a particular class of shares.

17.2. A decision by the company to enter into such individual agreements should be subject to the relevant corporate governance requirements applicable in national law and shareholders should be able to change their decision at any time by giving notice to the company using the form of communication that they have agreed.

Recommendation 21: *The Commission should consider taking action so that member states ensure that, even if a general decision to use digital technology for communication or exercise of rights has not been taken by a company, each company should be able to agree with one or more individual shareholders that each of them will communicate with the other by electronic means, for example by use of email or the internet. The decision necessary by the company and the shareholder should be made according to the national corporate governance system and decided by national law. If such an agreement is made, the same possibility must be available to all shareholders in the same position on a non-discriminatory basis. Every shareholder should be able to change their decision as to how they want the company to communicate with them at any time by giving notice in accordance with the agreed mode of communication.*

18. Electronic communication – individual opt-out

18.1. Member states should allow a company to decide to use electronic communications generally, but also allow an individual shareholder to elect to receive information in traditional form (hard copy, paper). There can be many reasons for this and even for a single shareholder it may be convenient to apply digitalisation in some cases, e.g. using electronic communication, while requiring hard copies in others, e.g. the financial accounts of the company. On the one hand, where a choice of digitalisation has been made, it may be disruptive, inconvenient and expensive for the company to provide hard copies. On the other hand, modern technology may allow for easy, quick and inexpensive printing. It may actually help the advance of digitalisation if shareholders are confident that they will have access to traditional means of communication.

18.2. If this approach is chosen in national law, i.e. that an individual shareholder can choose to use hard copy, there is a question as to whether the individual should have to make an election for all matters or can choose to receive specified information only, and which individuals can choose to receive hard copies: should this be all shareholders at any time and from time to time or should it only be those shareholders who did not vote in favour of using digital technology? On balance, we think this should be a matter for national law to determine although it might be helpful to consult on whether shareholders in publicly traded companies believe there should be a common minimum standard to protect shareholders who wish to receive hard copies as is currently the position under the Transparency Directive, which could merit EU harmonisation for these companies. It would also be advisable to consider, at least for publicly traded companies, when information will

be deemed to have been provided by the company to its shareholders in cases where it provides information both digitally and in hard copy form, for example, should it be when the information is provided digitally provided hard copies are sent on the same day?

18.3. Member states should also consider whether a company should be able to recover the cost of providing hard copies to a shareholder entitled to receive them in such cases. If so, the company should be limited to recovering costs which are proportionate and do not exceed the costs incurred.

Recommendation 22: *The Commission should consider taking action so that member states must allow all companies to decide that they will communicate digitally with shareholders generally but on the basis that any shareholder, or any shareholder who did not vote in favour of the decision, may require company information to be provided in hard copy. If a company is allowed to reclaim the cost of providing hard copies this should be limited to costs which are proportionate and do not exceed the costs incurred. The Commission should consider whether it would be helpful to provide a standard rule for a shareholder's right to receive hard copies, whether this should apply to all companies or only some companies, and for when information will be treated as having been provided, at least for publicly traded companies.*

19. Electronic communication – for all shareholders from formation

19.1. A company may want to interact with all its shareholders only by electronic means to obtain the savings and increased efficiency connected with digitalisation. This will often be welcomed by shareholders. Thus, a decision to apply full digitalisation may be uncontroversial.

19.2. However, a distinction should be made between the cases where the decision to rely entirely on digitalisation is made when a company is established and where the decision is made later. In the first situation, the decision is effectively made by the founder(s) of the company and whoever decides to invest in the company will know about its use of digitalisation for all shareholders and their decision to invest must be seen as an acceptance of these conditions. The situation is different where the decision is made at a later point as it may represent a substantial change for the company's shareholders or some of them who may not have expected this development and who may find it difficult to adjust to digitalisation.

19.3. Consequently, while there are no interests at risk where the decision is made when the company is created and as such member states should generally allow this possibility, consideration has to be made to protect existing shareholders in the latter case who may not want to be forced to use only digital communication. This is dealt with below in point 20.

19.4. As there appear not to be any reservations to the principle that a company should be able to choose full digitalisation from its formation, this right should be safeguarded by a directive depending on the company forms that should be available, e.g. by a new directive on formation of companies, by amendment of Directive 2009/101 on the formation of limited liability companies or amendment of the SRD on publicly traded companies.

Recommendation 23: *The Commission should consider taking action to obtain harmonisation by a directive so that member states must allow a company to be established according to its laws on the basis that the company will rely on full digitalisation in its relationship with its shareholders.*

20. Electronic communication – for all shareholders in existing companies

20.1. In point 18 above, we explored the possibility for a company to introduce electronic communication whilst offering individual shareholders the opportunity to opt-out of such an arrangement. Here we explore the case where an existing company wishes to move to rely entirely on digitalisation for all shareholders.

20.2. There are obvious benefits of electronic communication as it allows extensive communication at low or no costs. Thus, the introduction of electronic communication may serve to strengthen the exchange of information between a company and its shareholders and help shareholder engagement with the company and its management. However, some shareholders may find electronic communication difficult or unsafe. It is not unusual for company law to allow for solutions that go against the interest of a small minority of shareholders or substantially change their circumstances. The national company laws of the member states will already include provisions that allow for certain onerous decisions to be made by requiring a qualified majority. In some cases this may be supplemented by additional protection, for example a right for dissenting shareholders to exit the company by selling their shares to the company at a fair price or the right to receive hard copies of information if the shareholder so requests. Similar rules of national law should be made applicable for a company that wishes to move to full electronic communication with all its shareholders and that decision is supported by a majority of its shareholders. Generally, member states should be allowed to keep national rules on how the decision is to be made, e.g. by qualified majority, but member states should ensure that such a decision to introduce full digitalisation is available to all companies, and all member states should be required to allow such decisions.

20.3. In respect of publidy traded companies, it could be argued that the decision by shareholders to adopt a full regime of electronic communication should be subject to harmonisation so that the same majority to vote in favour of this would apply in every member state. This would ensure that investors across the Union are treated equally when taking advantage of the benefits of the Capital Markets Union. However, at this point in the development of company law generally the majority needed for shareholders to decide on something is a matter left for national law. We believe that, for the moment, it is a matter better left to national law. For this reason, the appropriate measure to achieve harmonisation would be a recommendation obliging member states to consider offering this possibility to their national companies, or a subset thereof, and subject to national law to safeguard investor protection.

Recommendation 24: *The Commission should consider taking action by a recommendation so that member states allow an existing national company, which is subject to its laws, to decide to introduce full digitalisation in its relationship with all its shareholders if such a decision is supported by a vote of its shareholders at a general meeting with a sufficient majority as decided by national law. Member states should be permitted to require additional protections for shareholders not voting in favour of full digitalisation.*

21. A company's records and accessibility

21.1. We note that Article 35 of Regulation 910/2014 provides that an electronic seal shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in an electronic form or that it does not meet the requirements for qualified electronic seals. It also provides that a qualified electronic seal shall enjoy the presumption of integrity of the data and of correctness of the origin of that data to which the qualified electronic seal is linked and that a qualified electronic seal based on a qualified certificate issued in one Member State shall be recognised as a qualified electronic seal in all other Member States. Article 40 contains provision on the validation and preservation of qualified electronic seals. Company law often requires a company to keep certain records e.g. its register of members or details of its directors. In certain cases, these records must be made available under national law either to members of the company or to the public generally upon request. We believe that companies should be allowed to keep such records in electronic form in all cases. We also believe that where a company has decided to use electronic communication with one or more shareholders the electronic address they use for a shareholder should be part of the information that the company is required to keep about its shareholders.

21.2. We think it would also be advisable to consider whether, in all or some cases, and for all or only some companies, e.g. publicly traded companies, those entitled to have access to the information should be able to request access electronically and whether companies should be able to, or required to, provide the information electronically. It would be worth considering whether there is also other information to which shareholders are allowed access e.g. a report by management or an independent expert in the case of a merger or division, which the company should be allowed to provide electronically and which shareholders should be able to access electronically.

21.3. Any action would need to consider how the company would be able to check whether a person making a request to access information is entitled to do so. It should consider any safeguards that it might be appropriate to apply, including to try to ensure that the information is only used for the purpose for which it is requested. It should also consider whether there are reasons why a company thinks that providing access to such information electronically would be inappropriate, e.g. if there are concerns about misuse of the information to be provided. If a company is to be required to keep the electronic address they use for a shareholder as part of the information they keep about shareholders, this may mean that other members of the company and possibly others (depending on national law) will be able to request copies of that information. There may be particular concerns about a company making such electronic addresses generally available and particular safeguards may need to be put in place to try to ensure that this information is not misused. Such safeguards might include requiring the person to confirm the purpose for which they will use

the information, restricting the purpose for which the information can be used and/or allowing the company to apply to court for an order that it need not provide the information if it believes the information will be misused.

Recommendation 25: *The Commission should consider taking action so that member states must allow a company to keep any record it is required to keep in electronic form. It should consider whether, when a company has decided to use electronic communications with one or more shareholders, it should be required to keep that information as part of the information it keeps about its shareholders. It should also consider whether those entitled to have access to the records or other information required to be provided by the company should be able to request access electronically, in some or all cases, and whether some or all companies should be able to, or be required to, provide the information electronically. Any such consideration should include:*

i. how the company would check that the request comes from someone entitled to access the information;

ii. what safeguards should be applied to ensure the information is used for the purpose for which it is intended and not for other purposes; and

iii. whether there are cases where it would be inappropriate to provide information electronically.

22. General meetings of shareholders

22.1. The annual general meeting (AGM) was originally the way chosen to ensure effective communication between the company and its shareholders. Communication outside the general meeting could of course occur and extraordinary meetings could be convened, but the AGM remained the normal way of ensuring communication on at least an annual basis. Typically, national company laws provide that, before the AGM, certain information must be distributed to shareholders by mail, e.g. the agenda, annual accounts or other relevant documents. At the AGM, communication was done orally with all participants in the same physical location. After the AGM, minutes would be written on paper and could be distributed by mail to those entitled to receive them, such as public authorities or those shareholders asking for them. In some jurisdictions, information sought at the AGM but not available could be provided to shareholders after the AGM. Thus, information was provided before, during and after the AGM. The ease of electronic communication enabled by digitalisation and its almost costless nature make it relevant to reconsider the role of the AGM.

22.2. Before contemplating reform of the role of the AGM, it is important to note the very different roles that the AGM plays in national corporate governance regimes as an instrument of shareholder power. In some jurisdictions, shareholders wield very few powers and are mostly concerned with supervision of management, e.g. approving the financial accounts and appointing supervisors, while in other jurisdictions, shareholders may wield considerable power over management by their power to appoint and dismiss directors. In some jurisdictions, such as in the Nordic member states, shareholders may even be expected to engage continuously with directors on issues of management. The possibilities of digitalisation contemplated here do not in any way seek to influence the distribution of powers in national company law; it is solely intended as a reform of the *practical forms* of communication that are used in connection with the various national corporate govern-

ance models. Furthermore, it is important to note that we make the following recommendations not to dispense with the general meeting as such or the communication traditionally connected with that event, which we believe are crucial elements in shareholder control and engagement that are necessary to achieve sustainable long-term results; on the contrary we believe that a more flexible regime for communication among a company and its shareholders will promote these interests even more.

22.3. First of all, it is evident that there is no need to gather shareholders in one single physical location. The SRD already acknowledges that shareholders should be able to participate electronically from different physical locations. But it should also be recognised that there is no reason to restrict the information sharing to the AGM.

22.4. Traditionally, the information provided before the AGM took the form of a one-way communication, from the company to the shareholders, e.g. of the agenda and the financial accounts. To some extent, it has been accepted in some jurisdictions that shareholders could approach the company or, more precisely, its management, before the AGM, but this was typically restricted to a one-way communication, often in the form of questions raised by a shareholder to be answered by management before or at the AGM.

22.5. Taking into account the possibilities of electronic communication, there is no reason why the two-way communication between shareholders and management and among shareholders themselves that is traditionally considered the main purpose of the AGM should be limited to the time-limited episode that constitutes the AGM. Companies should be able to allow shareholders to engage in debate before the AGM by utilising online shareholders debating platforms and some jurisdictions allow this already. Rules pertaining to the disclosure obligations of publicly traded companies would have to be observed, but should not in themselves form any hindrance.

22.6. Nor is there a need to restrict the meeting of shareholders to an annual event, if a general meeting can be easily convened. Even traditional jurisdictions allow extraordinary general meetings to be convened, but it is questionable whether they should be viewed as »extraordinary« and not simply part of the ongoing communication between a company and its constituencies. Consequently, it may be appropriate for the distinction between the AGM and extraordinary GMs in existing company law legislation, e.g. the notice required, to be reconsidered to allow companies to engage more frequently with their shareholders if the company or a minimum number of shareholders wish to do so and to allow for frequent general meetings of shareholders.

22.7. Some publicly traded companies have suggested that it should be possible for them, with shareholder approval and subject to certain safeguards, to be able to dispense with any requirement for a physical meeting. The proposal is that the publicly traded company would send out the relevant information that would be sent if a meeting were taking place and shareholders would be asked to vote on the resolutions that would have been proposed if a physical meeting took place, which they could do either by electronic voting or by postal vote or any other means acceptable in the relevant member state. There would, however, be no physical meeting at which directors would attend. Other companies and those with the right to attend meetings may think that a physi-

cal meeting is important to allow discussion of proposals and other matters where those attending can hear the arguments put forward on particular points or ask questions.

22.8. Any such proposal to dispense with a physical meeting would need to be subject to consultation with shareholders to see if it would be acceptable and, if so, whether certain safeguards would be necessary. For example, should a minimum number of shareholders, e.g. those holding at least 5% of the voting rights, have the right to require a physical meeting to be held on giving a specified amount of notice, which is a threshold used in Directive 2011/35 on Mergers, and should the company be required to provide a way in which shareholders who want to raise questions to be answered by the management are able to do so, which is accessible at least to all other members and any others entitled to attend a physical meeting (so they can see the points being raised and raise any further points), with an obligation on the company to answer questions subject to safeguards, e.g. along the lines of the existing requirements of the SRD?

Recommendation 26: *The Commission should consider taking action so that member states must allow their national companies to engage with their shareholders more continuously by permitting information sharing before general meetings and by reconsidering any differences in national company law between the annual general meeting of shareholders and other, so called extraordinary meetings, with a view to removing any unnecessary differences in respect of notice, call, agenda, information to be given, and procedure for decision making. The Commission should consider whether to consult on allowing publicly traded companies to dispense with physical meetings if this is agreed by their shareholders, e.g. by a sufficient majority, and to consult on the safeguards that would be needed if such a proposal were to be allowed.*

23. General meetings and data protection

23.1. In many jurisdictions the AGMs of publicly traded companies have been open to the press, which was an effective way to ensure publicity. Given the broad and changing constituency of publicly traded companies, their AGMs and GMs can attract a very large audience and can be of interest to the public more generally. Even in non-traded companies, the general meeting of shareholders may be of interest to the public because of the size and importance of the business.

23.2. As we make clear in this report, we believe that electronic communication is generally helpful and beneficial for companies, investors and society at large. However, there is a risk that the full potential of electronic communication is not realised due to a lack of clarity regarding the concepts in various areas of law on both a national and a Union level.

23.3. One area that could benefit from clarification is the law to protect personal data and individual integrity, where there is uncertainty in the context of the recording and transmission of company meetings where there are identifiable individuals who have not given their previous consent and other grounds that may allow processing of data do not apply. Whilst the protection of the rights of individuals is a welcome development in its own right and Article 6 of the General Data Protection Regulation (which is expected to be adopted shortly) allows for the processing (recording and distribution) of data in certain circumstances, it is important to clarify how this right applies where there is also a public interest in companies being able to transmit and record meetings, to assist

shareholder engagement, to facilitate cross-border investment and to meet the public interest in the general meetings of companies.

23.4. Consequently, it should be made clear that where a company has decided according to the applicable governance system to use electronic communication in respect of an annual general meeting or a general meeting and this decision is made clear to the shareholders, then the participating shareholders are deemed to have given their consent to the ensuing processing of data.

***Recommendation 27**: The Commission should consider taking action so that it is made clear that where a company has decided, in accordance with the relevant legal requirements of its applicable governance system, to transmit the general meeting and store and access it electronically and those attending the meeting have been advised that this will be the case, then the participating shareholders are deemed to have provided their individual consent to the ensuing processing of data.*

24. Improving the provision of information by publicly traded companies to shareholders and voting by shareholders of such companies

24.1. It is well known that cross-border investment is negatively affected by difficulties in connection with GMs even in publicly traded companies. Problems include, inter alia, transmitting information provided by a company about its GM through chains of intermediaries, including custodians, to the ultimate investor and problems in transmitting instructions relating to rights to be exercised by the investor at a meeting or otherwise relating to the shareholder's rights. The diagram set out in Annex B illustrates the fact that an investor in a publicly traded company (whether a retail investor or an institutional investor) may hold their investment through a complex chain of intermediaries, including custodians. Custodians may hold shares either on a segregated basis so the custodian and the company can identify that a particular share is held for a particular person, or in an omnibus account where it is not possible to identify a particular share as being held for a particular person. Voting instructions may be given by a third party who provides a service of arranging this.

24.2. The Commission's proposal to amend the SRD, cf. point 5.1 above, aims to deal with some of these problems. The relationship between an investor and an intermediary typically involves matters of national law and contract law. The position is further complicated by the fact that a chain of the different relationships between an investor and the company may involve many jurisdictions, some of which may be outside the Union. In some cases, investors may have chosen to hold their investment in a way that makes it difficult for them to insist that another participant in the chain acts in the desired way or to check that an instruction they have given has been followed. The structure of the way in which investments are often held makes it difficult to propose a simple and inexpensive solution which will work in most cases.

24.3. Digital technology may offer practical ways in which companies and investors could address some of these issues. If publicly traded companies produce information in an agreed format, and provide it in an agreed way, e.g. by publishing it on a single website which would be used for all publicly traded companies such as a designated homepage, this would assist investors and their intermediaries to identify the information more easily and to transmit the information quickly through the relevant chain to the investor and anyone else who needs it. This standard form ap-

proach could also apply to corporate actions undertaken by publicly traded companies, which would also help to ensure that information about such actions can be transmitted quickly and cost effectively to those that are interested.

24.4. There could also be benefits in agreeing a market standard approach across the EU for identifying accounts, which we understand already happens in the USA, and for identifying an investor. At present, each publicly traded company may determine what form of proof of entitlement to attend a meeting it requires. There could be benefits in agreeing a standard form proof of entitlement that all companies would accept. There would also be a benefit in agreeing either an agreed mechanism that companies and shareholders could use for voting or minimum standards that anyone involved in giving or transmitting voting instructions would agree to follow (whichever system they are using) so that voting instructions can be sent quickly and cost effectively through a chain. There would also be benefits in agreeing a standard format in which publicly traded companies would confirm which votes have been cast on a resolution.

24.5. It would also be worth considering whether there would be benefits in adopting a standard approach across the EU to record dates for the entitlement to vote at meetings and, if so, how this should be determined.

24.6. Any consideration of this area should also consider the costs involved in any such initiatives and who would bear the costs involved in establishing new systems.

24.7. Because of the increasing focus on providing information to shareholders and votes cast at the general meetings of publicly traded companies, some work has already been undertaken as to the reasons for such problems and ways in which they could be addressed. Some market standards have already been produced but they are not always followed. The discussion paper by the Shareholder Voting Working Party,[6] which considers the position in the UK, demonstrates the detailed assessment needed to identify where changes could be made. It concludes that the introduction of a new standalone electronic voting system would be extremely costly and is likely to be out of date before implementation, although it does not provide any background information for this conclusion. Instead it advocates the establishment of best practice guidelines through various industry bodies, the use of technology to improve current processes and implement new ones and changes to regulation to alter aspects of the timing and information processing in the voting chain. The discussion paper also contains information about the approach in some other member states and non-member states. It also refers to work being done by other vote confirmation groups in the Netherlands.

24.8. A more coordinated approach would provide information and evidence that could be used to formulate an approach which could help solve these issues. The areas to be considered could relate to (i) problems shareholders and others experience in providing information and casting votes (ii) problems publicly traded companies experience in confirming whether or not votes have been cast

[6] See Shareholder Proxy Voting: Discussion Paper on Potential Progress in Transparency published in July 2015 by the Shareholder Voting Working Party, which considers the problems and possible solutions in the UK market http://uk.practicallaw.com/groups/uk-shareholder-voting-working-group.

by the shareholder (iii) problems publicly traded companies experience in confirming to an investor who holds shares through a nominee or custodian (or someone acting on their behalf) whether or not votes have been cast.

Recommendation 28: *The Commission should consider taking action to set up a project, involving listed companies and their agents, those providing nominee and custodian services, proxy voting advisory firms, investors and any other interested parties. This project should look at:*

i . a standard approach to publicly traded companies announcing meetings and corporate actions digitally;

ii. providing information digitally in a standard format which can be transmitted to shareholders and other interested parties easily, quickly and cost effectively;

iii. providing a standard format of the entitlement to attend a meeting and vote which can be accessed and used digitally;

iv. an e-voting system or minimum standards participants would follow to enable voting instructions to be transmitted digitally, quickly and efficiently; and

v. a standard format which companies can use digitally to confirm which votes have been cast by reference to shareholders and also others involved in the voting process.

This project should look at least at the major markets in the EU. Its aim should be to identify cost effective practicable solutions which would make a significant difference in the relevant markets to the number of votes that can be cast and the listed company's ability to confirm information relating to votes cast to those involved in the voting process.

24.9. Another option, which might be worth exploring further, would be to make a further change to the SRD to allow every shareholder of a publicly traded company to appoint a permanent representative.

24.10. At present, Article 10 SRD allows every shareholder the right to appoint any other natural or legal person as a proxy holder to attend and vote at a general meeting in his or her name. The proxy holder enjoys the same rights to speak and ask questions in the general meeting as those to which the shareholder would be entitled.

24.11. However, member states may limit the appointment of a proxy holder to a single meeting, or to such meetings as may be held during a specified period. This means that there may only be a short period of time after notice of meeting is given and up until shortly before the meeting in which a shareholder can instruct a company that it is appointing someone else as its proxy. This short period of time can make it difficult for an investor to make a proxy appointment in time. It might be helpful if it were possible for shareholders to appoint *a permanent representative* who is authorised to act on their behalf until the shareholder decides to withdraw the authorisation.

24.12. We believe that the determination of who is a 'shareholder' vis-à-vis a publicly traded company should be left, as at present under the SRD, entirely to national law as it remains an area of

law that displays great differences among the member states and which is closely integrated into the national legal systems.

24.13. A shareholder in a publicly traded company as determined in accordance with the national law should be allowed to appoint one or more permanent representatives to represent the shareholder in respect of all the shares held by that shareholder or all the shares held from time to time or a specified number of shares.

24.14. As some shareholders act as a nominee or custodian for more than one investor, it is important that a shareholder should be able to appoint different permanent representatives for different investors in respect of different numbers of shares. The shareholder should be able to instruct the company to provide all information that would be sent to the shareholder in respect of the relevant shares to the permanent representative instead.

24.15. If this possibility is pursued, we think it should be possible to make an appointment and revoke it at any time. There would need to be some protection for companies, so that revocations received in a certain stated period before a meeting, e.g. after the registration date as settled by the SRD or within a stated number of hours before the start of the meeting, could be ignored for that meeting. This is to save a company from having to deal with last minute revocations which it may not be able to process before a meeting.

24.16. Once appointed, the company would be obliged and entitled to engage solely with the permanent representative (rather than with the shareholder) until the appointment is withdrawn by the shareholder or the shareholder no longer holds shares.

24.17. Where a shareholder has appointed more than one representative, it may be necessary for the shareholder to confirm the number of shares to which each appointment relates from time to time. The company would need to be given a right to require the shareholder to confirm the number of shares to which each appointment relates when the authorisation is given, when there are any changes in the number of shares held and, possibly, at other times. It may be necessary to limit the right to cases where the shareholder holds shares in segregated accounts rather than in an omnibus account.

24.18. The company would send information to be sent to shareholders to the permanent representative if the shareholder had requested this, and would accept instructions from the representative in relation to the shares. e.g. in relation to voting and the exercise of other rights.

24.19. The relationship between the shareholder and the permanent representative would in all respects be a matter for them and would not be a matter for the company. So, for example, it would be for the shareholder and permanent representative to decide whether the permanent representative would be able to use their own discretion and act without instructions or not and whether the permanent representative would offer advice to the shareholder or not. Any compensation to be paid to the permanent representative would also be a matter for the shareholder and permanent representative. Depending on the agreement reached by the shareholder and the permanent representative, this could have different results, for example whether the permanent representative would be able to exercise control over the company. However, as far as the company is con-

cerned, although it would not know the details of the particular agreement between the shareholder and the permanent representative, it would be important for it to be entitled to assume that the shareholder would be bound by decisions made by the representative where these decisions are of a kind that could have been made by the shareholder him- or herself, irrespective of whether the shareholder had in fact instructed the representative in a particular way.

24.20. It would be important for a shareholder to be able to appoint one or more permanent representatives by electronic means subject only to constraints necessary to establish the identity of the shareholder and the representative appointed and the integrity of the communication, and the shareholder would also need to be able to change or withdraw the appointment by electronic means subject to the timing point mentioned above.

24.21. Such a proposal would not necessarily help investors who cannot ensure that their instructions are transmitted to the company because of the particular rights they have in their custody chain. However where problems arise because of the tight timetables for appointing proxies to vote at meetings, it may help investors, if they have appointed a representative to ensure that they receive information from companies more quickly and efficiently and that they are able to exercise votes and other rights quickly and efficiently.

24.22. If such a proposal is pursued, it should be clear that representatives would be entitled to use electronic means of communication in the same way as if they were a shareholder. Given the complications of holding shares, it is particularly important that any proposal along these lines is fully tested with companies, those facilitating these arrangements, shareholders and investors.

24.23. If a permanent representative enjoys full discretion on how to exercise the votes entrusted by one or more shareholders, this may entail a transfer of control that could be relevant in respect of obligations to make a mandatory bid depending on how the relevant national law has implemented Directive 2004/25 on Takeover Bids. It is likely that permanent representatives will not find this attractive and will decline an appointment that may trigger such an obligation. However, it will be necessary for national competent authorities to monitor this obligation and for that reason permanent representatives should be required to disclose their capacity to exercise discretionary voting power according to the disclosure obligations already mandated by Directive 2013/50 on Transparency. In our view, this would follow from existing EU law and may thus not necessitate any action from the Commission.

Recommendation 29: *The Commission should consider taking action so that member states allow a shareholder in publicly traded companies to appoint one or more permanent representatives at any time and to allow such shareholders to request that information should be sent to the permanent representative instead of the shareholder. It should be possible to do this electronically. Where a permanent representative has been appointed, the company should be obliged and entitled to receive instructions solely from the permanent representative in relation to the shares for which the permanent representative is appointed. A representative should be able to exercise all the rights that the shareholder could exercise in relation to the shares. The company should not be required to consider the relationship between the shareholder and the permanent representative. The permanent representative would represent the shareholder in relation to all its shares or the shares speci-*

fied until the appointment is changed or withdrawn. Companies should be able to require a shareholder to confirm its permanent representative instructions each time there is a change in the number of shares held by that shareholder.

Overview of recommendations

PART II. GENERAL PRINCIPLES

Recommendation 1: *Digitalisation should respect and dovetail with existing corporate governance regimes of the individual member states.*

Recommendation 2: *The law should at all times remain technology neutral and abstain from mandating or favouring any specific technology. When in the interest of harmonisation it is deemed necessary to describe functionalities or technology, this should be done at level 2 according to Art. 290 – 291 TFEU, and preference should be given to open-source technology with due consideration to maintaining competition as far as possible.*

Recommendation 3: *The Commission should consider taking action to remind member states of the principle of mutual recognition and of the requirement to apply it wherever possible in the context of cross-border activity and to the greatest extent possible in respect of the standards, protocols, certificates, etc., applied by member states in respect of digitalisation of company law and the technologies involved in that and respond to any violations of the principle in this area. The Commission could also consider whether it would be helpful if national competent authorities were required to have details of the principle of mutual recognition on their website together with details of how to complain if a company or other person believes a requirement to provide certificates, documents or other information that is already available from their home member state or to conform to national requirements when they have already observed equivalent standards at home does not respect the principle of mutual recognition.*

PART III. DIGITILISATION OF COMMUNICATIONS BETWEEN A COMPANY AND THE STATE

Recommendation 4: *The Commission should consider taking action so that all member states cooperate, with the assistance of the Commission, so that their national systems can interact across borders and to secure the pan-European interoperability*

and compatibility of their systems with similar systems of other member states to achieve the overall goal of providing each citizen easy online access to all public systems and all publicly stored relevant information across the Union, irrespective of the location of the citizen and the information sought by that citizen. This could be done, for example, by using the BRIS platform to interconnect registers, including those relating to insolvency, disqualification of directors information and sole traders. As a first step, we suggest that all member states be asked to identify where information dealing with major shareholdings, filings made by insiders of publicly traded companies or concerning public takeover bids is kept and whether access to this information could be made available through the BRIS project.

Recommendation 5: *The Commission should consider taking action so that the member states allow online formation of all national companies formed under their laws and subject to registration in their business registries and dispense with all requirements that necessitate the physical presence of founders or others in their territory.*

Recommendation 6: *The Commission should consider encouraging member states to make available electronically via the relevant business registry a standard set of articles or other constitutional document applicable to each of the company forms that are recognised by national law and can be registered in the national business registry. Founders should be able to use and adopt these online and shareholders should be able, subsequently, to amend these online after complying with the relevant national law requirements for making such changes.*

Recommendation 7: *The Commission should consider (i) how to ensure that companies can meet the relevant filing requirements under Directive 2009/101 without having to be present physically in a member state and (ii) taking action so that each member state allows their national companies to make* ***all*** *filings (not just those required by Article 2) with the national business registry electronically (online) subject only to safeguards concerning identity, authority of the person acting on behalf of the company and the integrity of the filing and that the requirements can be met without the company having to be physically present in the member state. The Commission should consider taking action to see if there would be benefits in NCAs sharing the approach they adopt to dealing with the potential problems of online*

filings and to see whether it would be possible to identify minimum standards that all NCAs would adopt for such processes.

Recommendation 8: *The Commission should consider taking action so that where electronic copies of information about a company are provided they are certified as »true copies« without an applicant needing to request this explicitly.*

Recommendation 9: *The Commission should consider taking action to amend Directive 89/666 on branches, once BRIS is fully operational, to allow for a company to make all filings relating to a branch in another member state with the business registry of its home member state. The Commission should consider taking action to see if any requirements imposed on branches to file information which are additional to those imposed by the Directive are justified.*

Recommendation 10: *The Commission should consider taking action so that member states enable their digitalised systems to interface and make retrieval of company law information between their national NCAs and Relevant Bodies possible in such a way that a citizen or a company would only be required to deliver information at a single point after which it would be provided automatically to all other national NCAs and Relevant Bodies which also need that information from that entry point without the citizen or company needing to take further action (single point delivery principle). This principle should also apply among member states and apply to information required to be provided under financial markets laws irrespective of the character of the entity receiving the company law or financial markets law information mandated by law. At a later date, member states should consider whether it is possible to extend this to other regulatory authorities in the member state or another member state, such as tax authorities.*

Recommendation 11: *The Commission should consider taking action so that the status of the acceptability of electronic documents as evidence in practice in legal and other proceedings should be reviewed and, if there are significant differences between the approach adopted by member states, consideration is given to setting minimum standards which member states would accept as constituting acceptable evidence in cases not confined to legal proceedings.*

Recommendation 12: *The Commission should consider taking action in areas that are of relevance to company law to ensure that the benefits of digitalisation are not hampered by the traditional approach to these areas in other areas of law. It would be particularly helpful for the Commission to consider the interaction with money laundering and insolvency law.*

PART IV. ELECTRONIC COMMUNICATION BETWEEN A COMPANY AND ITS SHAREHOLDERS AND OTHER STAKEHOLDERS

Recommendation 13: *The Commission should consider taking action so that member states are generally required to allow companies to decide for themselves according to their national corporate governance system whether, to which extent and how to apply digitalisation in their internal affairs and in communication and other interaction between the companies and their various stakeholders, with member states limiting their involvement to safeguard the interest of affected stakeholders such as minority shareholders, employees and creditors. The Commission should also consider taking action to determine whether there are any provisions in national laws which would prevent companies from using digital technologies to enter into contracts or execute documents and, if so, should consider taking action so that member states are generally required to allow companies to use digital technologies to enter into contracts and execute documents if they wish to do so.*

Recommendation 14: *The Commission should consider taking action so that member states should only make requirements in respect of companies' choice of technology if the requirements imposed are necessary and proportionate to ensure that shareholders and those acting on their behalf can be identified and to safeguard the integrity of the communication. Companies should be allowed to make use of any technology, domestic or foreign, without prior consent from public authorities if they assume the responsibility of safeguarding requirements in law or administrative practice pertaining to the identity of the parties involved in the communication and the integrity of the communication itself.*

Recommendation 15: *The Commission should consider taking action so that member states ensure that their company law does not prevent any company from using electronic communication with its shareholders for all aspects of company law that involve providing information or exercising rights. In particular, member states should ensure it is possible to use electronic communication at least for the areas set out in point 13.1. The way in which the company would decide to take advantage of this freedom should be made in accordance with the national corporate governance system as decided by national law.*

Recommendation 16: *The Commission should consider taking action so that member states consider whether, in practice, there are impediments in company law or in practice to the use of digital technologies, inform the Commission of the impediments they have identified and the Commission should consider what steps could be taken to ameliorate these impediments.*

Recommendation 17: *The Commission should consider taking action so that at least publicly traded companies, shareholders and those involved in providing services to them establish groups to identify best practice for the use of technology to facilitate meetings and other shareholder communications, and communicate it to other companies and shareholders.*

Recommendation 18: *The Commission should consider taking action by amendment of Directive 2009/101 so that member states must allow any company or branch registered with a national business registry in that member state that has a homepage on the internet, if it so chooses, to have its homepage registered in that national business registry along with its other publicly available information (designated homepage). The Commission could also consider whether there should be any obligation for some or all companies with a homepage to register it as their designated homepage in their national business registry.*

Recommendation 19: *The Commission should consider taking action so that member states require any company which has a designated homepage to make certain minimum information about itself readily available on its designated homepage, free of charge, to anyone in a standard format.*

Recommendation 20: *The Commission should consider whether member states should require companies that have decided to use electronic communications for providing information to shareholders and to receive information from shareholders – or some companies, such as those that are publicly traded – to provide an email address or some other electronic address under Directive 2009/101 to the public and on its designated homepage if it has one, which it could change from time to time.*

Recommendation 21: *The Commission should consider taking action so that member states ensure that, even if a general decision to use digital technology for communication or exercise of rights has not been taken by a company, each company should be able to agree with one or more individual shareholders that each of them will communicate with the other by electronic means, for example by use of email or the internet. The decision necessary by the company and the shareholder should be made according to the national corporate governance system and decided by national law. If such an agreement is made, the same possibility must be available to all shareholders in the same position on a non-discriminatory basis. Every shareholder should be able to change their decision as to how they want the company to communicate with them at any time by giving notice in accordance with the agreed mode of communication.*

Recommendation 22: *The Commission should consider taking action so that member states must allow all companies to decide that they will communicate digitally with shareholders generally but on the basis that any shareholder, or any shareholder who did not vote in favour of the decision, may require company information to be provided in hard copy. If a company is allowed to reclaim the cost of providing hard copies this should be limited to costs which are proportionate and do not exceed the costs incurred. The Commission should consider whether it would be helpful to provide a standard rule for a shareholder's right to receive hard copies, whether this should apply to all companies or only some companies, and for when information will be treated as having been provided, at least for publicly traded companies.*

Recommendation 23: *The Commission should consider taking action to obtain harmonisation by a directive so that member states must allow a company to be established according to its laws on the basis that the company will rely on full digitalisation in its relationship with its shareholders.*

Recommendation 24: *The Commission should consider taking action by a recommendation so that member states must allow an existing national company, which is subject to its laws, to decide to introduce full digitalisation in its relationship with all its shareholders if such a decision is supported by a vote of its shareholders at a general meeting with a sufficient majority as decided by national law. Member states should be permitted to require additional protections for shareholders not voting in favour of full digitalisation.*

Recommendation 25: *The Commission should consider taking action so that member states must allow a company to keep any record it is required to keep in electronic form. It should consider whether, when a company has decided to use electronic communications with one or more shareholders, it should be required to keep that information as part of the information it keeps about its shareholders. It should also consider whether those entitled to have access to the records or other information required to be provided by the company should be able to request access electronically, in some or all cases, and whether some or all companies should be able to, or be required to, provide the information electronically. Any such consideration should include:*

i. how the company would check that the request comes from someone entitled to access the information;

ii. what safeguards should be applied to ensure the information is used for the purpose for which it is intended and not for other purposes; and

iii. whether there are cases where it would be inappropriate to provide information electronically.

Recommendation 26: *The Commission should consider taking action so that member states must allow their national companies to engage with their shareholders more continuously by permitting information sharing before general meetings and by reconsidering any differences in national company law between the annual general meeting of shareholders and other, so called extraordinary meetings, with a view to removing any unnecessary differences in respect of notice, call, agenda, information to be given, and procedure for decision making. The Commission should consider whether to consult on allowing publicly traded companies to dispense with physical*

meetings if this is agreed by their shareholders, e.g. by a sufficient majority, and to consult on the safeguards that would be needed if such a proposal were to be allowed.

Recommendation 27: *The Commission should consider taking action so that it is made clear that where a company has decided, in accordance with the relevant legal requirements of its applicable governance system, to transmit the general meeting and store and access it electronically and those attending the meeting have been advised that this will be the case, then the participating shareholders are deemed to have provided their individual consent to the ensuing processing of data.*

Recommendation 28: *The Commission should consider taking action to set up a project, involving listed companies and their agents, those providing nominee and custodian services, proxy voting advisory firms, investors and any other interested parties. This project should look at:*

i . a standard approach to publicly traded companies announcing meetings and corporate actions digitally;

ii. providing information digitally in a standard format which can be transmitted to shareholders and other interested parties easily, quickly and cost effectively;

iii. providing a standard format of the entitlement to attend a meeting and vote which can be accessed and used digitally;

iv. an e-voting system or minimum standards participants would follow to enable voting instructions to be transmitted digitally, quickly and efficiently; and

v. a standard format which companies can use digitally to confirm which votes have been cast by reference to shareholders and also others involved in the voting process.

This project should look at least at the major markets in the EU. Its aim should be to identify cost effective practicable solutions which would make a significant difference in the relevant markets to the number of votes that can be cast and the listed company's ability to confirm information relating to votes cast to those involved in the voting process.

Recommendation 29: *The Commission should consider taking action so that member states allow a shareholder in publicly traded companies to appoint one or more permanent representatives at any time and to allow such shareholders to request that information should be sent to the permanent representative instead of the shareholder. It should be possible to do this electronically. Where a permanent representative has been appointed, the company should be obliged and entitled to receive instructions solely from the permanent representative in relation to the shares for which the permanent representative is appointed. A representative should be able to exercise all the rights that the shareholder could exercise in relation to the shares. The company should not be required to consider the relationship between the shareholder and the permanent representative. The permanent representative would represent the shareholder in relation to all its shares or the shares specified until the appointment is changed or withdrawn. Companies should be able to require a shareholder to confirm its permanent representative instructions each time there is a change in the number of shares held by that shareholder.*

Annex A: Use of digitalisation in some Member States

In this annex we supply responses covering Austria, Denmark, France, Germany, Ireland, Italy, Lithuania, Luxembourg, the Netherlands, Poland, Spain and the UK.

Austria

Nr	Question	Answer / Comments
1	Can you form a company online? (Is this all types of companies or only some? Are there restrictions, e.g. you have to use model articles?).	Under Austrian law, formation of all companies strictu sensu (i.e. excluding partnerships) has to be done with a notarial deed. Specifically, the articles themselves have to be set up by notarial deed. Additionally, the application for registration itself (to be signed by all directors and, in the case of a public limited company, all members of the supervisory board) needs additional certifications by notary as to the identity of the persons submitting the application. Other documents need such certifications as well. As the notary is involved in any case, the application usually is submitted by the notary him- or herself to the court. As a result, a purely on-line formation without real-life interaction is not possible. Electronic filing of court documents is generally possible. If the registration (as is usual) is done by a notary public or attorney, he or she has to file electronically. This covers all documents necessary for formation. Austrian law does not use model articles. Notaries and lawyers of course have standard articles; published versions exist as well.
2	Can you file other documents that you are required to file with the Company Registry online (e.g. director appointments and removals)? If yes, all or only some?	For most applications a notary has to certify the identity of the persons submitting the application. Then, the notary will file the applications and accompanying documents electronically, as explained above. Some applications for registration (e.g. business address, website, members of the board of supervisors and members of a private company [GmbH]) and all other filings (esp. the annual accounts where applicable) can be submitted in simplified form, i.e. without involvement of a notary. Filings of the accounts have to be done electronically. Simplified applications for registration can be filed electronically, usually in pdf-format.

3	Can third parties access information about companies online? If yes, all or only some?	Third parties can access the entire registration file of the company online. This covers both the registration as such and the documents on which the registration is based. However, the information is not free of charge and requires payment. Older registrations and documents, as a rule from before 2005, have still to be accessed at the court.
4	Does your company law allow companies to communicate with shareholders electronically? If yes for all purposes or only some? Are there requirements or restrictions as to how this is done?	At this stage, not all communication from the company to the shareholders can be done electronically. One has to distinguish between public and private companies. For public limited companies many communications (in all there are some 35 instances) have to be done by publication in the so-called "Amtsblatt zur Wiener Zeitung", a state-owned newspaper. There are numerous exceptions which cannot be explained here. One example must suffice, namely calling a general meeting. As a rule, the meeting has to be announced in the "Amtsblatt". However, if all shareholders are known to the company (esp. if it has issued registered shares) the company can call the meeting by registered letter. Purely electronic communication is only sufficient if the shareholder to be addressed has given his or her consent. Listed companies, in addition to the rules mentioned above and where they have not issued registered shares, have to publish the document convening the meeting electronically, i.e. normally on their website. The situation is more liberal for private companies; there is no overarching rule on communication with their members. Generally, communication by e-mail can be foreseen in the Articles. If the Artides remain silent on this issue the most important communications (e.g. calling a meeting or calling in additional funds) have to be done by registered letter – presumably even the member may waive this right and consent to electronic communication.
5	Does your company law allow shareholders to communicate with companies electronically? If yes, for all purpose or only some? Are there requirements or restrictions as to how this is done?	Generally, Austrian company law does not contain rules on communication emanating from the shareholders. Thus, electronic communication will be sufficient. There are, however, some specific regulations: For **public companies**, many declarations by shareholders have to be done in "text form" (e.g. proposals for decisions by the general meeting, proxies if so foreseen by the Articles); e-mail is sufficient. Where the declaration has to be done "in writing" (esp. certificates of deposit of shares, or requesting a meeting by shareholders) it has to be signed by the shareholder; traditionally, a fax or pdf of the signed document was

		not considered sufficient. However, the Austrian Supreme Court has recently changed its opinion where sureties are concerned and has declared sureties by fax valid, which presumably will also apply to pdf-documents. However, as the purpose of the rules has to be taken into account, there is no legal certainty on that issue. In any case, electronic communications signed by a so-called secure electronic signature are considered to be in writing; this in practice has little importance. For electronic voting cf. below Question 6. With the private company the form of communication is not generally regulated either.
6	Can meetings of shareholders be held electronically where shareholders are not all present in the same place? If yes, are there requirements as to how this is done? Is it limited to publicly traded companies? Is there a distinction between providing information about the meeting (by transmission) and participation (e.g. the right to speak, to propose items on the agenda, to vote).	For public companies electronic participation in general meetings and voting is possible if foreseen in the Articles, both for listed and unlisted companies. Due to the costs and the technical and legal risks involved the practical impact of the corresponding rules is negligible. Electronic meetings are possible, but of no practical importance; cf. above 5. For private companies resolutions can be taken in writing, unless the articles prohibit this. However, each member has to explicitly consent to taking the resolution in writing, i.e. each member can ask for a meeting in person. For written resolutions a scan of the signed original is generally considered to be sufficient.
7	Is there a system in place in your jurisdiction that can be used to authenticate an electronic communication or a document (e.g. electronic signature)? If so, is it compulsory?	This is governed by Law 1999/190 on electronic signatures, based on Directive 1999/93. Documents signed by a secure electronic signature are deemed to be in writing; as explained above, the practical impact has been small.
	Additional comments, if any	

Denmark

Nr	Question	Answer / Comments
1	Can you form a company online? (Is this all types of companies or only some? Are there restrictions, e.g. you have to use model articles?).	Yes, all companies that have to be registered with the Business Authority can be registered online. No model articles are required, but there are standards available.
2	Can you file other documents that you are required to file with the Company Registry online (e.g. director appointments and removals)? If yes, all or only some?	Yes, all documents can be registered online, including the appointment and removal of directors and auditors, as well as annual accounts.
3	Can third parties access information about companies online? If yes, all or only some?	Yes, all information registered with the Business Authority or the separate online register Virk.dk are available online free of charge. However, court decisions forbidding certain persons from acting as directors or forming limited liability companies are considered confidential and are not publicly available. They are known by a restricted group of employees at the Business Authority, who will ensure that a court order is obeyed.
4	Does your company law allow companies to communicate with shareholders electronically? If yes for all purposes or only some? Are there requirements or restrictions as to how this is done?	Yes, companies may decide to communicate with shareholders, cf. Sec 92 CA. The content of this communication, eg. notice of the general meeting and its agenda, is decided by the ordinary rules on communication. The GM of a company may decide that all communication shall be done by electronic communication. The decision must state how communication can be done. According to Sec 80 CA, the company must enable proxy voting or the appointment of an attorney to be done electronically.

5	Does your company law allow shareholders to communicate with companies electronically? If yes, for all purpose or only some? Are there requirements or restrictions as to how this is done?	Yes, see above.
6	Can meetings of shareholders be held electronically where shareholders are not all present in the same place? If yes, are there requirements as to how this is done? Is it limited to publicly traded companies? Is there a distinction between providing information about the meeting (by transmission) and participation (e.g. the right to speak, to propose items on the agenda, to vote).	Yes, a GM can be held *fully* electronically, ie no physical presence and only online, or *partly* electronically, ie. some persons participate and the rest do so online, cf. Sec 77 CA. The former requires a decision by the GM, whereas the latter can be decided by the top management body. It applies to all limited liability companies. There is no distinction. On the contrary, the electronic format is only allowed where it can be ensured that the shareholders participating online can communicate and vote at the GM.
7	Is there a system in place in your jurisdiction that can be used to authenticate an electronic communication or a document (e.g. electronic signature)? If so, is it compulsory?	Yes, there are several online solutions, but the most common is the one used by public authorities called *Digital Signatur*, which can be used to authenticate and sign electronic documents and communications online. It is used by public authorities and private enterprises, e.g. banks.
	Additional comments, if any	A recent case involved a person who was able to make online registrations without permission in certain companies. It was quickly detected and additional safeguards have now been introduced. Such as restricted access to change (but not otherwise access) public data about a company and auto-generated emails to those responsible for a company to alert them whenever a change is filed.

France

Nr	Question	Answer / Comments
1	Can you form a company online? (Is this all types of companies or only some? Are there restrictions, e.g. you have to use model articles?).	Yes, all companies can register by filling an online form and will receive all the receipts and evidences of the registration https://www.infogreffe.fr/societes/formalites-entreprise/formalites.html One has no restrictions regarding the drafting of the articles of incorporation (to the extent they are compliant with the law), but standard templates are proposed on the website.
2	Can you file other documents that you are required to file with the Company Registry online (e.g. director appointments and removals)? If yes, all or only some?	Yes, all documents can be registered online, including the appointment and removal of directors and auditors, as well as annual accounts https://www.greffes-formalites.fr/modifs/fmlModif.php?FormeJuridique=SARL http://www.i-greffes.fr/
3	Can third parties access information about companies online? If yes, all or only some?	Yes, all the information related to companies is collected by the French commercial register (hereafter "Greffe du commerce") and available online at the following link: https://www.infogreffe.fr. However, consulting a document is not fully free and companies are sometime reluctant to publish their accounts, even if this is a legal requirement, because they tend to prefer to run the risk of being fined than to disclose sensitive information to their competitors.
4	Does your company law allow companies to communicate with shareholders electronically? If yes for all purposes or only some? Are there requirements or restrictions as to how this is done?	Yes, companies may decide to communicate with shareholders electronically. Regarding the convening for the shareholders' meeting of the company, there was previously some provision regarding French SARL where the law regarding a commercial company required previously substantial formalities (i.e. the obligation for a French SARL to convene

		its shareholders to general meetings by mean of registered letters), but the law was changed in order to perform this convening through simple electronic messages[7] .
5	Does your company law allow shareholders to communicate with companies electronically? If yes, for all purpose or only some? Are there requirements or restrictions as to how this is done?	Yes, see above.
6	Can meetings of shareholders be held electronically where shareholders are not all present in the same place? If yes, are there requirements as to how this is done? Is it limited to publicly traded companies? Is there a distinction between providing information about the meeting (by transmission) and participation (e.g. the right to speak, to propose items on the agenda, to vote).	The commercial Code[8] states for SA and SARL the possibility for shareholders to participate in a general meeting through Visio conference, provided certain conditions are fulfilled, ensuring the security and the quality of the communication.
7	Is there a system in place in your jurisdiction that can be used to authenticate an electronic communication or a document (e.g. electronic signature)? If so, is it compulsory?	Yes, there are many systems fulfilling the conditions laid in art. 1316-4 of the Civil Code, and the one used by the greffe du commerce is a system named Certigreffe, which relies on a usb stick and guarantees the confidentiality and the security of the procedures https://www.infogreffe.fr/societes/services-infogreffe/certificat-electronique.html
	Additional comments, if any	

[7] For example: décret n° 2015-545 du 18 mai 2015 pris pour application de l'ordonnance n° 2014-863 du 31 juillet 2014 relative au droit des sociétés, prise en application de l'article 3 de la loi n° 2014-1 du 2 janvier 2014 habilitant le Gouvernement à simplifier et sécuriser la vie des entreprises: http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=1CD3707481BACB65F6CEDD72CB5324DC.tpdila09v_2?idArticle=LEGIARTI000030615063&cidTexte=LEGITEXT000005634379&dateTexte=20150610&categorieLien=id&oldAction=&nbResultRech=

[8] Articles R. 223-20-1 for the SARL and R. 225-97

Germany

Nr	Question	Answer / Comments
1	Can you form a company online? (Is this all types of companies or only some? Are there restrictions, e.g. you have to use model articles?).	In order to form a company, you have to take recourse to the services of a notary. The articles of association need to be notarized and the application to the company registry will be legally checked and the identity of the applicant will be validated by the notary. After that, there is electronic communication between the notary and the register. Therefore the process of being incorporated takes less time than it used to take some years ago. Regular incorporations usually will be registered between one and three days. Provided that the founders paid the registering fee (failure to do so is one of the most common reasons for delay).
2	Can you file other documents that you are required to file with the Company Registry online (e.g. director appointments and removals)? If yes, all or only some?	Documents to be filed with the company registry have to be filed by the notary. He will send it electronically to the company registry.
3	Can third parties access information about companies online? If yes, all or only some?	All registered information is available online (see www.unternehmensregister.de and www.handelsregister.de). There are modest fees (usually 4.50 € per document). Whether the websites are sufficiently user-friendly for non-German speakers is debatable.
4	Does your company law allow companies to communicate with shareholders electronically? If yes for all purposes or only some? Are there requirements or restrictions as to how this is done?	Private companies are free to stipulate in their articles the way of communication between the company and the shareholders. According to the legal default rule, if there is no specific provision in the articles, the invitation to the shareholders' meeting has to be sent by registered letter. Public companies must publish the invitation to the general meeting in the official gazette (electronically) and on their website.

5	Does your company law allow shareholders to communicate with companies electronically? If yes, for all purpose or only some? Are there requirements or restrictions as to how this is done?	In public companies, an official request by minority shareholders to convene a general meeting or to put additional items on the agenda has to be submitted in writing. Shareholders of a public company may also establish an internet forum for communicating with each other, but it seems that this possibility is not very popular amongst shareholders.
6	Can meetings of shareholders be held electronically where shareholders are not all present in the same place? If yes, are there requirements as to how this is done? Is it limited to publicly traded companies? Is there a distinction between providing information about the meeting (by transmission) and participation (e.g. the right to speak, to propose items on the agenda, to vote).	Private companies can freely stipulate the procedure of the shareholders' meeting in their articles. The default rule is a physical meeting, but the shareholders unanimously can always waive this requirement. In public companies, the articles may provide that shareholders can vote without being present in the meeting, either in writing or electronically. The articles may also provide for broadcasting the meeting, e.g. on the company's website. Listed companies are obliged to publish on their website the documentation which the shareholders need in order to prepare the meeting. There is an interconnection with the shareholders' individual right to ask questions during the meeting: The management board may reject individual questions if the required information has already been made available on the company's website at least seven days before the meeting. Proxy voting in the meeting is possible. Listed companies have to accept electronic communication means for the authorization of the proxy.
7	Is there a system in place in your jurisdiction that can be used to authenticate an electronic communication or a document (e.g. electronic signature)? If so, is it compulsory?	There is a particular act on digital signatures, which are accepted for various purposes in civil law and procedural law.
	Additional comments, if any	

Ireland

Nr	Question	Answer / Comments
1	Can you form a company online? (Is this all types of companies or only some? Are there restrictions, e.g. you have to use model articles?).	Company incorporation can be completed online in limited circumstances. An electronic company incorporation scheme is available to facilitate presenters who are members of the "Fé Phráinn Scheme" who require speedy company incorporation. It is not suitable for a once-off incorporation, but is instead used by presenters who file documents regularly.
2	Can you file other documents that you are required to file with the Company Registry online (e.g. director appointments and removals)? If yes, all or only some?	Yes. The Companies Registration Office ("CRO") provides for CORE (the Companies Online Registration Environment) which is available to registered users who are often accountancy firms or authorised filing agents (see below) filing on behalf of clients. This allows members to check the status of their companies, to receive notification of filings for companies in members' portfolios and of changes in the status of those documents, to watch their companies and to file documents online. In order to avail of faster registration, the following documents can be filed on-line: Business Name Individual; Business Name Partnership; Business Name Body Corporate; Change of Company Name; Annual Return; Change in secretary/director details; Change of address; Multi-member to single-member company; Single-member to multi-member company; Special resolutions and any document lodged in connection with it; and Ordinary resolution and any document lodged in connection with it. Registered users are required to use a high level of security in sending in returns in order to ensure that the CRO will be able to prove the identity of the sender for any return. Forms can also be submitted electronically through one of the secretarial software vendors that has a relationship with the CRO. A director or secretary who wishes to sign returns electronically through one of these packages can do so using a ROS (Revenue Online Service) Certificate. This means that any person who has registered with ROS and has obtained a digital ROS cert can sign CRO foms online. It is the responsibility of company officers to ensure that their ROS certificate is not improperly used. Section 35 Companies Act 2014 ("the Act") provides for the authorisation by a company of an "electronic filing agent" to perform the electronic signing of documents that are required to be delivered by the company to the CRO and the delivery to the CRO by electronic means of those documents so signed. Under the Act, annual returns may also be made to the Registrar electronically (s.344).

3	Can third parties access information about companies online? If yes, all or only some?	Yes, certain important information, such as company name and registered office address, may be checked free of charge on the CRO web site. More detailed company information such as an annual return, company accounts or company printout, are also available online but for a fee.
4	Does your company law allow companies to communicate with shareholders electronically? If yes for all purposes or only some? Are there requirements or restrictions as to how this is done?	For all companies, notice may be served on shareholders by electronic means if the company's constitution allows. It may also be permitted if: "(a) the member has consented in writing to the company, or the officer of it, using electronic means to serve or give notices in relation to him or her; (b) at the time the electronic means are used to serve or give the notice in relation to the member, no notice in writing has been received by the company or the officer concerned from the member stating he or she has withdrawn the consent referred to in paragraph (a); and (c) the particular means used to serve or give the notice electronically are those that the member has consented to."(s.218) Furthermore financial statements may be sent electronically to addresses notified to the company for that purpose (s.338) Squeeze out and sell out rights may be effected by notice delivered electronically if the three conditions referred to above have been complied with (s.459). For traded public limited companies (PLCs), additional rights are provided for shareholders. Notice of a meeting must be issued "in a manner ensuring fast access to the notice on a non-discriminatory basis, using such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the Member States". The PLC must make available to shareholders on its website: notice of the general meeting, the total number of shares, documents to be submitted to the meeting, copies of draft resolutions or commentary on agenda items, proxy voting forms, draft resolutions tabled by shareholders (s.1103).
5	Does your company law allow shareholders to communicate with companies electronically? If yes, for all purpose or only some? Are there requirements or restrictions as to how this is done?	For PLCs shareholders with 3% of the issued share capital have the right by electronic or postal means to put an item on the agenda and table a resolution (s.1104)

6	Can meetings of shareholders be held electronically where shareholders are not all present in the same place? If yes, are there requirements as to how this is done? Is it limited to publicly traded companies? Is there a distinction between providing information about the meeting (by transmission) and participation (e.g. the right to speak, to propose items on the agenda, to vote).	For all shareholders, general meetings of shareholders may be held using any technology that provides shareholders as a whole with "a reasonable opportunity to participate" (s.176). Proxies may be effected by sending or delivering the instrument or by communicating the instrument to the company by electronic means (s.183). Unanimous written resolutions may be effected by having the relevant documentation delivered to the company by electronic mail or fax as well as in the usual manner (s.193) Traded PLCs may provide for participation in a general meeting by electronic means (s1106). It states as follows: (1) A traded PLC may provide for participation in a general meeting by electronic means including— (a) a mechanism for casting votes, whether before or during the meeting, and the mechanism adopted shall not require the member to be physically present at the meeting or require the member to appoint a proxy who is physically present at the meeting; (b) real time transmission of the meeting; (c) real time two way communication enabling members to address the meeting from a remote location. (2) The use of electronic means pursuant to subsection (1) may be made subject only to such requirements and restrictions as are necessary to ensure the identification of those taking part and the security of the electronic communication, to the extent that such requirements and restrictions are proportionate to the achievement of those objectives. (3) Members shall be informed of any requirements or restrictions which a traded PLC puts in place pursuant to subsection (2). (4) A traded PLC that provides electronic means for participation at a general meeting by a member shall ensure, as far as practicable, that— (a) such means— (i) guarantee the security of any electronic communication by the member;

		(ii) minimise the risk of data corruption and unauthorised access; (iii) provide certainty as to the source of the electronic communication; and (b) in the case of any failure or disruption of such means, that failure or disruption is remedied as soon as practicable. Shareholders may appoint a proxy by electronic means and have at least one effective method of notification of a proxy by electronic means offered to it by the traded PLC (s.1108). Voting results must be made available at meeting and on website within 15 days (s.1110)
7	Is there a system in place in your jurisdiction that can be used to authenticate an electronic communication or a document (e.g. electronic signature)? If so, is it compulsory?	The Act provides for the authorisation by a company of an "electronic filing agent" to perform the electronic signing of documents that are required to be delivered by the company to the CRO and the delivery to the CRO by electronic means of those documents so signed (s.35). In addition, the Electronic Commerce Act 2000 provides that electronic documents are treated as documents for the purposes of cases.
	Additional comments, if any	The Act envisages that changes may be made to improve operational efficiency. It provides that the delivery of documents in electronic form may be made mandatory if the Minister, after consultation with the Registrar, considers that the performance by the Registrar of functions under this Act could be more efficiently discharged (s.897). Such an order could prescribe that the sole means to be used to deliver, under the particular provision concerned, a document to the Registrar would be those provided for under the Electronic Commerce Act 2000.

Italy

Nr	Question	Answer / Comments
1	Can you form a company online? (Is this all types of companies or only some? Are there restrictions, e.g. you have to use model articles?).	No, Italian company law still sticks to the traditional incorporation via public notary.
2	Can you file other documents that you are required to file with the Company Registry online (e.g. director appointments and removals)? If yes, all or only some?	Yes. The details can be accessed (in English) at www.registroimprese.it in the section "webfiling service". Files, signed using a digital signature, are submitted electronically to the Business Registry Office of the relevant Chamber of Commerce. Receipts are given by the Office to the certified email of the company, ensuring traceability and transparency. All companies registered in the Italian Business Register must have a certified email. Also annual financial statements can be submitted electronically, provided they are signed using the digital signature belonging to the company's legal representative.
3	Can third parties access information about companies online? If yes, all or only some?	Yes. The details can be also accessed at www.registroimprese.it. In particular detailed legal, economic and administrative information can be obtained online clicking on "features" "for the citizen".
4	Does your company law allow companies to communicate with shareholders electronically? If yes for all purposes or only some? Are there requirements or restrictions as to how this is done?	According to art. 2366, paragraph 2, of the Italian civil code the notice convening a general meeting can be published either in the Official Gazette or in at least one daily newspaper indicated in the articles of association. Such daily newspaper can be also an online daily press. Moreover, according to art. 2366, paragraph 3, of the Italian civil code companies whose shares are not listed nor widely dispersed among the public can adopt a provision in their articles of association whereby they can be authorised to send the notice convening a general meeting with any means, herein included electronic mail provided that this is done in a way ensuring evidence of the receipt of such (electronic) notice. According to art. 125-bis TUF (testo unico della finanza/Financial Consolidated Act) the shareholders' meeting of listed companies is convened with a notice published on the company's website and with the other formalities set out by Consob (the Italian Securities and Markets Authority), that is granted regulatory powers to implement such provision. According to art. 2370, paragraph 3, of the Italian civil code the articles of association can allow intervention in the shareholders' meeting and the exercise of the voting rights electronically. The same provision applies to listed companies under article 127 TUF (testo unico della finanza/Financial Consolidated Act) and Consob (the Italian Securities and Markets Authority) is granted regulatory powers to implement such provision

		As to listed companies, artide 125-ter provides that the board of directors publishes on the website of the companies a report on the topics in the agenda of the shareholders' meeting; article 127-ter TUF provides that the company can arrange a "Q&A" section in its website to provide answers to the shareholders in view of a forthcoming shareholders' meeting; more generally art. 125-quarter TUF lists the documents (herein proxy materials) to be published by listed companies in their website, that is mandatory.
5	Does your company law allow shareholders to communicate with companies electronically? If yes, for all purpose or only some? Are there requirements or restrictions as to how this is done?	Shareholders may communicate with the company electronically to participate electronically in a shareholders' meeting or with regard to proxy voting as indicated above.
6	Can meetings of shareholders be held electronically where shareholders are not all present in the same place? If yes, are there requirements as to how this is done? Is it limited to publicly traded companies? Is there a distinction between providing information about the meeting (by transmission) and participation (e.g. the right to speak, to propose items on the agenda, to vote).	As already mentioned, according to art. 2370, paragraph 3, of the Italian civil code the articles of association can allow intervention in the shareholders' meeting and the exercise of the voting rights electronically. The same provision applies to listed companies under artide 127 TUF (testo unico della finanza/Financial Consolidated Act) and Consob (the Italian Securities and Markets Authority) is granted regulatory powers to implement such provision. In particular details on the electronic participation and electronic voting are set out in articles 143 bis and 143 ter of Consob regulation no. 11971 on issuers (so called Regolamento emittenti). It can be accessed at www.consob.it, legal framework, laws and regulations). In essence, the artides of association may provide for the use of electronic means to permit one or more of the following types of participation at the shareholders' meeting: a) transmission of the shareholders' meeting in real time; b) participation at the meeting from another location through a two way communication system in real time; c) exercise of the right to vote before the meeting or during it, without the need to appoint a representative to be physically present.
7	Is there a system in place in your jurisdiction that can be used to authenticate an electronic communication or a document (e.g. electronic signature)? If so, is it compulsory?	Yes, electronic signature is regulated by Legislative Decree 7 March 2005 no. 82 (so called Italian code of digital administration), based upon the relevant EU Directive on a Community framework for electronic signatures.
	Additional comments, if any	None

Lithuania

Nr	Question	Answer / Comments
1.	Can you form a company online? (Is this all types of companies or only some? Are there restrictions, e.g. you have to use model articles?)	There is a possibility to form a company online. The regulation does not let to set up all types of companies online. It is allowed to set up a private enterprise, a private limited liability company and a small partnership. There are several restrictions: 1st the incorporator shall have e-signature; 2nd there are model articles which must be followed; 3rd if the headquarter is not the private property of the incorporator, there shall be the signed agreement with owner's e-signature; 4th shares of the private limited liability company shall be paid monetary contribution; 5th the name of the company shall be temporary booked in the Register of Legal Entities; 6th in the name of a company cannot be the word "Lietuva".
2.	Can you file other documents that you are required to file with the Company Registry online (e.g. director appointments and removals)? If yes, all or only some?	It is allowed to use online system to give applications of 1. Data (principal managing body, headquarter, procuracy, contacts) changing; 2. Legal status changing; 3. Founding documents changing.
3.	Can third parties access information about companies online? If yes, all or only some?	Yes, they can access. The information can be found at http://www.registrucentras.lt/jar/ The information about the code, legal form and legal status of companies is non-charged. The other pieces of information can be given if the contract with Register of Legal Entities is signed. This

		information is paid.
4.	Does your company law allow companies to communicate with shareholders electronically? If yes for all purposes or only some? Are there requirements or restrictions as to how this is done?	Yes, companies can communicate with shareholders electronically. Shareholders can use electronic means of communications when they want to vote. Information can be presented to shareholders by electronic communication. The agenda and projects of decisions can be offered using electronic communication. There are no specific requirements how this kind of communication should be done.
5.	Does your company law allow shareholders to communicate with companies electronically? If yes, for all purpose or only some? Are there requirements or restrictions as to how this is done?	Shareholders can use electronic means of communications when they want to vote. There are no specific requirements to those procedures. The general rule of requirements can be found in Republic of Lithuania Law on Companies. The article 21 says: "For the shareholders to be able to attend and vote at the General Meeting of Shareholders by means of electronic communications, only the requirements and restrictions which are necessary for establishing the shareholders' identity and for ensuring the security of the transmitted information may be applied to the use of the means of electronic communications and only in the case when they are proportionate to achieving these goals."
6.	Can meetings of shareholders be held electronically where shareholders are not all present in the same place? If yes, are there requirements as to how this is done? Is it limited to publicly traded companies? Is there a distinction between providing information about the meeting (by transmission) and participation (e.g. the right to speak, to propose items on the agenda, to vote).	According to the Article 21 of Republic of Lithuania Law on Companies, "The company may provide a possibility for shareholders to attend the General Meeting of Shareholders and to vote by means of electronic communications. For the shareholders to be able to attend and vote at the General Meeting of Shareholders by means of electronic communications, only the requirements and restrictions which are necessary for establishing the shareholders' identity and for ensuring the security of the transmitted information may be applied to the use of the means of electronic communications and only in the case when they are proportionate to achieving these goals". This regulation refers to both private limited liability and public limited liability companies.

7.	Is there a system in place in your jurisdiction that can be used to authenticate an electronic communication or a document (e.g. electronic signature)? If so, is it compulsory?	Yes, the electronic signature is regulated by Republic of Lithuania Law of 11 July 2000 on Electronic signature. According to the article 8 of this Act, "A secure-electronic-signature, created by a secure-signature-creation-device and based on a qualified-certificate which is valid, shall have the same legal force that a hand-written signature in written documents has and shall be admissible as evidence in court."
8.	Additional comments, if any	None

Luxembourg

Nr	Question	Answer / Comments
1	Can you form a company online? (Is this all types of companies or only some? Are there restrictions, e.g. you have to use model articles?).	Yes, all companies can register by filling an online form and will receive all the receipts and evidences of the registration: https://www.rcsl.lu/mjrcs/jsp/IndexActionNotSecured.action?time=1434360151016&loop=2 One has no restrictions regarding the drafting of the articles of incorporation (to the extent they are compliant with the law), and during the process of the registration, the user can attach his/her own article of incorporation.
2	Can you file other documents that you are required to file with the Company Registry online (e.g. director appointments and removals)? If yes, all or only some?	Yes, all documents can be registered online, including the appointment and removal of directors and auditors, as well as annual accounts.
3	Can third parties access information about companies online? If yes, all	Yes, all the information related to companies' acts are collected by the Luxembourg commercial register (hereafter *"Greffe du register du commerce et des sociétés"*) and available online at the Memorial C[9]:

[9] Art. 9. Of the Law dated 10th august 1915 on commercial companies states that *«§ 1. Instruments, extracts therefrom or information the publication of which is provided for by law shall within one month after the date of the finalised instrument be lodged with the «register of commerce and companies». A receipt shall be issued in respect thereof. Documents so lodged shall be placed in a file kept for each company. » «The original or a notarised copy of the powers of attorney, whether in the form of a public deed or private instrument and which are annexed to the constitutive instrument of sociétés anonymes, sociétés en commandite par actions, sociétés coopératives, sociétés à responsabilité limitée and civil companies, shall be filed at the same time as the documents to which they relate.*
§ 2. Any person may, without charge, examine documents lodged in respect of a specific company and obtain, even by a request sent in writing, a full or partial copy thereof, the only payment required being that of the «administrative costs as determined by grand-ducal regulation»4, 5.Such copies shall be certified true copies unless the applicant waives certification.» «§ 3. Publication shall be made in the «Mémorial C, Recueil des Sociétés et Associations»6; the published documents shall be sent to the «register of commerce and companies»4 where they may be examined by any person free of charge and they shall be collected in a Recueil Spécial (Special Register). Publication must take place «within two months» of lodgement.»

	or only some?	http://www.legilux.public.lu/entr/search/index.php
4	Does your company law allow companies to communicate with shareholders electronically? If yes for all purposes or only some? Are there requirements or restrictions as to how this is done?	Yes, companies may decide to communicate with shareholders electronically. One shall mention as well that in some cases, convocation between a company and a shareholder must be performed by way of registered letter. This is the case for example for the bearer of registered shares (action nominatives)[10], or in the framework of specific majority requirements[11] but even in this case where the Law requires a registered letter, article 34 of the law dated 14th August 2000 forecasts the possibility of an electronic registered letter[12].
5	Does your company law allow shareholders to communicate with companies electronically? If yes, for all purpose or only some? Are there requirements or restrictions as to how this is done?	Yes, see above.
6	Can meetings of shareholders be held electronically where shareholders are not all present in the same place? If yes, are there re-	Setting-up a shareholders meeting is not an obligation in Sarl of less than 25 shareholders, they can vote by writing. The commercial Code states for SA the possibility for shareholders to participate in general meeting through Visio-conference, provided certain conditions are fulfilled, ensuring the security and the quality of the communication[13].

[10] Article 32-3 (3), 70 § 3 of the law dated 10 august 1915 on commercial companies

[11] Article 194 of the law dated 10th august 1915

[12] "the message signed by an electronic mean on the base of a qualified certificate in which the hour, the date, the sending and the reception are certified according to conditions as set out in the grand-ducal decree is a registered letter."

[13] «Art. 64bis. (1) Unless otherwise provided by the articles and without prejudice to specific legal provisions, the internal rules relating to quorum and decision-taking in the board of directors, the supervisory board and the management board of the company shall be as follows:
a) quorum: at least half of the members must be present or represented.
b) decision-taking: a majority of the members present or represented.
(2) Where there is no relevant provision in the articles, the chairman of each corporate body shall have a casting vote in the event of tie.
(3) Unless otherwise provided by the articles, the internal rules may provide that for the calculation of quorum and majority, the directors or members of the management board participating in the board of directors or management board meeting by video conference or by telecommunication means permitting their identifi-

	quirements as to how this is done? Is it limited to publicly traded companies? Is there a distinction between providing information about the meeting (by transmission) and participation (e.g. the right to speak, to propose items on the agenda, to vote).	
7	Is there a system in place in your jurisdiction that can be used to authenticate an electronic communication or a document (e.g. electronic signature)? If so, is it compulsory?	Yes, there are many systems fulfilling the conditions laid in art. 1322-2 of the Civil Code, and the Luxembourg commercial register providing 4 possibilities to authenticate the user by an electronic way, in compliance with the requirements of security and reliability forecasted by the law. (Luxembourg Id with electronic certificate, token, smartcard or usb stick). https://www.infogreffe.fr/societes/services-infogreffe/certificat-electronique.html
	Additional comments, if any	

cation may be deemed to be present. Such means shall satisfy technical characteristics which ensure an effective participation in the meeting of the board of directors or of the management board, whose deliberations shall be on-line without interruption.
The meeting held at a distance by way of such communication means shall be deemed to have taken place at the registered office of the company.»

Netherlands

Nr	Question	Answer / Comments
1	Can you form a company online? (Is this all types of companies or only some? Are there restrictions, e.g. you have to use model articles?).	No. Basically all companies need to be incorporated by notarial deed (with the exception of a simple association). Upon passing the notarial deed (upon which the company comes into existence) the company has to be registered in the Commercial Register. Generally it is the notary who takes care of this. This registration can be done online (but has no effect as to the coming into existence of the company). There is no formal set of standard Articles (although in practice the notaries of course use a fairly standard notarial deed)
2	Can you file other documents that you are required to file with the Company Registry online (e.g. director appointments and removals)? If yes, all or only some?	Yes, all documents can be registered online, including the appointment and removal of directors and auditors, as well as annual accounts.
3	Can third parties access information about companies online? If yes, all or only some?	Yes, all information registered with the Commercial Register ("Handelsregister") which is administered by the Chambers of Commerce is available online. However most of the information is not free of charge and requires a small payment.
4	Does your company law allow companies to communicate with shareholders electronically? If yes for all purposes or only some? Are there requirements or restrictions as to how this is done?	Yes, companies may decide to electronically communicate with shareholders. The Articles may determine that all communication shall be done by electronic communication. Electronic participation and voting of shareholders in the general meeting may also be allowed by the Articles (art. 2:117a/227a Dutch Civil Code). However, this is rarely used. In public companies this is due to impracticalities and costs as well as (legal) uncertainty if connections were to be interrupted etc. In private companies impracticalities and costs also mean that this is not common practice. However, in these companies it is much more common that decisions are being made outside meetings by written resolutions (after consultations by phone etc).
5	Does your company law allow shareholders to	Yes, for example if shareholders want to propose agenda items (Article 2:114a Dutch Civil

	communicate with companies electronically? If yes, for all purpose or only some? Are there requirements or restrictions as to how this is done?	Code). See for participation and voting above.
6	Can meetings of shareholders be held electronically where shareholders are not all present in the same place? If yes, are there requirements as to how this is done? Is it limited to publicly traded companies? Is there a distinction between providing information about the meeting (by transmission) and participation (e.g. the right to speak, to propose items on the agenda, to vote).	Yes, a GM can be held fully electronically, ie no physical presence and only online, or partly electronically, ie. some persons participate and the rest by online. This is possible in all limited liability companies. However, as explained above, this is far from common practice for the reasons set out under 4.
7	Is there a system in place in your jurisdiction that can be used to authenticate an electronic communication or a document (e.g. electronic signature)? If so, is it compulsory?	No, at this point this is not yet established in a corporate context. Legislation is available for e-contracting.
	Additional comments, if any	

Poland

Nr	Question	Answer / Comments
1	Can you form a company online? (Is this all types of companies or only some? Are there restrictions, e.g. you have to use model articles?).	Yes, according to art. 157^1 CCC (Code on Commercial Companies, Pol. *kodeks spółek handlowych*) one can form a limited liability company (Pol. *spółka z ograniczoną odpowiedzialnością – sp. z o.o.*) online – this provision was introduced in January 2012. Moreover, since 15 January 2015, it is also possible to establish two of Polish company law partnerships online – pursuant to art. 23^1 and art. 106^1 CCC a general partnership (Pol. *spółka jawna*, which is the equivalent of the German *Offene Handelsgesellschaft*) and a limited partnership (Pol. *spółka komandytowa*, which is the equivalent of the German *Kommanditgesellschaft*) may be established via online registration. The remaining types of Polish companies and partnerships, i.e. joint stock company, professional partnership, limited joint-stock partnership as well as *Societas Europaea* still need to be established in a traditional way as there is no possibility for online registration yet. In case the company or a partnership is formed online, there is a model artides of association provided, which cannot be altered before the company is established (any changes are only possible afterwards). There is one more important restriction – there may not be any contributions in kind with regards to share capital when creating the company (or the partnership) online; share capital must be paid entirely in cash. In limited liability company it may be paid up within seven days after establishing the company, unlike in traditional procedure, in which the share capital needs to be paid before forming this type of company. It is important, that according to art. 157^1 CCC establishing limited liability company does not require secure electronic signature, i.e. simple electronic signature is enough, which means it is sufficient to register on the website. With regards to general partnership and limited partnership, pursuant to art. 23^1 CCC and 106^1 CCC respectively, it is required to use secure electronic signature verified with qualified certificate or electronic signature confirmed by the Polish electronic platform of public administration services profile (Pol. *elektroniczna platforma usług administracji publicznej*, ePUAP).
2	Can you file other documents that you are required to file with the Company Registry	Yes, but only some. Art. 19 sec. 2 of Act on National Court Register allows online filing with the National Court Register. Art. 19 sec 2b requires secure electronic signature verified with qualified certificate or electronic signature confirmed by the Polish electronic platform of public administration services profile (ePUAP). It needs

	online (e.g. director appointments and removals)? If yes, all or only some?	to be pointed out that in practice it is rarely used, it seems to be still easier, quicker and cheaper to file printed documents in a traditional way. It also may be especially difficult to implement with regards to legal actions that require notarial deed, e.g. resolutions of general meeting. In order for notarial deeds to be submitted, notary public must have provided such a deed with a secure electronic signature verified with qualified certificate.
3	Can third parties access information about companies online? If yes, all or only some?	Third party may access some information about a company online (nonetheless much more information is available in Registry Court on demand). The extract from National Court Register (Pol. *KRS – Krajowy Rejestr Sądowy*) is free of charge for everyone via the Ministry of Justice website. The access is easy and convenient. Data is available for all entities registered with the National Court Register. The extract includes mainly: basic information about the company (address, share capital, branches, information about changes in articles of association etc.), in limited liability companies list of shareholders who hold at least 10% of shares, rules of representation, members of management and supervisory board, commercial proxies, and other. Full file including historic data must be applied for and is available as a paid service. Further information, such as articles of association or resolutions of general meeting are only available and may be viewed by everyone in the Registry Court.
4	Does your company law allow companies to communicate with shareholders electronically? If yes for all purposes or only some? Are there requirements or restrictions as to how this is done?	According to art. 238 § 1 CCC, in Polish limited liability companies a notice concerning information about general meeting may be sent to a shareholder by electronic mail (instead of registered mail or courier service despatch) provided that the shareholder had previously consented to this in writing along with providing his electronic mail address. According to art. 402 § 3 CCC same procedure is also possible in joint stock companies, but there is one additional condition. It is only possible when all of the shares are registered shares i.e. there are no bearer shares issued by the company. In case the company issued any bearer shares (which is the case in all listed companies and many non listed companies) it is not possible to send notice about the general meeting via electronic mail, because in such case it is required to make an official announcement regarding general meeting. Polish law does not provide the possibility for the company to electronically communicate with shareholders (or a particular group of shareholders) in any other situation.

5	Does your company law allow shareholders to communicate with companies electronically? If yes, for all purpose or only some? Are there requirements or restrictions as to how this is done?	Shareholders may communicate with the company electronically with regard to proxy voting in joint stock company. According to art. 412 § 2 CCC the proxy regarding voting on shareholders meeting on behalf of shareholder may be granted in writing or electronically. The only other example of possibility for shareholders to communicate electronically with the company is the possibility of taking part in shareholders meeting by electronic means of communication (see question 6).
6	Can meetings of shareholders be held electronically where shareholders are not all present in the same place? If yes, are there requirements as to how this is done? Is it limited to publicly traded companies? Is there a distinction between providing information about the meeting (by transmission) and participation (e.g. the right to speak, to propose items on the agenda, to vote).	Yes, according to art. 406 CCC shareholders meeting in joint stock companies may be held electronically. This regulation refers to both private and public companies, moreover, it can be applied to limited joint stock partnership (Pol. *spółka komandytowo-akcyjna*, which is the equivalent of the German *Kommanditgesellschaft auf Aktien*). For this to be allowed: a) company's articles of association must provide for such a possibility (opt in), b) it needs to be provided in the announcement regarding the particular general meeting, that shareholders may participate by means of remote communication. When holding such a general meeting, the company must ensure a live transmission, possibility for bilateral communication, which includes the right to speak and the right to vote, both personally and by proxy.
7	Is there a system in place in your jurisdiction that can be used to authenticate an electronic communication or a document (e.g. electronic signature)? If so, is it compulsory?	In Poland this is governed by the Act of 18 September 2001 on electronic signature, which is based on Directive 1999/93 of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures. According to Art. 78 § 2 of Polish Civil Code, electronic signature which is verified with qualified certificate is equivalent to the written form.
	Additional comments, if any	There are some major changes with regard to digitalisation of company law coming into force on 1 April 2016. Generally, the range of actions regarding companies and partnerships (those which were established online)

		which may be done electronically will be further expanded. Not only establishing of company or partnership will be possible electronically, but also inter alia change of articles of association, transferring all rights and obligations of partner in a partnership, adopting a resolution in limited liability company, transferring of shares in limited liability company and dissolution of a company or partnership.

Spain

Nr	Question	Answer / Comments
1	Can you form a company online? (Is this all types of companies or only some? Are there restrictions, e.g. you have to use model articles?).	In Spain, it is possible to incorporate a SL (Sociedad de Responsabilidad Limitada) or SLNE (Sociedad Limitada Nueva Empresa, as "sub-form of SL) online. SA (sociedad anónima) is excluded from this possibility. All the legal and bureaucratic steps in order to incorporate a SLNE or SL are made from the Notary's office through electronic notarial documents without any need for the partner/s to go (and file documents) to the Mercantil Registry, Social Security and Tax Authorities. The Notary sends (electronically) all the documentation to these Authorities. The notarial deed of incorporation must be signed within **one working day** of the reception (at the Notary's office) of the telematic company name certification issued by the Central Mercantile Registry, provided that at the time the Notary and the rest available necessary data were provided by interested parties (partner/s). The Mercantile the registrar shall register the deed/charter within **three working days** from the reception of the telematic documents (sent by the notary). Thus, costs are reduced. As a general rule, the fees are: (i) 150 euros for the Notary's and (ii) 100 euros for the Register's (as regards the incorporation of a SRL). Besides, if that SRL is incorporated: (i) with no more than 3.000 euros of capital and (ii) the templates of articles of association (approved by the Ministry of Justice) the notarial fees will be: (i) 60 euros for the Notary and (ii) 40 euros for the Register. Former publication and inscription of the SRL at the BORME (official gazette of the Mercantil Registry) is free.

		The Estatistics (the published available ones) explain how many companies have used this online proceeding and how many days it took: http://www.circe.es/Circe.Publico.Web/Estadisticas/EstadisticasSimples.aspx
2	Can you file other documents that you are required to file with the Company Registry online (e.g. director appointments and removals)? If yes, all or only some?	
3	Can third parties access information about companies online? If yes, all or only some?	
4	Does your company law allow companies to communicate with shareholders electronically? If yes for all purposes or only some? Are there requirements or restrictions as to how this is done?	• Section 11 quater LSC has recognized, expressly for corporations (SL and SA), the possibility that electronic communication can be carried out between companies and their partners. • Section 11 quarter LSC establishes: "*Communications between the company and the partners, including the sending of documents, applications and information, may be made by electronic means provided that such communications have been accepted by the partner.* *The company will have to enable, through the company website itself, the corresponding device that can prove the undoubted date of receipt and the content of electronic messages between partners and company".* • However: The web page is facultative for corporations (art. 11 bis.1º LSC), although it is mandatory for listed companies (539.2 LSC). • Thus, today, not so many companies have incorporated the webpage [that must be approved by the general meeting and incorporated (the fact of its creation) into the Mercantile Registry] and are using electronic means in order to establish communications between the company and its shareholders/partners. • Of course, all the listed companies have one.
5	Does your company law allow shareholders to communicate with companies electroni-	

	cally? If yes, for all purpose or only some? Are there requirements or restrictions as to how this is done?	
6	Can meetings of shareholders be held electronically where shareholders are not all present in the same place? If yes, are there requirements as to how this is done? Is it limited to publicly traded companies? Is there a distinction between providing information about the meeting (by transmission) and participation (e.g. the right to speak, to propose items on the agenda, to vote).	
7	Is there a system in place in your jurisdiction that can be used to authenticate an electronic communication or a document (e.g. electronic signature)? If so, is it compulsory?	
	Additional comments, if any	

United Kingdom

Nr	Question	Answer / Comments
1	Can you form a company online? (Is this all types of companies or only some? Are there restrictions, e.g. you have to use model articles?).	Yes. Web incorporation lets people incorporate a company online as a private limited company with model articles of association. Customers register an e-mail address and password.
2	Can you file other documents that you are required to file with the Company Registry online (e.g. director appointments and removals)? If yes, all or only some?	Yes. Web filing provides a secure system so companies can submit information online. The sorts of forms that can be submitted online relate to annual return, change of accounting reference date, company accounts, change of registered office, appointments of directors and secretary, change of details and removal, and return of allotment of shares. There are security measures, involving the use of an authentication code provided by the registry. Software filing allows the transmission of documents via e-mail in an approved form, using an authentication code. The software must be from a package supplier or have been tested by Companies House. The sort of documents that can be filed this way are similar to those for web filing. This system is usually used by those who file documents on a weekly or daily basis.
3	Can third parties access information about companies online? If yes, all or only some?	Yes. You can get some details about a company for free, including: its registered office address; previous company names; directors' details; if it has been dissolved; when its accounts were filed or due; and a history of its filed documents. There is a £1 charge for other filed documents, eg company accounts, annual returns and reports. You need to register to order these. You can pay by credit/debit card or PayPal.
4	Does your company law allow companies to communicate with shareholders electronically? If yes for all purposes or only some? Are there re-	Yes. The Companies Act 2006 contains provisions to enable companies to use electronic communications where the Act requires a document or information to be sent or provided. It contains provisions which set out when a document or information is sent or supplied in electronic form. This means if it is sent by electronic means (eg email or fax) or any other means while in electronic form (eg a disk sent by post). It sets out that a document is sent by electronic means if it is sent and received by electronic equipment or transmitted conveyed and received entirely by

	quirements or restrictions as to how this is done?	wire, radio, optical means or other electromagnetic means (s1168). The sender must reasonably consider that the receiver will be able to read it (so it can be seen and read with the naked eye) and retain a copy of it. The Act also contains provisions which set out in some detail how documents or information are to be sent by a company and to a company (s1144 and Schedules 4 and 5). These contain provisions for documents and information to be sent in electronic form and communications by means of a website (which require the company to notify the shareholder that the information has been posted on the website). It also contains provisions on authentication (s1146) and when documents sent by means of a website or by electronic means are deemed to have been delivered (s1147).
5	Does your company law allow shareholders to communicate with companies electronically? If yes, for all purpose or only some? Are there requirements or restrictions as to how this is done?	Yes – see above.
6	Can meetings of shareholders be held electronically where shareholders are not all present in the same place? If yes, are there requirements as to how this is done? Is it limited to publicly traded companies? Is there a distinction between providing information about the meeting (by transmission) and participation (e.g. the right to speak, to propose	Yes. The Act also makes it clear that a meeting of any company can be held in a way that people who are not present in the same place can attend, speak and vote by electronic means. For traded companies, use of electronic means can only be subject to requirements and restrictions necessary to ensure the identification of those taking part and the security of the electronic communication and which are proportionate to the achievement of those objectives (s360A). These latter provisions are to meet the Shareholder Rights Directive requirements.

	items on the agenda, to vote).	
7	Is there a system in place in your jurisdiction that can be used to authenticate an electronic communication or a document (e.g. electronic signature)? If so, is it compulsory?	Yes. Article 5.2 of Directive 1999/93 on a Community framework for electronic signatures is implemented by the Electronic Communications Act 2000. There is a register of UK Established Certification Service Providers that issue Qualified Certificates.
	Additional comments, if any	

Annex B: Cross-border Voting Complexity