

TO BE OR NOT BE... DIRECTOR IN CROATIA

Tina Jakupak*
Željka Bregeš**

ABSTRACT

According to the 2019 Directive on Digital Tools and Processes in Company Law (referred to here as ‘the Digitalization Directive’), Member States are required until August 2023 to lay down a set of rules defining what kind of persons are not legally allowed to be directors of companies (e. g. those with a criminal background).

Building their paper around long-standing critics of the EU company law regime and the transposition rules thereof, the authors present legal provisions of Croatian company law where special regard is paid to the ‘disqualified directors’ and the recipes for how to deal with these new challenges imposed by the Digitalization Directive.

One of the positive aspects of the Digitalization Directive is that it requires Member States to clearly state the reasons why persons are not allowed to be company directors and that a list of these disqualified directors must be maintained. Company directors risk losing their rights of setting up or representing a company if they fail to meet their legal responsibilities. Although practically all Member States have at least one reason for disqualification, in practice there is wide variation in the reasons and in whether or not a list is kept.

Given the scope and aim of the Digitalization Directive, the paper seeks to find out whether and to what extent the term ‘disqualified directors’ would and should be introduced into Croatian law. The paper argues that the EU regime allows the introduction of the ‘disqualified directors’ test into Croatian law.

Alongside examining legal sources and literature, the authors pursue their research by systematically analyzing rules on ‘disqualified directors’ under the Digitalization Directive and Croatian Companies Act. After the introduction, the second part of the paper considers the concept of disqualified directors and provides an overview of

* Tina Jakupak, Commercial Court in Zagreb, Zagreb, Croatia; tina.jakupak@tszg.pravosudje.hr.

** Željka Bregeš, Commercial Court in Zagreb, Zagreb, Croatia; zeljka.breges@tszg.pravosudje.hr.

other Member States. The paper gives a background picture of why the Digitalization Directive proposed certain actions, inherent problems inherent, and what major critiques have been brought forward in the meantime regarding 'disqualified directors'. The third part analyses the Croatian legal regime, aiming at revisiting it in the light of the 'transposition test'. The fourth part summarizes and concludes.

KEYWORDS: *Disqualified directors, the Digitalization Directive, Croatian Companies Act.*

1. INTRODUCTION

The Court of Justice of the European Union has repeatedly recognized that not all differences in national rules can be solved by jurisprudence, but may need to be dealt with by future legislation or conventions¹. This legislative update with the Digitalization directive² seeks to improve the standards associated with company directors across the EU.

On July 31, 2019, the Digitalization Directive entered into force. The requirements introduced by the Digitalization Directive are based on the Company Law Package of the European Commission and particularly relate to the on-line formation of corporations but also have requested in respect of directors. In this paper, the emphasis is on the latter.

The Company Law Directive³ was amended with three directives: the Directive on restructuring and insolvency⁴, the Digitalization Directive, and the Cross-border Directive⁵.

¹ Judgment of 27 September 1988, *The Queen v H. M. Treasury and Commissioners of Inland Revenue, ex parte Daily Mail and General Trust plc*. C-81/87 EU:C:1988:456, para. 21 to 23, Judgment of 5 November 2002, *Überseering BV v Nordic Construction Company Baumanagement GmbH (NCC)*, C-208/00, EU:C:2002:632, para. 69, Judgment of 16 December 2008, *Cartesio Oktató és Szolgáltató Bt*, C-210/06, EU:C:2008:723, para. 108.

² Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law, PE/25/2019/REV/1, OJ L 186, 11.7.2019, p. 80–104 (hereinafter: *The Digitalization Directive*)

³ Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law, OJ L 169, 30.6.2017, p. 46–127

⁴ Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132, OJ L 172, 26.6.2019, p. 18–55

⁵ Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions OJ L 321, 12.12.2019, p. 1–44

The objective of the Digitalization Directive is namely to provide more digital solutions for companies in the internal market at the EU level by the principle of subsidiarity as set out in Article 5 of the Treaty on European Union⁶ and with the principle of proportionality.⁷ The Digitalization Directive covers provisions on the use of digital tools and processes in company law. Member States had to transpose the Digitalization Directive by August 1st, 2021, with a longer deadline for some provisions⁸.

Member States should bring into force by at the latest August 1st, 2023 provisions of the Digitalization Directive concerning disqualified directors. According to Digitalization, Directive Member States are required until the indicated date to lay down a set of rules defining what kind of persons are not legally allowed to be directors of companies. According to the available source⁹, nine Member States have transposed the Digitalization Directive by August 1st, 2021 (partially or completely). There are eight Member States which have not yet informed the European Commission about measures taken for the transposition of the Digitalization Directive.

Member States must have rules on the disqualification of directors, i. e. on the reasons why persons are not eligible to be directors. Member States must have such rules for at least “persons who take part in the administration, supervision or control of the company” and those that “are authorized to represent the company in dealings with third parties and legal proceedings”¹⁰. The Digitalization Directive requires Member States to establish a system for sharing information on ‘disqualified directors’ (i. e. persons who are determined to be ineligible to be a company director due to criminal or other activity).

Most Member States do not have a specific concept of “disqualified directors” in company law, but the transposition of the Digitalization Directive provides an opportunity to introduce the concept of “disqualified directors” into company law in countries where this does not exist and to extend the reasons for disqualification. It should also require that a current list (if any exist) of disqualified persons (together with the reason for their disqualification) be maintained, and that this list be accessible to the public.

⁶ Consolidated version of the Treaty on European Union OJ C 326, 26.10.2012, p. 13–390 - ELI: http://data.europa.eu/eli/treaty/teu_2012/oj

⁷ Preamble – Recital 40. of the Digitalization Directive

⁸ Article 2(2) of the Digitalization Directive

⁹ See more on <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32019L1151> - accessed on October 10th, 2022

¹⁰ ETUC Guidelines on the Directive on digital tools and processes in company law, Brussels, 2021 - https://www.etuc.org/sites/default/files/2021-06/Guidelines_digital%20tools%20Directive%20EN.pdf accesse on September 13th, 2022

Regarding disqualifications, the Directive on restructuring and insolvency¹¹ was also adopted in connection with this Digitalization Directive and Company Law Directive¹². The objective of that Directive is to contribute to the proper functioning of the internal market and remove obstacles to the exercise of fundamental freedoms, such as the free movement of capital and freedom of establishment, which result from differences between national laws and procedures concerning preventive restructuring, insolvency, discharge of debt, and disqualifications.¹³

Croatian Companies Act implemented the Digitalization Directive in 2022¹⁴. The aforementioned directive was implemented by law in such a way that provisions were added to the law on the conditions to be met by directors and other authorized persons to represent the company, as well as the measures that the state is obliged to undertake in this regard.

2. THE AIM – „FAST TRACK“ OR „SLOW TRACK“ APPROACH

In its 2003 Action Plan, the European Commission stated its intention to propose a directive to increase the responsibilities of directors which would include director disqualification.¹⁵

In 2006, the European Parliament proposed that the European Commission should have measures to enhance the cross-border availability of information on the disqualification of directors.¹⁶ The increase in cross-border mobility of companies did lead to the risk that those who are subject to sanctions in one Member State could simply continue their improper activity in another Member State. Therefore, it called for greater access to information on the disqualification of directors. The European Commission has endeavored to broaden

¹¹ Directive (EU) 2019/1023 of the European parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency)

¹² Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification), OJ L 169, 30.6.2017, p. 46–127

¹³ Preamble recital 1 of the Directive 2019/1023

¹⁴ Law on Amendments to the Companies Act – Official gazette no. 34/22

¹⁵ Modernising Company Law and Enhancing Corporate Governance in the European Union – A Plan to Move Forward (COM (2003) 284 final) - <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A52003DC0284> - accessed on September 17th, 2022

¹⁶ European Parliament resolution on recent developments and prospects in relation to company law (2006/2051(INI)) OJ C 303E , 13.12.2006, p. 114–119 - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52006IP0295> - accessed on September 17th, 2022

disqualification throughout the EU, and thus promote mutual recognition.¹⁷ This has been difficult to achieve because of the diverse disqualification rules of the Member States and because of issues relating to the rights of individuals.

One problem that often presents itself in addressing the issue of disqualification is that it falls into a grey area, somewhere between company law and insolvency law.¹⁸

On issues of corporate governance, the EU has always focused its attention on ensuring companies are managed by directors who are fit for purpose. This is most notable in the Shareholders Rights Directive¹⁹. The same is notable in the Takeover Bids Directive²⁰ and more recently, the Commission Implementing Regulation (EU) 2018/1212²¹. Corporate Governance was also highlighted as an area of interest in the context of the implementation of the Commission Action Plan on financing sustainable growth dated 2012²². Special provisions on corporate governance and remuneration concerning banks and investment firms were also conceived through the Capital Requirements Directive IV, as amended by Capital Requirements Directive V,²³ and Regulation No 575/2013, as amended by Regulation No 2019/876.²⁴

¹⁷ Green Paper on the approximation, mutual recognition and enforcement of criminal sanction in the European Union (COM (2004) 334 final), 24 - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52004DC0334> - accessed on September 17th, 2022

¹⁸ Karsten Engsig Sorensen, "Disqualifying Directors in the EU" in Hanne S Birkmose, Mette Neville & Karsten Engsig Sørensen (eds.) *Boards of Directors in European Companies. Reshaping and Harmonising Their Organisation and Duties* (Wolters Kluwer 2013) - https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2358368 – accessed on September 17th, 2022

¹⁹ Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement OJ L 132, 20.5.2017, p. 1–25

²⁰ Directive 2004/25/EC of the European Parliament and of the Council of 21 april 2004 on takeover bids OJ L 142, 30.4.2004, p. 12–23

²¹ Commission Implementing Regulation (EU) 2018/1212 of 3 September 2018 laying down minimum requirements implementing the provisions of Directive 2007/36/EC of the European Parliament and of the Council as regards shareholder identification, the transmission of information and the facilitation of the exercise of shareholders rights C/2018/5722, OJ L 223, 4.9.2018, p. 1–18

²² Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions Action Plan: Financing Sustainable Growth COM/2018/097 final

²³ Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures

²⁴ Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding

This legislative update with the Digitalization Directive seeks to improve the standards associated with company directors across the EU. It foresees the exchange of information between Member States on disqualified directors to prevent fraudulent behavior. Any disqualification information recorded by each Member State's register may be inquired into by another Member State through a regulated electronic procedure via a system of interconnected business registers²⁵, under the responsibility of the EU's e-Justice portal. This system facilitates the exchange of information between registries and is especially useful when a Member State is required to verify whether an applying director is disqualified in any other Member State.

In this age of digitalization, it is easier to become an incorporated company in another Member State. So the rules on disqualification in the Digitalization Directive take into account the increased mobility in the internal market and digitalization itself. The Digitalization Directive considers that it should be possible to disqualify a person who is a director of a foreign company and to enforce a disqualification order against someone who intends to use a foreign company as a vehicle for their business.²⁶

Any director can be disqualified. There is a number of reasons such as wrongful trading, fraudulent trading, or unfit conduct. Failing to adhere to duties as a director will result in an investigation and/or disqualification.

Almost every Member State has disqualification rules for directors, and only a few Member States do not have a central public register of the disqualified persons²⁷. The comparative legal analysis has also shown that the Member States'

ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012, OJ L 150, 7.6.2019, p. 1–225

²⁵ Business Registers Interconnection System (BRIS) is based on legal obligations set out by Directive 2012/17/EU on the interconnection of business registers and the Implementing Regulation (EU) 2015/884 of 8 June 2015. The directive requires the establishment of an information system that interconnects the central, commercial and companies registers (also referred to as business registers) of all Member States, whereas the Regulation details the technical specifications for the system. About BRIS see more: Ž. Bregeš i T. Jakupak, "DIGITALIZATION OF BUSINESS REGISTER", *InterEULawEast*, vol.4, br. 2, str. 91-99, 2017. [Online]. <https://doi.org/10.22598/iele.2017.4.2.6>

²⁶ About (increased) mobility of companies e.g. Horak, Hana; Dumančić, Kosjenka: *Cross-Border Transfer of the Company Seat : One Step Forward, Few Steps Backward // US China law review*, 14 (2017), 10; 711-728 doi:10.17265/1548-6605/2017.10.005

²⁷ Only Greece and Italy don't have the disqualification proceeding and there are other eight Member States (Austria, Belgium, Cyprus, Denmark, Germany, Netherlands, Slovakia, Slovenia) which do not have public register - Gerard McCormack – Andrew Keay – Sarah Brown

provisions may differ according to the period, the content, and the reasons for disqualification.

However, with very few exceptions, disqualification is (or should be) one of the main sanctions for the breach of insolvency-related duties. Other reasons for disqualification can include committed fraud, tax evasion, the use of company assets for personal benefit, and failure to maintain proper company accounting records.

The disqualification aim should be effective throughout the EU, not only at the national level. The lack of harmonization in this area of company law undermined national protection because according to the rules that were in force before the Digitalization Directive, there was no obstacle for a disqualified director to manage a company in a different Member State. The lack of availability of information about the disqualified directors ensured the free movement of the directors who could cause potential business failures in other Member States. For example, a director who was disqualified under Hungarian law cannot manage a company in Hungary for five years, but he could act as a director in Croatia or any other Member State. The Digitalization Directive aims to prevent and discourage further abuses in this area of company law in such a way.

Under the Digitalization Directive²⁸ Member States have an opportunity to share and receive this information (more precisely they are not precluded from doing so), but they are not obliged to ensure access to such information. The Digitalization Directive ensures that Member States should come up with rules on how to disqualify certain individuals from economic activities, but it does not provide details on such criteria for disqualification. The EU should ensure the availability of information on the disqualified directors more precisely.

What does the Digitalization directive say about disqualified directors? Member States shall ensure that they have rules on the disqualification of directors²⁹. Member States may require that persons applying to become directors declare whether they have been disqualified³⁰. Also, Member States may refuse the appointment of a person as a director of a company where that person is currently disqualified³¹. Furthermore, Member States need to be able to communicate

– Judith Dahlgreen: Study on a new approach to business failure and insolvency. Comparative legal analysis of the Member States' relevant provisions and practices. Table 1.4. Disqualification Regimes 65-69. https://ec.europa.eu/info/sites/default/files/insolvency_study_2016_final_en.pdf Croatia doesn't have public register on disqualified directors yet

²⁸ Preamble – 24 of the Digitalization Directive

²⁹ Articles 13f and 13i of the Digitalization Directive

³⁰ e.g. Article 239. Croatian Companies Act

³¹ e.g. Article 43.6 Croatian Court Register Act

information about the disqualification of directors in one Member State to other Member States in due time.

From a legal perspective, directors' duties and liabilities are regulated in all Member States³². The Digitalization Directive contains significant provisions, which seek to ban "unfit" directors from being directors of a limited liability company. This action will be taken only when it is proven that the director has acted wrongfully, fraudulently, and/or negligently. The Digitalization Directive introduced further measures to disqualify directors who have run insolvent businesses in the past or have influenced other directors. Directors can also be disqualified if they are involved in company offenses abroad.

The Digitalization Directive, among others, provides a legal framework for Member States to request information from other Member States in respect of disqualified directors. Member States may refuse the appointment of any individual as a director of a company or branch who is currently under a disqualification order imposed in another Member State.

One of the positive aspects of the Digitalization Directive is that it requires Member States to clearly state the reasons why persons are not allowed to be company directors and that a list of these disqualified directors must be maintained. Company directors risk losing their rights of setting up or representing a company if they fail to meet their legal responsibilities. Although practically all Member States have at least one reason for disqualification, in practice there is wide variation in the reasons and in whether or not a list is kept.

Currently, most EU countries do not have a codified section in company law with a clear definition of 'disqualified director' and grounds for disqualification³³. In most countries, the grounds for disqualification are limited and scattered over different laws. Few countries³⁴ keep a public record of disqualified directors³⁵. It is therefore necessary that Member States define broad criteria for disqualification, keep a list of current and former disqualified persons, and give the public access to this list.

³² European Commission, Directorate-General for Justice and Consumers, Study on directors' duties and sustainable corporate governance: final report. Publications Office, 2020, <https://data.europa.eu/doi/10.2838/839863> - accessed on September 13th, 2022

³³ UK as the former EU member state was an exception and has a specific law on disqualified directors

³⁴ e.g. Estonia, Finland, Ireland, the Netherlands

³⁵ ETUC Guidelines on the Directive on digital tools and processes in company law, Brussels, 2021 - https://www.etuc.org/sites/default/files/2021-06/Guidelines_digital%20tools%20Directive%20EN.pdf accessed on September 13th, 2022

In Malta, following the Digitalization Directive's provisions, changes introduced by the new act³⁶ include the new requirement for newly appointed directors to give their consent in writing for such an appointment and to declare whether they are aware of any circumstances that could lead to disqualification from being appointed or to hold the position of director of a company registered in any Member State³⁷. In the instance that a director is disqualified or does not hold the necessary license to act as a company service provider, and provided that no exceptions under the law are applicable to such a case, Malta Business Registry³⁸ shall inform the company accordingly³⁹. The company should then remove such a director and submit the necessary statutory form within 14 days of such removal. If the company fails to proceed according to this provision, the Registry may apply before the competent court asking for the removal of such an officer. The new act amends also the provisions relating to the disqualification of directors. The amendment introduces a new disqualification in those cases where a director would be acting and providing the services of a company service provider without the necessary authorization from the Malta Financial Services Authority⁴⁰. The second amendment is related to the consideration which is to be taken by the Registry when a person applies for the position of director. Apart from the disqualifications under the Act, the Registry may take into account any disqualifications that already bar the respective person from being appointed to or from holding the office of director in another Member State.

In Luxembourg, there is no, strictly speaking, the definition of “disqualified director”. A director *ex officio* or *de facto*, apparent or hidden, remunerated or not of a company declared insolvent can be disqualified if he/she contributed to the insolvency with a serious and characterized fault by the District Court Luxembourg dealing with commercial matters⁴¹. The disqualification may concern the exercise, directly or through an intermediary, of commercial activity as well as a function of administrator, manager, statutory auditor, or any function conferring the power to enter into an agreement on behalf of

³⁶ Act No. LX of 2021 - Companies (Amendment) Act, 2021, Thirteenth Legislature (2017 - 2022), accessed on September 13th, 2022.

³⁷ These requisites are provided for by Article 139(1) and (5) of the Companies Act and concern directors who apply when a company is being formed, as well as for new appointments in existing companies.

³⁸ see more on <https://registry.mbr.mt/ROC/> - accessed on September 17th, 2022

³⁹ A new duty on the Registry is being introduced under article 140(7) of the Act No. LX

⁴⁰ Article 142(1)(e) of Act No. LX

⁴¹ Article 444-1 Commercial Code - <https://legilux.public.lu/eli/etat/leg/code/commerce/20160101>-accessed on October 12th, 2022

the company. The disqualification will be obligatorily pronounced against the one who is condemned for simple bankruptcy or fraudulent bankruptcy. The disqualification in its duration shall not be less than one year nor more than twenty years.⁴²

In Germany, there are generally very few restrictions on who can become a managing director. Only individuals may be appointed as managing directors. Managing directors are not required to be German citizens and do not need to be residents of Germany. The practice of some commercial registers (“Handelsregister”) is, however, to require foreign managing directors to be capable of entering Germany at any time. The disqualification causes are regulated in statutes on the various forms of companies (GmbHG, AktG, etc.), which require some form of criminal conduct committed by the director as a precondition to disqualification. This includes bankruptcy, aggravated bankruptcy, violation of bookkeeping duties, extending unlawful benefits to creditors, and extending unlawful benefits to debtors.⁴³ Based on the Federal Government’s draft of February 10, 2021, the German Bundestag passed the Act Implementing the Digitalization Directive (DiRUG)⁴⁴ on June 10, 2021. It also passed the Bundesrat on June 25, 2021 and entered into force on August 1, 2022. The DiRUG contains several new regulations that facilitate the cross-border exchange of information on disqualified directors. To this end, the Companies Register is entrusted with answering foreign inquiries and forwarding requests for information from German courts⁴⁵. In addition, professional and trade bans imposed abroad shall lead to the disqualification of German Managing Directors and Board Members.⁴⁶

In Denmark, while records are not open to public access, disqualification details are kept by the Danish Business Authority (Erhvervsstyrelsen)⁴⁷. The pur-

⁴² Article 444-1 (3) Commercial Code - <https://legilux.public.lu/eli/etat/leg/code/commerce/20160101>-accessed on October 12th, 2022

⁴³ Heribert Hirte, Tim Lanzius, Sebastian Mock: Directors’ disqualification and creditor protection. In: Marcus Lutter (ed.): *Legal Capital in Europe*. De Gruyter Recht, Berlin, 2006. 257.

⁴⁴ Gesetz zur Umsetzung der Digitalisierungsrichtlinie, DiRUG dated 5 July 2021, German Federal Law Gazette I 2021, p. 3338, entered into force on 1 August 2022

⁴⁵ Article sec. 9c HGB-E, Handelsgesetzbuch - <https://www.gesetze-im-internet.de/hgb/BJNR002190897.html> - accessed on October 12th, 2022

⁴⁶ sec. 6 para. 2 sent. 3 GmbHG-E, Gesetz betreffend die Gesellschaften mit beschränkter Haftung - <https://www.gesetze-im-internet.de/gmbhg/BJNR004770892.html> and sec. 76 para. 3 sent. 3 AktG-E, Aktiengesetz - <https://www.gesetze-im-internet.de/aktg/BJNR010890965.html> - accessed on October 12th, 2022

⁴⁷ The Danish Business Authority was established on 1 January 2012. It has a broad portfolio of tasks and responsibilities, which overall should make it easier and more attractive to do business in Denmark. The Business Authority operates in many fields - from planning law and rural development to digitisation, effective supervision and monitoring of funds, companies,

pose of the register is to prevent persons who are subject to disqualification from being registered as members of the management of a company, and to ensure that any existing records in the system of the persons concerned are deregistered. The register is open for other public authorities (the police, the prosecution authority, and the bankruptcy court), when necessary for the performance of their tasks. The Danish Business Authority informs the Danish Tax Authorities about registrations in the disqualification register.

In Slovenia, when appointing a person as a director in a Slovenian company, prohibitions that exist in other Member States will not be taken into account. The Ministry of Justice and the Supreme Court will respond to Member States' inquiries about the bans in force in Slovenia, each within their respective jurisdictions⁴⁸. The Ministry of Justice is responsible for managing criminal records and records of final decisions in courts, so it will check whether the person has been legally convicted of a crime or whether a security measure prohibiting him/her from practicing the profession was imposed on him/her. Supreme Court of the Republic of Slovenia will verify the existence of circumstances, whether the person was a member of the management body or of the control of the company, over which the bankruptcy procedure was initiated, was finally ordered to pay compensation to creditors by the provisions of the law governing the financial operations of companies, liability for damages, namely for two years after the judgment becomes final. The Slovenian competent authority has to answer immediately to the listed authorities through the business register integration system to the competent authority of the Member states.

In the UK, as a former Member State of the European Union⁴⁹, the principal statutory restrictions on acting as a director derive from the Company Directors Disqualification Act 1986 (hereinafter CDDA)⁵⁰. The Act provides that persons who are undischarged bankrupt or subject to a bankruptcy restrictions order may not act as directors of limited companies⁵¹. It is an offense for persons to act in contravention of these provisions. The CDDA lays down several

money laundering, accounting, auditing, export and EU checks. It is responsible for the Central Business Register (CVR), which is the state's main register for information on all Danish companies. The Business Authority is part of the Danish Ministry of Business and Growth (Erhvervsministeriet). On erhvervsstyrelsen.dk, you can find information on all the Authority's areas of work, including the Danish Business Register CVR.dk.

⁴⁸ <https://e-uprava.gov.si/drzava-in-druzba/e-demokracija/predlogi-predpisov/predlog-predpisa.html?id=14371> – accessed on September 10th, 2022

⁴⁹ The UK left the EU on 31 January 2020 after a withdrawal deal was passed by Parliament

⁵⁰ Company Directors Disqualification Act 1986-<https://www.legislation.gov.uk/ukpga/1986/46/contents> – accessed on October 12th, 2022

⁵¹ Section 11 of Act

other grounds on which directors may be disqualified by law from acting as directors. A director may be disqualified from holding office as director, or from being otherwise involved in the management of limited companies. Where a person has been disqualified under the CDDA, he or she may not – without special leave of the court – act as a director of any limited company or be concerned or take part in the management of a company. Disqualification orders may be imposed on companies as well as individuals, so those companies that act as ‘corporate directors’ of other companies may be barred in the same way as individuals⁵².

3. STATE OF PLAY IN CROATIA

State of play of transposition of the Digitalization Directive in Croatia: Companies Act has been amended and supplemented in March 2022⁵³. On March 9th, 2022, the Croatian assembly voted to amend the Companies Act. The law entered into force on June 1st, 2022. Provisions on ‘disqualified directors’ have to wait for the rulebook by the Minister of Justice and Administration to register disqualified directors. The minister responsible for judicial affairs will adopt the rulebook on disqualified directors by July 15, 2023. The ministry responsible for judicial affairs will organize records by August 1, 2023.

Simultaneously with amendments to the Companies Act, Court Register Act was amended on the same day⁵⁴. The mentioned acts are mutually connected by cause-and-effect principles, goals, and purpose of enactment, mainly due

⁵² The courts have discretion under the CDDA to determine what constitutes ‘unfitness’. They have used a number of criteria to assess this. In *Re Bath Glass Ltd* [1988] 4 BCC 130, it was held that, to declare a director unfit, the court must be satisfied that the defendant has been guilty of a serious failure or failures, whether deliberate or through incompetence, to perform his or her duties. Furthermore, a director would be unfit if his actions were very far from those of a ‘reasonably competent director’. Other specific criteria which at various times have been deemed significant for this purpose include (i) the amount of the company’s debts, and in particular the amounts owing to the Crown, (ii) the number of companies with which a director has been involved which have gone into liquidation, (iii) breaches of commercial morality, (iv) gross incompetence and (v) recklessness. The court held that, if a director is to be found to be ‘unfit’ in such a situation, then there must be some additional ingredient, which in this case would have been that at the time the director received advance payment from a customer, the director knew – or should have known – that there was no reasonable prospect that the company would avoid insolvency. Given the efforts that the directors in this case were found to be making to find the necessary ‘corporate solution’ to save the business, this additional ingredient was not considered to be present

⁵³ Law on Amendments to the Companies Act – Official gazette no. 34/22

⁵⁴ Law on Amendments to the Court Register Act – Official gazette no. 34/22

to the implementation of the Digitalization Directive, therefore a decision was made to conduct a unified debate on these legal proposals. It is established (in the final text of both acts) that the text of the Final Proposal of Companies Act and the Final proposal of Court Register Act contain statements on the compliance of the Final Proposals with the *acquis* of the European Union, from which it follows that these acts are fully harmonized with the provisions of the primary and secondary sources of European Union law.

A company acts through two bodies: shareholders and a board of directors⁵⁵. The board of directors is in charge of the management of the company's business such as the strategic and operational decisions of the company. Directors are responsible for ensuring that the company meets its statutory obligations. The role of a director is to participate in board meetings to enable the board to reach these decisions and make sure that the company's obligations are fulfilled⁵⁶.

The directors are effectively the agents of the company, appointed by the shareholders to manage the company's day-to-day affairs. The basic rule is that the directors should act together as a board but typically the board may also delegate certain of its powers to individual directors or a committee of the board.

Director disqualification, under the Companies Act,⁵⁷ is part of the statutory framework that's designed to deal with insolvency, and the financial misconduct that sometimes causes, or arises from, insolvency. The Companies Act contains several grounds for disqualification. According to Croatian Companies Act, the director can be liable for damages⁵⁸ (which he commits to the company), but he can also be liable for a misdemeanour and a criminal offense. Criminal, misdemeanour, and civil liability are not mutually exclusive. They all are *ultima ratio societatis*.

Any natural person who is fully capable of doing business can be a member of the board⁵⁹. The articles of association may specify the conditions for the

⁵⁵ Barbić, Jakša. *Pravo društava. Knjiga 2: Društva kapitala. Svezak 1. i 2. 7. izmijenjeno i dopunjeno izd.*, Zagreb: Organizator, 2020.

⁵⁶ responsibility of board members - see article 252., 273., 430. etc Companies Act

⁵⁷ Companies Act - Official gazette no. 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 111/12, 125/11, 68/13, 110/15, 40/19, 34/22

⁵⁸ High Commercial Court of Republic of Croatia decision no. Pž-399/2018-4 of May 21, 2020.:,The first-instance court correctly determined that the defendant, as the director of the plaintiff company, knew and must have known that she was issuing promissory notes for a claim that did not exist at the time of issuance and decision-making, nor was it likely to arise given the notices of termination. With this knowledge, the defendant, as the director of the company, disposed of the company's assets in such a way that she issued promissory notes to the company in which she is the director (Z d.o.o.), for claims that did not arise. “

⁵⁹ Article 239/1 Companies Act

appointment of board members. The board member cannot be a person: who has been punished for the criminal offense of abuse of trust in business operations, fraud in business operations, causing bankruptcy, favoring creditors, or violating the obligation to keep trade and business books from the Criminal Code of the Republic of Croatia, for a period of five years from the date of finality of the judgment by which she was convicted, with the fact that at that time the time spent serving the sentence is not counted, or who has been punished for a criminal offense of another state, which by its essential features corresponds to the criminal offenses from point 1; against whom a security measure has been imposed, prohibiting the performance of an occupation that is fully or partially covered by the subject of the company's business for the duration of the ban; which is prohibited in another country from performing professions that are fully or partially covered by the company's business for the duration of the ban.

The Ministry responsible for judicial affairs will organize and keep records of persons who cannot be members of the administration (by the beforementioned). The minister responsible for judicial affairs shall prescribe the content, manner of conducting, and conditions of use of the evidence by ordinance (referred to in this article).

According to these provisions on disqualified (company) directors, which are being amended, the object is to ensure the protection of all persons who communicate with companies or branches. They work to prevent possible fraudulent behavior or other types of abuse, it is important that the authorities can check whether the person who is appointed as director is prohibited from performing those duties. For this purpose, the Ministry of Justice and Administration will organize and keep records of persons who cannot be members of the board. Access to these records will be allowed to the court and public notaries.

Company directors risk losing their rights of setting up and/or representing a company if they fail to meet their legal responsibilities. As to 'disqualified directors': strict rules are required – there are a set of rules defining what kinds of persons are not legally allowed to be directors of companies, procurators, owners, and shareholders.

Croatia in the future will keep a non-public record of disqualified directors. It will define criteria for disqualification, keep a list of current and former disqualified persons, and give non-public access to this list. A clear and broad definition of reasons for disqualification is codified in law and the law asks for declaration of directors/applicants declaring that they are not listed as disqualified directors in any other country/Member State⁶⁰.

⁶⁰ In form of notary record - Article 83. of Public Notary Act - Official gazette no. 78/93, 29/94, 162/98, 16/07, 75/09, 120/16, 57/22

Croatia extended the provision on ‘disqualified directors’ to other persons as follows: when examining an application for the registration or change of a member of the board, executive director, member of the supervisory board, member of the board of directors, procurator and liquidator of a company, the court will check whether that person is registered in the register of persons who cannot be members of the board, which is maintained by the ministry responsible for judicial affairs. In case of doubt, the court register can check through the registry linking system whether that person in another EU Member State is prohibited from performing a profession that is fully or partially covered by the company’s business. If it determines that a person cannot be a member of the management board, executive director, member of supervisory or management board, procurator, or liquidator of a commercial company, the court will refuse to register his appointment. So, in Croatia, the option is to refuse the application of any individual that has been disqualified in another Member State⁶¹.

The aim is that a company cannot knowingly permit an ineligible or disqualified person to serve as a director. A search on the Disqualified Director Register as well as criminal and reference checks must be part of the nominations process before an individual is appointed to the board.

Another key benefit of the Digitalization Directive is fostering information flow between the Member States’ company registers via the BRIS which Croatia is part. In the future, the court register will obtain the data of companies registered in the EU electronically. The Digitalization Directive explicitly states that the exchange of information is free of charge for company registers in the Member States⁶². The practical relevance, among other things, is that the Commission Implementing Regulation⁶³ lays down technical specifications defining the methods of exchange of information between the register of the company and the register of the branch in case a branch is opened or closed or when changes occur in the data and information of the company. It also lays down detailed arrangements and technical details need to be laid down to ensure the effective, efficient, and prompt exchange of information on disqualified directors established by the Digitalization Directive.

⁶¹ Article 43. 6. of Court Register Act – Official gazette no. 1/95, 57/96, 1/98, 30/99, 45/99, 54/05, 40/07, 91/10, 90/11, 148/13, 93/14, 110/15, 40/19, 34/22

⁶² Article 13f of the Digitalization Directive

⁶³ Commission Implementing Regulation (EU) 2021/1042 of 18 June 2021 laying down rules for the application of Directive (EU) 2017/1132 of the European Parliament and of the Council as regards technical specifications and procedures for the system of interconnection of registers and repealing Commission Implementing Regulation (EU) 2020/2244, OJ L 225, 25.6.2021, p. 7–51.

We should keep in mind that the Digitalization Directive should be applied in compliance with EU data protection law and the protection of privacy and personal data: as to which data on disqualified directors should be publicly available⁶⁴.

Given that a company foundation has to be completed within five working days, it will be difficult for Croatian Court Register to reach out to other Member States' public authorities to conduct a check on the applicant's qualification to set up a company. In other words, public authorities are under time pressure. It is therefore of utmost importance that such a system is made available for other Member States – at best it should be issued centrally with „at the push of a button“.

Croatia is waiting for the disqualified directors register. The disqualified directors register should include details of directors disqualified by the courts, the insolvency service and the other authorities. It should contain: their name, address, date of birth, nationality, last registered address, personal identification number (OIB), when the disqualification began and ends, how many disqualifications they've had, why they were disqualified, names of companies relevant to their disqualification, whether they have the court's permission to continue to act as a director.

Another piece of new regulation regarding liability and fraud prevention in the field of Company law: the Committee of Experts (Council of Europe) for the evaluation of measures against money laundering and financing of terrorism (hereinafter: Moneyval) adopted the Report on the 5th evaluation round of the Republic of Croatia⁶⁵, which was adopted at the 62nd plenary session held in December 2021. On May 12, 2022, the Government of the Republic of Croatia adopted the Conclusion on the acceptance of the Action Plan for strengthening the effectiveness of the Croatian system of preventing money laundering and terrorist financing⁶⁶ which contains measures and activities whose goal is to further strengthen the Croatian system of preventing money laundering and terrorist financing, and which will also fulfill the recommended measures from the cited Report. In order to prevent the misuse of legal entities for illegal purposes and with the aim of transparency of data on legal entities, the Gov-

⁶⁴ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119, 4.5.2016, p. 1

⁶⁵ Anti-money laundering and counter-terrorist financing measures Croatia, Fifth Round Mutual Evaluation Report, December 2021 – see on <https://rm.coe.int/moneyval-2021-24-mer-hr-en/1680a56562> - accessed on Oct 17th, 2022

⁶⁶ Official Gazette, no. 56/22, hereinafter: Action Plan

ernment will introduce (until January 1st, 2022) mechanisms that, among other things, will ensure the verification of all data provided at the stage of establishing a legal entity and prevent persons legally convicted of the criminal offenses of money laundering and terrorist financing from acting as shareholders, participants or directors, introducing a requirement to check the criminal background of those persons, including the verification of targeted financial sanctions of the United Nations. Moneyval Report in Croatia introduces mechanisms that will ensure: (i) verification of all data provided in the phase of establishing a legal entity; (ii) preventing criminals (money laundering, predicate offenses, terrorist financing) from acting as shareholders, shareholders, beneficial owners or directors, by introducing a requirement for a criminal background check on that person, including a United Nations targeted financial sanctions check; (iii) introducing a permanent monitoring mechanism to ensure timely disclosure and registration of changes in basic information; (iv) establishment of a monitoring mechanism to ensure accuracy and timely updating of information; (v) effective, proportionate and dissuasive sanctions for non-compliance with prescribed requirements. It is necessary to assign clear responsibility to competent authorities, provide the resources necessary for regular supervision, and keep statistics on the application of sanctions. The report determines that in terms of technical compliance, the legal framework has been significantly amended, but a number of technical shortcomings are noted some of which present challenges to effectiveness. There is a new Draft of Amendments to the Companies' Act regarding disqualification due to Report⁶⁷.

4. CONCLUSION

It should be noted that director's disqualifications are still relatively rare in Croatia, but also EU. The Digitalization Directive was designed to speed up the disqualification process and increase the volume of directors' disqualifications.

What are the restrictions placed upon people when disqualified as directors? If disqualified, a director may not act as a director, or manager in the disqualification period. If he /she does so, that should be (is) an offence.

Member States should take this opportunity by the Digitalization Directive to revise their systems of disqualified directors: a clear and broad definition of reasons for disqualification should be codified in law; reasons for disqualification should go beyond insolvency-related behavior to include financial fraud,

⁶⁷ See <https://esavjetovanja.gov.hr/Econ/MainScreen?EntityId=21517> – accessed on September 5th, 2022.

employee-related misconduct, state aid fraud, and other criminal conduct; a list of persons disqualified and the reasons for disqualification should be maintained and made available to the public and through the BRIS; Member States should include the requirement of applicants declaring that they are not listed as disqualified directors in any other country as well as the obligation to refuse an individual's application due to disqualification in another Member State into the transposition of the Digitalization directive into national law.

Member States should be able to prevent fraudulent and/or other abusive behavior by refusing the appointment of a person as a director of a company, considering not only the former conduct of that person in their own territory, but, where so provided under national law, also information provided by other Member States. Member States should, therefore, be allowed to request information from other Member States. The reply could either consist of information on a disqualification in force or other information which is relevant for disqualification in the Member State that received the request. Such requests for information should be possible by means of the system of interconnection of registers. In that regard, Member States should be free to choose how to best collect this information, such as by gathering the relevant information from any registers or other places where it is stored in accordance with their national law or by creating dedicated registers or dedicated sections in business registers. Where further information, such as on the period and grounds of disqualification, is needed, Member States should be allowed to provide it through all available systems of exchange of information, in accordance with national law.

It would appear that this latest Directive will continue to strengthen the trend for qualified, balanced boards. It was necessary to raise the bar as regards the competency of directors serving on listed or regulated entities in EU.

From the perspective of a commercial court register judge, while all of the above seems well thought out, it remains to be seen how the law will apply to existing technology and allow judges to view the registers of disqualified directors when making decisions. It is likely that the adoption of the rulebook alone will not be enough, but greater cooperation will be required from state bodies within Croatia, and subsequently from the Member States.

From the perspective of a commercial trial court judge business judgment rule should also be considered because according to beforementioned rule members of the management board and the supervisory board, i.e. the board of directors, are given the opportunity to be released from responsibility for the business decisions they make if, when making them, on the basis of adequate information, they reasonably assumed that they were acting for the benefit of the company and did not act contrary to the obligation of the manner management of the company's affairs. The business judgment rule excludes ju-

dicial control of management members if they adhere to the assumptions of fair judgment in their work. The business judgment rule makes it possible to negate the responsibility of members of the management board, the supervisory board, or the board of directors in cases where they acted with due care.

A part of the wonder at being a commercial court judge is that decision-making is endless, and every decision is important.

To summarize: companies, not only in Croatia, should strengthen its executive (senior) leadership by engaging experienced and credible individuals, with significant experiences. Ensure risk culture is at the heart of the organisation. These principles are based on sound principles of Corporate Governance, and could easily be applied across the boards of multiple companies, with a strong board of directors at the helm, creating a balanced team composed of credible individuals.

LITERATURE:

1. Barbić, Jakša. *Pravo društava. Knjiga 2: Društva kapitala. Svezak 1. i 2., 7. izmijenjeno i dopunjeno izd.*, Zagreb: Organizator, 2020.
2. Horak, Hana; Dumančić, Kosjenka: *Cross-Border Transfer of the Company Seat: One Step Forward, Few Steps Backward // US China law review*, 14, 2017, 10; 711-728.
– DOI: <https://doi.org/10.17265/1548-6605/2017.10.005>
3. Horak, Hana; Dumančić, Kosjenka; Poljanec, Kristijan: *European Market Law Textbook, Vol. 1. / Horak, Hana (ur.)*, Zagreb: Ekonomski fakultet Sveučilišta u Zagrebu, 2015.
4. Horak, Hana; Dumančić, Kosjenka; Pecotić Kaufman, Jasminka: *Uvod u europsko pravo društava*, Zagreb: Školska knjiga, 2010.
5. Horak, H. i Dumančić, K. (2008). *Pravilo poslovne prosudbe u hrvatskom i pravu SAD. Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 29 (2), 975-1008.
6. Heribert Hirte, Tim Lanzius, Sebastian Mock: *Directors' disqualification and creditor protection*. In: Marcus Lutter (ed.): *Legal Capital in Europe. De Gruyter Recht*, Berlin, 2006.
– DOI: <https://doi.org/10.1515/9783110926583.254>
7. Karsten Engsig Sorensen, "Disqualifying Directors in the EU" in Hanne S Birkmose, Mette Neville & Karsten Engsig Sørensen (eds.) *Boards of Directors in European Companies. Reshaping and Harmonising Their Organisation and Duties*, Wolters Kluwer 2013.

LEGAL ACTS

1. Consolidated version of the Treaty on European Union OJ C 326, 26.10.2012, p. 13–390
2. European Parliament resolution on recent developments and prospects in relation to company law (2006/2051(INI)) OJ C 303E, 13.12.2006, p. 114–119
3. Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law, PE/25/2019/REV/1, OJ L 186, 11.7.2019, p. 80–104
4. Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law, OJ L 169, 30.6.2017, p. 46–127
5. Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132, OJ L 172, 26.6.2019, p. 18–55
6. Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions OJ L 321, 12.12.2019, p. 1–44
7. Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement OJ L 132, 20.5.2017, p. 1–25
8. Directive 2004/25/EC of the European Parliament and of the Council of 21 april 2004 on takeover bids OJ L 142, 30.4.2004, p. 12–23
9. Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures
10. Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012, OJ L 150, 7.6.2019, p. 1–225
11. Commission Implementing Regulation (EU) 2018/1212 of 3 September 2018 laying down minimum requirements implementing the provisions of Directive 2007/36/EC of the European Parliament and of the Council as regards shareholder identification, the transmission of information and the facilitation of the exercise of shareholders rights C/2018/5722, OJ L 223, 4.9.2018, p. 1–18

12. Commission Implementing Regulation (EU) 2021/1042 of 18 June 2021 laying down rules for the application of Directive (EU) 2017/1132 of the European Parliament and of the Council as regards technical specifications and procedures for the system of interconnection of registers and repealing Commission Implementing Regulation (EU) 2020/2244, OJ L 225, 25.6.2021, p. 7–51
13. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119, 4.5.2016, p. 1
14. Companies Act - Official gazette no. 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 111/12, 125/11, 68/13, 110/15, 40/19, 34/22
15. Court Register Act – Official gazette no. 1/95, 57/96, 1/98, 30/99, 45/99, 54/05, 40/07, 91/10, 90/11, 148/13, 93/14, 110/15, 40/19, 34/22
16. Public Notary Act – Official gazette no. 78/93, 29/94, 162/98, 16/07, 75/09, 120/16, 57/22
17. Commercial Code - <https://legilux.public.lu/eli/etat/leg/code/commerce/20160101>
18. Gesetz zur Umsetzung der Digitalisierungsrichtlinie, DiRUG dated 5 July 2021, German Federal Law Gazette I 2021, p. 3338
19. Handelsgesetzbuch - <https://www.gesetze-im-internet.de/hgb/BJNR002190897.html> -
20. Gesetz betreffend die Gesellschaften mit beschränkter Haftung - <https://www.gesetze-im-internet.de/gmbhg/BJNR004770892.html>
21. Aktiengesetz - <https://www.gesetze-im-internet.de/aktg/BJNR010890965.html> -
22. Act No. LX of 2021 - Companies (Amendment) Act, 2021, Thirteenth Legislature (2017 - 2022), <https://parlament.mt/13th-leg/acts/act-lx-of-2021/>
23. <https://e-uprava.gov.si/drzava-in-druzba/e-demokracija/predlogi-predpisov/predlog-predpisa.html?id=14371>

JUDGEMENTS

1. Judgment of 27 September 1988, *The Queen v H. M. Treasury and Commissioners of Inland Revenue, ex parte Daily Mail and General Trust plc.* C-81/87 EU:C:1988:456
2. Judgment of 5 November 2002, *Überseering BV v Nordic Construction Company Baumanagement GmbH (NCC)*, C-208/00, EU: C:2002:632
3. Judgment of 16 December 2008, *Cartesio Oktató és Szolgáltató Bt* , C-210/06, EU:C:2008:723, para. 108

4. Judgement of High Commercial Court of the Republic of Croatia decision no. PŽ-399/2018-4 of May 21, 2020

OTHER SOURCES

1. Modernising Company Law and Enhancing Corporate Governance in the European Union – A Plan to Move Forward (COM (2003) 284 final) - <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A52003DC0284>
2. European Commission, Directorate-General for Justice and Consumers, Study on directors' duties and sustainable corporate governance: final report. Publications Office, 2020.
3. Gerard McCormack – Andrew Keay – Sarah Brown – Judith Dahlgreen: Study on a new approach to business failure and insolvency. Comparative legal analysis of the Member States' relevant provisions and practices.
4. ETUC Guidelines on the Directive on digital tools and processes in company law, Brussels, 2021.
5. Green Paper on the approximation, mutual recognition, and enforcement of criminal sanction in the European Union (COM (2004) 334 final), 24
6. Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee, and the Committee of the Regions Action Plan: Financing Sustainable Growth COM/2018/097 final