

NATIONAL-LEVEL CORPORATE ANTI-ABUSE MEASURES RELEVANT TO THE EU COMPANY LAW PACKAGE

Expert Questionnaire

Croatia

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1) **Anti-abuse mechanisms** - do any of these exist in this country? If so, how do they work?

a. Disqualified Directors

i. **Is there an official definition of “disqualified directors”? If so, what are the grounds for disqualification? Where is this? (legal text and link)**

No

ii. **Is there an official list of (current) disqualified directors? If so, where is it? (name and link)**

N/A

iii. **Who has access to this list?**

N/A

b. Beneficial Owners

i. **Where is the database of beneficial owners and who maintains it (link)**

Register of Beneficial Ownership / Registar stvarnih vlasnika

This is maintained by the Ministry of Finance, FINA / Croatian Financial Agency/
<https://rsv.fina.hr/RSV-javnost/login> without fee through system E-Citizens

The Register is a central electronic register containing information on the ultimate beneficial owners of all legal entities and trusts. The beneficial owner is every physical person (persons) who is an ultimate owner or who is a controlling or managing entity, including that physical person (persons) who are performing the ultimate effective control over the legal entity. In accordance with Article 32 of Law on Prevention of Money Laundering and Terrorism Financing the following legal entities are required to register their information on beneficial owner (owners) with the Register:

- Companies
- Branch offices of foreign companies
- Associations
- Foundations and
- Institutions which are not founded solely by the Republic of Croatia, or by municipal or county units.

The deadlines for entering information into the Register began to run from 3 June 2019, except for associations for which the deadlines for registration starts to run from 1 July 2019. All legal entities and trustees are required to inscribe the information on their ultimate beneficial ownership in the Register by 31 December 2019.

The authorized person for entering information with the Register may without the fee enter the information:

1. Throughout web application of Financial agency using a business certificate; or
2. In the offices of Financial agency on specially prescribed forms. The content of the form may differ for each organizational form.

A failure to inscribe correct, accurate and up to date information on beneficial ownership in the Register within the deadlines prescribed by the By-law could result in fines ranging between HRK 5,000.00 and HRK 350,000.00 for legal entities, and fines between HRK 5,000.00 and HRK 75,000.00 for their responsible persons.

ii. Are there any checks on the authenticity of beneficial owners, or does the organisation depend on a “statutory declaration” or “affidavit” from the company directors?

Yes. Beneficial owners (‘person in control’) shall fill in a special form and submit it for the registration purposes before FINA.

<https://rsv.fina.hr/RSV-OnLineUnos-web/login> access with digital certificate

Through the web application by the person authorized by the company / company director by themselves or they can give the authorization to a person within the company or a company director can further authorize the person outside the company (power of attorney). Usually, the registration of data in the Register of beneficial owners for clients is done by accounting services. An accounting/bookkeeping service that has a business certificate FINAine, through which on behalf of its client accesses the services of the state and public administration (e-Tax, e-Customs, e-Health, e-Pension, etc.), can for his client (company, etc. which is obliged to enter data in the Register of beneficial owners) using the same business certificate electronically (web application Register of beneficial owners) to enter data in the Register of beneficial owners. The entry of data in the Register of beneficial owners through the branch office of the Financial Agency requires personal delivery by an authorized person of the completed and signed printed Form. If the authorized person performs the registration at the counter in the FINA branch, the completed form must be accompanied by a copy of the official identity document. The name and surname must be entered in the form for entering the name and surname of the person authorized to enter data in the Register and the form must be signed. If the person liable for registration wants to register through an authorized person at the counter in the Fina branch, then the form and other prescribed documentation should be accompanied by a power of attorney (not to be notarized) and a copy of the personal identification. The name and surname of the person authorized to enter data in the Registershall be entered in a specific column and the form shall be signed.

An excerpt from the Register can also be downloaded via the web application for registration of beneficial owners or at the Fina branch

iii. How quickly must the company give notice when ownership has changed (updating of lists/databases)?

Following any change in registered data, a subject must submit an application (30 days).

iv. Who has access to the beneficial ownership database? Does the general public have unrestricted access, restricted access or no access?

Yes. Direct access via web app: <https://rsv.fina.hr/RSV-javnost/login>

Online through E – Citizen system. The register is public and a certain level of information is accessible to the public while government institutions and law enforcement institutions, particularly those involved in preventing money laundering and terrorism financing will have complete access to the register's details.

c. Electronic identity (E-ID) scheme – is there a scheme registered with the European Commission, and if so, what eIDAS level of assurance does it have?

The Personal Identity Card (eOI) has a “high” level of assurance.

2) Company registry – transparency, access, cost

a. Which organization maintains the company registry? (name and link)

Court register (Sudski registar) - <https://sudreg.pravosudje.hr/registar/f?p=150:1>

b. To what extent is it digitalized? Can company foundations/registrations and reporting be carried out fully online/digitally?

SUBMISSION:

You can **establish** a simple private limited company and private limited company on line with the START system. The submission of an application for changes of data in the court register are not available on line. There are two other ways to establish a company in Croatia: in person and through the hitro.hr system - for both of them you need to go to notary.

Each entry (establishment, changes, etc.) into a court register (e.g. company formation) shall be published on the court register’s website and it can be seen for each entity. It is possible to see every court decision from 2011.

In December 2019 the e-registration (e-establishment) of companies was introduced. It is available through the E-Citizen system and has no requirement to visit a public notary. Croatian citizens need to possess an e-ID and an activated personal user box within the e-Citizens system. The authority responsible for the START system is the Ministry of the Economy and Sustainable Development.

Since START is available so far only for Croatian citizens, all others (EU/EEA + other foreigners) need to register a business via the Hitro.hr service and/or a notary. All necessary actions are performed without physically going to the commercial court. There are no more costs for public notaries, proxies, seals and tax stamps. Court fees are reduced by 50%. All submissions are submitted electronically. Documents can be signed with an electronic ID card. Share capital can be paid by bank cards via the Internet (a deposit is made to a special account managed by the Ministry of Justice). Court fees can be paid by bank cards via the Internet.

The application for registration is automatically submitted through the system to the competent court. The commercial court issues a Decision on establishment in the form of an electronic document: in addition to the Court Decision, the party also receives a Certificate

from the Tax Administration on the OIB and a Notice on the classification of the business entity in the register of the Central Bureau of Statistics. If it is necessary to supplement or correct the application, the commercial court submits a conclusion via the e-establishment system and the applicant returns the corrected application to the court for reconsideration through the same channel. The service is available 24 hours 7 days a week via the Internet.

c. Are bulk downloads of the entire list of registered companies possible?

No.

d. Are there search features beyond the name of the company or person (e.g. by sector or employee size)

Yes, there is a search by number, company's VAT number, personal ID number /OIB/, relevant court, active/ dissolved subject and pending court proceedings (e.g. insolvency proceeding). There is no search by a person's name.

e. What is the typical cost of downloading a document from the registry?

It is possible to get an unofficial excerpt (active and passive) from the court register free of charge. You can also get the last information /court decisions for the subject on line free of charge. A downloaded e-excerpt is not free of charge (5HRK per page).

f. Is there information on employment levels beyond what is contained in the company's annual accounts?

No.

g. Information on European company forms and EU reorganizations (CBM) - is a search possible for companies with the SE legal form or companies reorganized through a CBM?

There is no special search function for this.

3) Firm foundations

a. What authority or organization is responsible for registering new companies?

The court registers affiliated to commercial courts. There are nine courts and two permanent offices. Private limited companies, including simple companies, may be registered online without a proxy (distance formation), via the Start system of the Financial Agency (FINA).

b. What are the steps needed to found and register a new company? To what extent can these happen digitally?

You may establish a (simple) private limited companies via the authentication system of the court register (Start). Financial (consolidated) reports are available in e-form on the website of the court register (in Croatian only). The call for the shareholders meeting, along the agenda and other important announcements of the company, shall be published on the company's website. Each entry into a court register (e.g. company formation) shall be published on the court register's website. No special anti-abuse checks are made. However, only those who possess a valid certificate for entering the Start system may start a company and digitally sign the formation documents (identity check). Any abuse of the system will

result in criminal liability for counterfeiting and fraud. It is possible to found a company digitally without a notary through the START system for limited liability company /d.o.o./ and simple limited liability company / j.d.o.o (mini-GmbH)

<https://start.gov.hr/st/assets/Korisnicka%20uputa%20za%20aplikaciju%20START%20d.o.o.%20i%20j.d.o.o.pdf>

c. What checks (if any) are done on the authenticity of documents, identity of founders, record of founders (e.g. disqualification as directors) and beneficial owners

i. By registration authority

The registration authority checks on the formal requirements for company's formation, including the form of the documents, identity of the founders by checking their ID, and signatures.

ii. By notaries

Notaries check on the formal requirements for company's formation, form of the documents, identity of the founders by checking their IDs, signatures)

iii. By "facilitator" companies (foundation agents)

There are number of companies providing full service for starting a company in Croatia. There are no special anti-abuse requirements.

4) Cross-border Mergers (CBMs) –

a. Which authority is responsible for the pre-merger certificate (outbound CBMs), which authority is responsible for approving the merger (inbound CBMs)? (name and link)

This is the court register in both cases. <https://sudreg.pravosudje.hr/> and <https://pravosudje.gov.hr/pristup-informacijama-6341/ostale-informacije/pravosudna-tijela-rh/trgovacki-sudovi-6437/6437> (link to all 9 commercial courts).

Corporate bodies taking part in a CBM should prepare joint draft terms of merger. Following that, they have to submit it to the competent court register, at least a month before the general meeting of shareholders in all participating companies is due. Management bodies must prepare a merger report, stating the economic and legal case for the merger, and the implications of the merger for both shareholders and stakeholders (creditors, employees). Moreover, an audit of the proposed merger shall take place. The general meeting of shareholders in all participating companies must render a positive decision on the proposed merger by a qualified (3/4 of the share capital) majority, unless the acquiring company holds at least 90% of shares in the acquired company. However, even in such a case one-fifth of the shareholders of the acquiring company may ask the company to convene a meeting. Finally, management boards of all participating companies shall file an application for the registration of the CBM in competent court registers of all participating companies.

b. What personnel capacity/qualifications does the authority/ies listed above (organization(s) granting the pre-merger certificate + approving merger) have?

The judges at court registers do not need to have any particular qualifications.

c. What (if any) anti-abuse checks are made?

i. Purpose of reorganization

This is mentioned in that part of the joint draft terms of merger referring to the 'economic and legal' case for CBM, and the implications of the merger for both shareholders and stakeholders (creditors, employees).

ii. Background check on directors

No

iii. Identity of beneficial owners

No

iv. Worker I/C/P arrangements

Yes, in the draft terms of merger. Such a plan shall at least state the expected implications of the proposed merger for employees and information on co-determination procedures in the acquiring company.