

## **TRENDS AND PERSPECTIVES OF INCORPORATION OF THE LIMITED LIABILITY COMPANIES IN BOSNIA AND HERZEGOVINA AND NEIGHBORING COUNTRIES**

### **Abstract**

The author analyzes the process of establishing companies in Bosnia and Herzegovina, with an emphasis on limited liability companies, making a comparison with the surrounding countries and the *acquis communautaire*. It is pointed out that the incorporation is not limited to registration and in that sense the substantive difference between the two terms is explained, especially from the aspect of defining legal relations from the pre-incorporation phase and liability for the undertaken obligations. Regarding the registration procedure itself, it is concluded that in Bosnia and Herzegovina, i.e. its entities and Brčko District, which are competent for regulating the analyzed matter, the trends of neighboring countries and the European Union are followed, and that the improvement is especially related to the introduction of electronic registration, shortening and facilitating of procedure and rationalization of costs.

**Key words:** Incorporation, Limited Liability Company, Registration.

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## 1. Introduction

Bosnia and Herzegovina is a complex state created by the disintegration of the Socialistic Federative Republic of Yugoslavia (hereinafter: SFRY), of which it was one of the republics. An integral part of the General Framework Agreement for Peace in Bosnia and Herzegovina, which was initialed in the small town of Dayton in the USA, and signed on December 14, 1995 in Paris is Annex 4, which represents the Constitution of Bosnia and Herzegovina, which stipulates that the state consists of two entities, the Federation of Bosnia and Herzegovina (hereinafter: FBiH), which is composed of 10 cantons, and the Republic of Srpska (hereinafter: RS). In the condominium of the two entities is the Brčko District (hereinafter: BD).

As one of the republics, Bosnia and Herzegovina (hereinafter: BiH) has gone through a common path of developing legislation in the former SFRY, which also applies to the matter of company law. Namely, with the transition to the socialist model of business management, in 1945 the market system was abandoned, and thus also the regulation of company law which until then had been based on the concept of private property.<sup>2</sup>

The principled equality of all forms of ownership was restored after the adoption of the Law on Enterprises of the SFRY in 1988.<sup>3</sup> This stage continued in the newly formed state of BiH, i.e., its entities. In the FBiH, the first Law on Enterprises, based on the market economy model, was adopted in 1995.<sup>4</sup> After that, the new Law on Business Entities was soon adopted.<sup>5</sup> With this Law, the economic term "enterprise" was replaced with the legal term "business entity". This law was already a serious attempt to harmonize domestic law with European Union (hereinafter: EU) law. It was one in a series of transitional laws that established a regulatory framework for market liberalization, privatization and the establishment of capital market.<sup>6</sup> The subsequent amendments were also made in order to comply with the *acquis communautaire*, until the adoption of the new Law in 2015, which is still in force today.<sup>7</sup>

RS legislation has had a similar development path. The Yugoslav Law on

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<sup>2</sup>At the same time, it must be emphasized that different legal sources were applied in the territories of the former Yugoslavia, especially those that were under the jurisdiction of the Austro-Hungarian monarchy. See more: J. Barbić, „Utjecaj njemačkog prava na stvaranje hrvatskog prava društava“, *Zbornik radova Pravnog fakulteta u Splitu*, 3-4/2007, 339-363.

<sup>3</sup>Law on Enterprises, „Official Gazette of SFRJ“, No.77/88, 40/89, 46/90 and 61/90.

<sup>4</sup>Law on Enterprises, „Official Gazette of FBiH“, No.2/95 and 8/96. This law replaced the Yugoslav Law on Enterprises of 1988.

<sup>5</sup>Law on Business Entities, „Official Gazette of FBiH“, No.23/99, 45/00, 2/02, 6/02, 29/03, 68/05, 91/07, 84/08, 88/08, 7/09, 63/10 and 75/13.

<sup>6</sup>M. Simić, (ed.), *Zakon o izmjenama i dopunama Zakona o privrednim društvima*, Sarajevo 2018, 16.

<sup>7</sup>Law on Business Entities of FBiH, „Official Gazette of FBiH“, No.81/15 and 75/21.

Enterprises was replaced by the Law on Enterprises of the RS in 1998,<sup>8</sup> and then by the Law on Business Entities,<sup>9</sup> modeled on the Law on Business Entities of Serbia from 2004, and it is still in force today. Finally, in the territory of BD, the laws of the entities were initially applied in parallel, and in 2001 the Law on Enterprises of BD was adopted.<sup>10</sup> The equivalent to these laws in comparative legislation is Company Act, although the term "business entity" is broader than the term "company".

Bosnia and Herzegovina is in the status of a candidate for EU membership since December 2022. The development path to the EU began practically immediately after the formation of the state. In March 1999, the Council of Ministers (Government) of BiH adopted a Decision on launching an initiative for accession to the European Union,<sup>11</sup> and a positive opinion on the status of a potential candidate was given in 2003. However, back in March 2000, the EU marked the direction of reforms necessary for further qualification in European integration with the Guidelines for BiH (the so-called Roadmap), so that the voluntary harmonization of BiH legislation with parts of *the acquis communautaire* began even then.<sup>12</sup> BiH has formally committed itself to harmonizing its own legislation with the *acquis communautaire* only by signing the Stabilization and Association Agreement on 16 June 2008, which entered into force on 1 June 2015.<sup>13</sup> In Art. 70(1) of the Agreement it is stipulated the obligation of BiH to strive to ensure full harmonization of its existing laws and future legislation with the *acquis communautaire*. Alignment should be implemented on the basis of a program to be agreed between the European Commission and BiH.<sup>14</sup>

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<sup>8</sup>Law on Enterprises of the RS, „Official Gazette of R. Srpska“, No.24/98, 62/02, 66/02, 38/03, 97/04 and 34/06.

<sup>9</sup>Law on Business Entities, „Official Gazette of R. Srpska“, No. 127/08, 58/09, 100/11, 67/13, 100/17 and 82/19.

<sup>10</sup>Law on Enterprises of BD, „Official Gazette of Brčko District BiH“, No.11/01, 10/02, 14/02, 01/03, 08/03, 04/04, 19/07, 34/07, replaced with No. 49/11 (consolidated text of the Law from 2001) and 11/20.

<sup>11</sup>Decision on launching an initiative for accession to the European Union, „Official Gazette of BiH“, No.3/99.

<sup>12</sup>A. Alihodžić *et al.*, *Priručnik za usklađivanje propisa Bosne i Hercegovine sa propisima Evropske unije*, Direkcija za evropske integracije BiH, Sarajevo 2005., 59, [www.dei.gov.ba/dei/media\\_servis/publikacije/default.aspx?id=1177&langTag=bs-BA](http://www.dei.gov.ba/dei/media_servis/publikacije/default.aspx?id=1177&langTag=bs-BA) (14.10.2021.).

<sup>13</sup>Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part, OJ L 164, 30.6.2015, OJ L 12, 17.01.2017., OJL 22, 27.01.2017.

<sup>14</sup>Pursuant to the Agreement, the Council of Ministers on 28 July 2016 adopted a new Decision on the procedure of harmonization of BiH legislation with the *acquis communautaire*, which also defines the instruments for harmonization, in the form of harmonization tables and declarations of harmonization. See: Decision on the procedure of harmonization of BiH legislation with the *acquis communautaire*, „Official Gazette of BiH“, No. 75/16.

The matter of company law will certainly be an unavoidable area in the negotiations after the acquisition of candidate status, given that since 2005 and the negotiations with Croatia and Turkey, this is provided as one of 35 chapters, with also an important chapter relating to the right to establish a company and the freedom to provide services.<sup>15</sup> After all, in the Agreement itself, within the framework of Chapter V, a special subchapter is regulated, which in Art. 51 refers precisely to business establishment, by which the EU and BiH mutually committed themselves to facilitate for companies and citizens of the other party from the Agreement to start business on their territory, on the basis of what they will grant them equal treatment, either with their own companies or companies from any third country, whichever is better.

In addition to general company laws, certain parts of company law in BiH are regulated by special laws (*lex specialis*). This is also the case with the matter of company registration. At the level of Bosnia and Herzegovina, in 2004, the Framework Act on Registration of Business Entities in Bosnia and Herzegovina<sup>16</sup> was passed, which aims to determine the method of registration of business entities in the entities of BiH, i.e. RS and FBiH, as well as in the BD, and to harmonize the entire legislation with EU regulations by creating a unique identification of business entities and establishing a quick and uniform procedure for their registration in the territory of BiH, whether they are domestic or foreign business entities. In any case, the range of business entities in BiH legislation is wider than the scope of the EU directives which applies to companies, since it applies to both companies and partnerships, as well as cooperatives and other legal entities which perform business activity, established in accordance with special laws on registration of the entities and the BD for the purpose of making a profit.

In BiH, despite the adoption of the Framework Act on Registration of Business Entities, the issue of regulating the entire subject matter of company law, and thus the issue of registration of companies, is in the entity's jurisdiction. Thus, in the RS, this issue is regulated by the Registration of Business Entities Act in the RS of 2013,<sup>17</sup> and in the FBiH by the homonymous Act of 2005.<sup>18</sup> It can be said that both laws are harmonized with the Framework Law and contain substantially identical solutions, but that the Act at the level of the RS, which replaced the former 2005 Act, is still more modern, since it speeds up the registration process by prescribing shorter deadlines and gives more importance to electronic

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<sup>15</sup> Chapters 6 and 3.

<sup>16</sup>Framework Act on Registration of Business Entities in BiH, „Official Gazette of BiH“, No. 42/04.

<sup>17</sup>Registration of Business Entities Act in the RS, „Official Gazette of. R. Srpska“, No. 67/13, 15/16 and 84/19.

<sup>18</sup>Registration of Business Entities Act in FBiH, „Official Gazette of FBiH“, No. 27/05, 68/05, 43/09, 63/14, 32/19 – decision of the Constitutional Court and 85/21.

registration, management of register in electronic form, and publishing and submitting data and acts electronically. Also, while both Acts continue to be based on the principles of judicial registration under the rules of non-contentious procedure, the Republic of Srpska's Act has made a step forward in this segment as well, since it has moved registration outside the domain of courts of general jurisdiction to commercial courts, as well as by the inclusion of a special administrative organization, i.e. Agency for intermediary, IT and financial services (hereinafter: Agency), which should shorten and facilitate the process of registration for business entities. This is the first step in the Republic of Srpska's law to move from the judicial system to the system of administrative registration of companies. Also, following the example of the RS, in 2020 a new Act on Registration of Business Entities in the Brčko District of BiH<sup>19</sup> was adopted, which regulates the electronic registration procedure in accordance with the one-stop shop system. The Act came into force on 1 January 2021.

Nevertheless, in the title we opted for the broader term “incorporation”, which is most often used in Anglo-Saxon legal terminology, along with the term “formation”,<sup>20</sup> because registration is only a part of the comprehensive process of foundation, which is the subject of this paper, which comprises drafting and concluding the memorandum of association, entering founder’s shares in the company and undertaking preparatory actions in order to start a registered activity immediately after acquiring subjectivity, such as providing business premises, procuring tools and raw materials for work, hiring workers, etc., which all together represent legal actions performed in the pre-incorporation phase, whose legal nature also needs to be determined, especially in the interest of third parties who enter into legal relations with the representatives of the future company, which in that period has no legal personality. The registration process itself, in a narrower sense, refers only to the period from the submission of the application for registration to the adoption of the decision on registration by the competent registry.

## 2. Constitutive elements of a company

The ways in which companies can be founded in BiH can be grouped into three basic systems: the normative system, the legal system and the permit

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<sup>19</sup>Act on Registration of Business Entities in the Brčko District of BiH, „Official Gazette of Brčko District BiH“, No. 11/20.

<sup>20</sup>See P. L. Davies, *Gower and Davies' Principles of Modern Company Law*, Sweet & Maxwell, London 2008., 21., 26., 79.; J. Birds/ A. J Boyle/ B. Clark/ I. MacNeil/ G. McCormack/ C. Twigg-Flesner/ C. Villiers, *Boyle & Birds' Company Law*, Jordan Publishing Limited, Bristol 2007., 2., 47., 58-59., 87.; D. French/ S. Mayson/ C. L. Ryan, *Mayson, French & Ryan on Company Law*, Oxford University Press, Oxford 2014., 5., 42.

system.<sup>21</sup> The normative system is today the prevailing system in countries where the economy rests on market principles, and so with us. Under this system, founders (promoters) must meet all statutory requirements and the competent register will be required to issue a registration decision (certificate) without the possibility of any discretion. This is in accordance with the principle of the officialness in conducting the formation process.

So, in order to form a company, certain preconditions must be fulfilled. Namely, the memorandum of association (as formal condition)<sup>22</sup> must be concluded and the founder's shares (as material condition) from which the basic capital of the future company will be formed, must be entered or only registered in the court register under the conditions allowed for certain forms of business entities.<sup>23</sup> The realization of the above two conditions also constitutes the two constituent elements of a future company.<sup>24</sup> This issue is also separately regulated in the entities and the BD of BiH by the general laws in the field of company law.<sup>25</sup>

## 2.1. The Memorandum of Association

The memorandum of association as the basic formal constitutive element of the future company, which must contain the minimum data required by law, can take two forms. These are the form of a contract on incorporation if there is more than one founder or a form of decision on incorporation if a single member company is formed. Every person who holds the title of a founder must sign the memorandum of association. The form of the memorandum of association must be solemn which means that act must be notarial processed in the RS,<sup>26</sup> while in the FBiH certification of the signatures is sufficient.<sup>27</sup> A slightly milder form is

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<sup>21</sup>More about the systems of incorporation of business entities: M. Vasiljević, *Kompanijsko pravo*, Pravni fakultet Univerziteta u Beogradu, Belgrade 2010., 92-93.

<sup>22</sup>By memorandum of association (Foundation Act) we mean contract on incorporation (*ugovor o osnivanju*) or decision on incorporation (*odluka o osnivanju*), depending on whether the business entity is incorporated as a multi-member or single-member business entity.

<sup>23</sup>See Art. 55 para. 1, Art. 107 para. 1 and Art. 187 para. 4 of the Law on Business Entities of RS – LBE, and Art. 44 para. 5, Art. 79, Art. 114 and 307 para 5 of the LBE of FBiH.

<sup>24</sup> See S. Dizdarević, *Poslovno pravo (pravne norme, dioničarstvo, obligacije)*, Sarajevo 2003., 117. In addition to these elements, there may be other special conditions for the incorporation of company. Their existence depends, above all, on the type of business for which the company is founded. For example, the hiring of a certain number of workers in the position of investment manager can be requested as a personnel element if a company is founded for the management of investment funds or it can be requested the existence of a warehouse as a material condition if the company is founded to perform wholesale trade operations.

<sup>25</sup>See footnotes 7, 9 and 10.

<sup>26</sup>See D. Marković-Bajalović, *Pravo privrednih društava*, Istočno Sarajevo 2011., 41.

<sup>27</sup>With exceptions related to electronic registration described in the next paragraph of this paper. See Art. 7 paras. 3 and 4 of the LBE of RS and Art. 108 para 2 and Art. 304 para. 3 of the LBE

required in the RS for amendments to this act, but only in case of companies (in contrast to partnerships), which can be made in a written form with notarial certificate. The mildest form is required for a decision on incorporation (case of one-member company), which can be passed, as well as amended in the form of a written act with notarial certification of the signature.<sup>28</sup>

The latest amendments to the LBE of the RS of 2019 went a step further in harmonizing with the amendments to the Registration of Business Entities Act, and indirectly with the EU Directive on the Use of Digital Tools and Procedures in Company Law (hereinafter: Directive 2019/1151).<sup>29</sup> Namely, it is envisaged that in the process of electronic registration of a company or making amendments to the founding act of a one-member limited liability company (hereinafter: LLC), instead of the so far obligatory notarization of the signature of the founder or authorized person, the application of the method of authentication and electronic signature, in accordance with the regulations governing electronic signature and electronic document, will be sufficient.<sup>30</sup> Thus, instead of the notary, the identity of the founder or the person authorized to represent the one-member LLC will be verified in the future by the competent certification body when submitting a request for approval of authentication method. Proving the identity gives the right to use an electronic signature (by issuing a qualified electronic certificate with an accompanying smart card) which is completely equated with the signature in a material form.<sup>31</sup> This contributes to the simplification and greater economy of the registration procedure of this form of a company.

On the other side, legislation in BiH does not provide the institute of models of memorandums of association, which were firstly known only in English law, but now have become more common in many EU countries.<sup>32</sup> They are also provided

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of FBiH. Also see Art. 22 para. 1(2) of the Registration of Business Entities Act in FBiH – RBEA of the FBiH.

<sup>28</sup>Art. 7 paras. 3 and 4 of the LBE of RS.

<sup>29</sup>Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 amending Directive 2017/1132 as regards the use of digital tools and processes in company law, “Official Journal of the European Union”, L 186/80, 11.7.2019.

<sup>30</sup>In the FBiH, also, the latest amendments to the Law on Business Entities of 2021 provides for the possibility of adopting the founding act in the form of an electronic document, when it comes to limited liability companies, but without any further specification. See Art. 304, para. 3 of the said Law.

<sup>31</sup>See Art. 5 of the Law on electronic signature of the Republic of Srpska, „Official Gazette of RS“, No. 106/15.

<sup>32</sup>In Spain, for instance, the use of model acts for simple companies, which are established by natural persons and do not have a board of directors, has significantly reduced the costs of incorporation. Namely, they amount only to 100€ for the complete incorporation procedure. See: S. A. Royo-Villanova, „Proposal Regarding the Use of Digital Tools and Processes in Company Law: The Practitioner's Perspective“, *European Company and Financial Law Review*,

in Art. 13h (1) of the Directive 2019/1151, in the form of an obligation for Member States to place them on registration portals or websites that can be accessed through a single digital gateway, at least for limited liability companies. They serve to facilitate and accelerate registration of companies and to complete the process of electronic registration without the physical presence of founders or promoters of the company.<sup>33</sup> An important role of models is in transferring expenses from the founders to the state or other subjects involved in drafting those acts, so founders donot have to pay for services of notaries or attorneys. The content of the memorandum of association is prescribed by law, separately for each legal form of a company or partnership. This is done by stating the minimum content without which the act would be null and void (basic are data about the founders, business name, seat and activity of the company, as well as the type and value of the founder`s shares entered into the company), but the law provides the possibility for the content to be expanded by other data of importance to the company and its members, if they have an interest in doing so.<sup>34</sup> However, in practice, rarely does the content of the memorandum of association extend beyond the statutory minimum, but other significant issues related to the status and functioning of the company are regulated by a subsequent general act, which, in addition, does not need to be submitted to the company register in RS, regardless of the company or partnership, which is an additional convenience for the company members.<sup>35</sup> For companies that have such subsequent general act (contract of members or a statute), it is often more significant than the memorandum of association alone, since it regulates in more detail the issues of interest to the functioning of the company.<sup>36</sup> This act does not have to be in solemn but in ordinary written form and does not always have to be signed by all members of the business entity, but in the case of a statute it is sufficient to be signed by the first person of the body that adopted the act (e.g., the president of the company`s management board).<sup>37</sup> From the content of this subsequent general act as well as the content of memorandum of association, it

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1-2/2019, 178.

<sup>33</sup> T. Jevremovic Petrović, *Modeli osnivačkih akata*, Pravni fakultet Univerziteta u Beogradu, Belgrade 2019, 16.

<sup>34</sup>See Art. 50 para 2, Art. 87 para. 2, Art. 101 para. 2 and Art. 180 para. 2 of the LBE of RS. In the FBiH, this possibility is not explicitly prescribed by law, but in legal theory it is considered that it should be possible for the founders to, apart from the issues enumerated by the LBE of FBiH, regulate certain other issues within the framework of other imperative norms of the LBE of FBiH and the Law on obligations. See A. Gagula, 12.

<sup>35</sup>Therefore, it is recommended, especially in the case of public limited liability companies, that the memorandum of association be reduced to only the mandatory legal content. See M. Vasiljević, 255. On the advantages and disadvantages of concluding subsequent general act see also D. Marković-Bajalović, 41.

<sup>36</sup>Similar to relation between memorandum of association and articles of association.

<sup>37</sup>See Art. 181 para. 5 of the LBE of RS.



depends on whether the emphasis in the LLC will be on personal or capital elements.<sup>38</sup>

In the FBiH, Art. 22, para. 1, it. 3 of the Registration of Business Entities Act for all forms of business entities provides a general solution that establishes the obligation to submit these documents, in the form of a statute, which does not have to be a notarial act, but only certified by the notary. In fact, with the entry into force of the LBE of FBiH, as a *lex posterior* in relation to the Law on the Registration of Business Entities in the FBiH, the obligation to notarize the memorandums of association of LLCs in the FBiH was abolished.<sup>39</sup> In this sense, even without taking into account the issues opened by the decision of the Constitutional Court of Bosnia and Herzegovina since 2015,<sup>40</sup> there is no longer a need for notarization of founding acts in FBiH.<sup>41</sup> On the other hand, individual provisions on the necessary documentation for the registration of certain forms of companies prescribe the obligation to submit statute only in case of public limited liability companies<sup>42</sup> in the general regime and certain specialized

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<sup>38</sup>Considering the mixed legal nature of this type of business entities (it has elements of both personal and capital business entities). See H. Šemić, *Trgovačko pravo (knjiga prva)*, Bihać/Sarajevo 2000., 73.

<sup>39</sup>See Art. 304 of the LBE of FBiH. At the same time, it must be emphasized that the Constitutional Court of FBiH declared unconstitutional some parts of the Registration of Business Entities Act which relates to the form of the memorandum of association and statute of an enterprise with public powers and memorandum of association of the LLC. See the Judgement of the Constitutional Court of FBiH, No. U-22/16 of March 06, 2019. It relates to Art. 29 it. 2 and 3 and Art. 36. para. 1 of the Registration of Business Entities Act of FBiH.

<sup>40</sup>Decision of the Constitutional Court of FBiH No. U-15/10 of 02.12.2015., which determined that Art. 73 of the Law on Notaries of FBiH, which provided for the notarial processing of memorandums of association, is not in accordance with the FBiH constitution.

<sup>41</sup>See A. Gagula, „Ugovorno uređenje odnosa osnivača u društvu sa ograničenom odgovornošću“, *Anali Pravnog fakulteta u Zenici*, 20/2017, 8.

<sup>42</sup>For the sake of terminological clarification, it must be emphasised that companies can be divided into limited liability companies or private limited liability companies (by which in local terminology we mean „*društva sa ograničenom odgovornošću*“) and public limited liability companies or joint stock companies (by which in local terminology we mean „*akcionarska društva*“ or „*dionička društva*“, depending on whether the terminology of the LBE of RS or the LBE of FBiH is used. In addition, public limited companies (joint stock companies) can be divided into open or closed depending on whether they can publicly issue shares or not. However, in the FBiH, a slightly different terminology is used, so open public limited companies are called companies that are incorporated successively, while closed public limited liability companies are those that are incorporated simultaneously. The term open public limited company has a completely different meaning in the LBE of FBiH (see Art. 105 para. 3 of the LBE of FBiH) and under it is meant a narrow circle of public limited companies that are incorporated successively and that meet special conditions. In the legislation of Republic of Srpska such public limited companies are called listed companies, although they cannot be equated with open public limited companies regulated in legislation of the FBiH. Namely, these are open public limited companies that, if they meet the requirements of Art. 167 of the Law on the Securities Market of the Republic

companies (banks, insurance companies, companies with public authorizations).<sup>43</sup>

The memorandum of association, in the form of a contract on incorporation, is a simple contract under the Law on obligations, until the company is registered, i.e. until it acquires the status of a legal entity.<sup>44</sup> Therefore, this contract, its conclusion, modifications and termination are regulated by the same legal provisions that regulate other obligations (e.g., issues of ability to conclude the contract and absence of willpower, unanimity in changing its provisions, rules on termination of contract, etc.).<sup>45</sup> Only from the moment of creation of the new legal entity, i.e. of a company defined by the memorandum of association, the act itself produces statutory effects and becomes the highest legal act of that company. Changes in its legal nature are most pronounced in public limited liability companies, so the contract, for example, no longer has to be changed unanimously, but by a certain percentage of the qualified majority.<sup>46</sup>

## 2.2. Founder's Shares<sup>47</sup>

The difference between the RS, the FBiH and the BD is in the possibility, provided only in the RS, to enter into LLCs and closed public limited liability companies, in addition to money, things and rights, also performed work and services.<sup>48</sup> In opened public limited liability companies, however, neither work nor services, performed or future, may not be entered.<sup>49</sup> The reason for such legal restrictions, unlike the partnership<sup>50</sup> where all kinds of founder's shares are allowed, is the limited liability of its members for the obligations of the company, which could lead to damage to the creditors and the inability to collect claims if the basic capital was formed only from these types of shares, since it could not

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of Srpska (*Official Gazette of the R. Srpska*, No. 92/06, 34/09, 8/12 – decision of the Constitutional Court, 30/12, 59/13, 86/13 –decision of the Constitutional Court, 108/13, 4/17, 63/21, 11/22 and 63/22), must list their shares on the official stock market.

<sup>43</sup>See Art. 23-27. of the Registration of Business Entities Act of FBiH. A similar solution contains also the Registration of Business Entities Act in the BD of BiH, see Arts. 21-25.

<sup>44</sup>See M. Vasiljević, 63-64.

<sup>45</sup>*Ibid*, 63.

<sup>46</sup>See, for example, Art. 330. of the LBE of RS.

<sup>47</sup>We will use term “share” although the status of a member of a private company is not always represented by shares. This term will be so used to express a part of capital owned by the member of a private limited liability company, which doesnot actually represent shares.

<sup>48</sup>See Art. 45 of the LBE of FBiH, which provides the possibility of entering only money, things and rights. On the other hand, according to Art. 79 of the LBE of FBiH, performed services can be entered in the partnership. See also Dizdarević, 119; H. Šemić, 116.

<sup>49</sup>Art. 187. para. 1 of the LBE of RS.

<sup>50</sup>By which in local terminology we mean „*ortračko društvo*“, i.e. „*društvo sa neograničenom solidarnom odgovornošću*“. See Art. 48-84. of the LBE of RS and Art. 86-93. of the LBE of FBiH.

be possible to enforce the claims.<sup>51</sup> LLC in the RS is an exception, given that the legislator has favored the founders giving them as many benefits as possible in order to develop the entrepreneurial spirit, at the expense of legal security and protection of the interest of creditors of this type of business entities. Thus, today only 1 BAM<sup>52</sup> is required as a condition for establishing this legal form of companies,<sup>53</sup> unlike previous practice of requesting higher amounts (under the Law on Enterprises 1998 it was necessary to enter 5,000BAM, and under the LBE 2008, 2,000 BAM was required prior to the amendments of this Law). In the FBiH, a slightly more serious amount of 1,000 BAM is still required for the LLC.<sup>54</sup> The same amount is required in the BD, but only in case of multi-member companies, while for a single member LLCs, like in the RS, the amount of 1 BAM is a sufficient founding capital.<sup>55</sup>

### 3. Status of the pre-incorporation phase

The process of forming a company is a phase that the founders must go through in order to implement the intention of creating a new entity. They must, above all, fulfill the statutory requirements in order to show their seriousness and the will to form a company. The pre-incorporation period is known as the period of a company *in statu nascendi* (German: *Vorgesellschaft*). This situation lasts from the conclusion of the memorandum of association to the issuance of a decision on the registration of a company by the competent authority, which is considered as the moment of acquisition of legal personality of the company.<sup>56</sup> However, before concluding the contract on incorporation, the founders are already working towards the formation of the company, so there is another phase that precedes the state of company *in statu nascendi* and we could call it a pre-founding company. German legal theory is particularly insistent on isolating this stage of incorporation.<sup>57</sup> If, however, the pre-contract of incorporation is concluded, then this phase could also be called a pre-contractual company. For the period of a pre-founding or pre-contractual company, it is indisputable that it has a civil law nature and is closest to the form of a civil partnership.<sup>58</sup>

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<sup>51</sup>See M. Vasiljević, 66.

<sup>52</sup>The full name of the BiH's currency is "convertible mark" and it worths 0,510241 €.

<sup>53</sup>Art. 107, para 1 of the LBE of RS.

<sup>54</sup>LBE of FBiH, Art 307, para. 1. Also, the value of an individual member's contribution cannot be less than 100 BAM.

<sup>55</sup>See Art. 343, para. 1 of the Law on Enterprises of BD of BiH.

<sup>56</sup>See Z. Vasiljević, „Pravna priroda stanja preddruštva“, *Pravo i privreda*, 4-6/2016, 164-167.

<sup>57</sup>G. Hueck/ C. Windbichler, *Gesellschaftsrecht*, Beck, C H, Munich 2008, 206-207. 14.; F. Kübler, *Gesellschaftsrecht*, C.F. Müller, Heidelberg 1994, 433.

<sup>58</sup>See J. Barbić, *Pravo društava – opći dio*, Organizator, Zagreb 2008, 201.; G. Hueck/ C. Windbichler, 207.

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Therefore, at this stage, the founders are jointly and severally liable for the accepted obligations with all their assets.<sup>59</sup> The difference is that if a pre-contract was concluded, provided that the form and mandatory content required for the memorandum of association were followed, the pre-contract could have the force of the memorandum of association and, in the event of a dispute, a court judgment could replace the company's constitutive act.<sup>60</sup> This can happen if one of the persons who signed the pre-contract refuses to take the necessary legal actions for the purpose of founding the company, or refuses to sign the memorandum of association. In any case, the rules on changed circumstances, on the basis of which the obligation to conclude a contract may cease, could apply on the pre-contract if the circumstances had changed so much in the meantime that the pre-contract would not have been concluded if such circumstances had existed at the time of its conclusion.<sup>61</sup> Finally, the founders can simply decide not to submit an application for registration, for which they do not need any reason and the company will not be incorporated in that case.

More serious dilemmas exist regarding the determination of the legal nature of the company *in statu nascendi*. Conflicting views are based on two basic concepts built by German and French legal theory. The first legal theory considers that the limited legal subjectivity of the company should already be recognized at this stage, i.e. it should be treated as an emerging company (*in statu nascendi*) and accordingly the rules of company law should be applied. The second stream considers that this stage is only a matter of obligational relations, be it internal relations between the founders or external to third parties. Therefore, at this stage, only the civil law nature that is closest to the civil partnership agreement can be accepted.<sup>62</sup> This issue also raises dilemmas in EU company law, which sought to harmonize it, in particular, with the aim of protecting third parties entering into contracts with the representatives of the company at the stage of incorporation, in order to avoid the situation of no one being held liable for obligations from

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<sup>59</sup> The prevailing position in our legal theory is that for the obligations that one partner undertakes on behalf of the partnership, the other partners are liable as joint guarantors. See D. Marković-Bajalović, 45. In any case, this question is solved in Art. 12. para. 1 of the LBE of RS which prescribes that the founders of the business entity and other persons shall be jointly and severally liable with their assets for the obligations assumed in connection with the incorporation of the business entity, unless otherwise is stipulated in the contract with third parties who have claims on that basis. A similar conclusion can be derived from the Art. 4 paras. 3 and 4 of the LBE of FBiH.

<sup>60</sup>J. Barbić (2008), 202-203.

<sup>61</sup>*Ibid*, 203.

<sup>62</sup>See more Z. Vasiljević, 166-168.

such contracts.<sup>63</sup> Therefore, the Directive 2017/1132,<sup>64</sup> in Art. 7. Stipulates that in the case of carrying out an action in the name of the company before it acquires legal personality and the company does not assume the obligations arising from such action, all persons who acted will be jointly and severally liable without limit for their fulfillment. Therefore, there is a possibility of establishing liability not only on the side of the founder, but also on the side of third parties who participated in the foundation of a company.

A dispute over the determination of the legal nature of an emerging company may also have significant practical implications. Namely, at this stage certain legal actions are usually taken in order to involve the future company in legal transactions as soon as possible. For example, contracts are concluded for the lease of business premises, the purchase of equipment, the hiring of workers, the appointment of representatives, etc.<sup>65</sup> After all, certain actions that require the costs expected to be reimbursed by the future company must be done, such as opening a temporary account, notarizing the memorandum of association, sending a public invitation to buy shares in case of an open public limited liability company, etc. If we accepted the concept of legal unity between the emerging and future company, then we would also have to accept the regime of legal assignment of claims and liabilities from the founders to the company at the moment of acquiring legal subjectivity, a solution adopted in the Law on Enterprises of RS of 1998. If, however, we proceed from the theory of legal separation, then the transfer of rights and obligations could occur only if the corporate governance bodies of the newly formed company accept it. This is the concept of contractual assignment offered explicitly by the legislator in the RS,<sup>66</sup> while in the FBiH this is implicitly assumed. Namely, the LBE of the FBiH stipulates that prior to the registration of a company no one can act on its behalf, and that the person who break this rule is responsible for the obligations with all his property (unlimited jointly and severally).<sup>67</sup> It is also prescribed in Art. 309 (1) of the LBE of the FBiH, but only in the case of LLCs, that the costs of incorporation are divided among the founders equal to their shares, unless

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<sup>63</sup> M. Vasiljević/ V. Radović/ T. Jevremović Petrović, *Kompanijsko pravo Evropske unije*, Pravni fakultet Univerziteta u Beogradu, Belgrade 2012, 113-115.

<sup>64</sup> Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification), "Official Journal of the European Union", L 169, 30.06.2017.

<sup>65</sup> See M. Vasiljević (2010), 68.

<sup>66</sup> Namely, art. 12. of the LBE of RS stipulates that the founders of the company and other persons for liabilities assumed at the stage of incorporation shall be jointly and severally liable with their entire property, unless otherwise stipulated by the contract with a third party having a claim on this basis. For the same obligations, a company can only be held jointly and severally liable with the founders or other persons if it assumes liabilities in accordance with the law after registration.

<sup>67</sup> Art. 4, paras. 3 and 4 of the LBE of the FBiH.

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otherwise specified in the memorandum of association. Such a solution points to the conclusion that the FBiH legislation can also be classified as one that accepts exclusively the civil law nature of the company *in statu nascendi*.

However, the contract on civil partnership is still unnamed in our law. It was once regulated by the Austrian Civil Code of 1811 (hereinafter: ACC),<sup>68</sup> which was applied in the territory of BiH as a subsidiary source of law.<sup>69</sup> Finally, perhaps the most drastic difference between the two concepts of determining the legal nature of the pre-incorporation phase is seen in the process of establishing a one-member company, which is possible in the case of a closed public limited liability company and private LLC. Proponents of identity theory still believe that there is a pre-company, and that it is necessary to apply the same regime as in the case of multi-member pre-companies, given that there is also a need to take certain legal actions before registration, at least those prescribed by law, such as the obligation to enter the founder's shares. It is considered that at the time of entry, these deposits no longer belong to the founder, hence cannot be seized for the purpose of settling claims of his personal creditors. It can also lead to abuses.<sup>70</sup> Given that a civil partnership cannot consist of only one partner, it is not possible to determine the legal nature of a one-member pre-company in this way. We believe that in this case we cannot discuss about a pre-company at all, because there is no need for the sole founder to regulate his relations with anyone, so he should continue to be personally liable to third parties for all actions taken as long as the intended company is not founded.<sup>71</sup>

#### 4. Registration in the competent register

##### 4.1. State and Tendencies of Changes in BiH

In order for a company to acquire legal personality and, on the basis of this, the possibility of acting independently in legal transactions, it is necessary to enter the company in a competent register. In comparative law, there is a trend

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<sup>68</sup>It was promulgated in Vienna under the title: *Allgemeines Bürgerliches Gesetzbuch für die deutschen Erbländer, Justizgesetzsammlung*, No.1-6/1811. It was amended three times – in 1914, 1915 and 1916.

<sup>69</sup> It could be said that today ACC in RS represent a source of law that belong to a group of sources called *lex mercatoria* (even in the judicial practice of the RS, the application of AGZ is accepted "because of the obvious legal gap in the regulation of this matter through positive legal regulations"; see the verdict of the Supreme Court of RS, No. 72 O P 043480 20 Rev, 06.07.2021.), while in FBiH in Art. 1107 para. 6 of the Law on Obligations (Official gazette of SFRJ, No. 29/78, 39/85, 45/89- decision of the Constitutional Court and 67/89, Official gazette of RBiH, No. 2/92, 13/93 and 13/94, Official gazette of FBiH, No. 29/03 and 42/11) explicitly states that ACC's rules regarding partnership can be applied if they are in accordance with its Constitution and laws.

<sup>70</sup>This is acknowledged by the supporters of the mentioned concept. See: J. Barbić (2008), 199-200.

<sup>71</sup>Z. Vasiljević, 176.

to manage this register by administrative organizations under the rules of administrative procedure, in order to relieve the courts. However, in BiH it is still under the court jurisdiction, namely the district commercial courts in the RS and the municipal courts in the FBiH, which have established commercial divisions,<sup>72</sup> Also, in the BD, the registration procedure is under the jurisdiction of the Basic Court of BD.

The enactment of the Registration of Business Entities Act (hereinafter: RBEA) in the RS in 2013 has, however, made some progress in terms of introducing a one-stop shop system<sup>73</sup> that provides a unique service to applicants by the RS Agency for Intermediary, IT and Financial Services (hereinafter: AIIFS), as an entity administrative organization. AIIFS provides services both in the process of registering at the competent registration court and in the process of obtaining the unique identification number at the competent tax authority, and if possible, for obtaining the customs number at the Authority for Indirect Taxation of BiH. The RS also went further in regulation of the so-called electronic registration,<sup>74</sup> which represents the provision of services in one virtual location during the registration process at the competent registry, the Tax authority and AIIFS, applying technical methods by using a qualified electronic certificate to identify the applicant and enforceable signing of documents in the form of an electronic document. Particularly contributory were the amendments to the RBEA of 2019, in accordance with the new Directive 2019/1151, in which most attention was paid to this particular issue, i.e. electronic registration. It has been defined as a Unique Information System for Registration of Business Entities of the RS (abbreviated: UIS), which is used for electronic communication and exchange of data between participants in the registration process. An electronic application

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<sup>72</sup> One in each canton of FBiH.

<sup>73</sup> Although this registration system is also applied in FBiH, but without participation of any administrative organization. See: Art. 50, para. 2 and Arts. 74-75 of the Registration of Business Entities Act in the FBiH. The one-stop shop system is also provided by the new Registration of Business Entities Act in the BD, see Art. 2, para. 1, it. d).

<sup>74</sup> Although it must be emphasized that the transitional and concluding provisions, i.e. Art. 89a. of RBEA of the RS define that the procedure of electronic registration is enabled only for LLCs, in accordance with art. 13g(1) of Directive 2019/1151, and that the process of electronic registration and reservation of a business name will start when technical conditions are reached, thus protecting the legislator from the gap between the real and the normative. However, this procedure is allowed only to those limited liability companies whose founders are domestic natural or legal persons. At this stage, the Agency is still preparing the platform on which the electronic communication will be held. The problem is, however, the lack of qualified certification bodies, which would provide services to business entities and institutions of RS in accordance with the Electronic Signature Act of the RS. In the RBEA of the FBiH in Art. 48, para. 2, on the other side, it is only stipulated that it is possible to submit the application for registration electronically if it is possible to file and verify the electronic signature, without further elaboration of this matter. In the BD at the beginning of the implementation of the new RBEA, from 1 January 2021, electronic registration should be provided for LLCs and entrepreneurs.

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form has been created, and the applicant must be registered in the UIS and have an authentication method and a user account created. The authentication method is a qualified electronic certificate of the applicant by which the UIS application is made. This certificate is issued by a qualified certification body with headquarters in either the RS, BiH or abroad. In the electronic registration process itself, communication between the applicant and the competent registration court and the tax authority is carried out in accordance with the Electronic Commerce Act of the RS.<sup>75</sup> The reason for introducing the AIIFS as an intermediary in the registration process is precisely its better preparedness for electronic communication processes. The role of the AIIFS<sup>76</sup> is to ensure the software program, technical correctness, maintenance and delivery of electronic data of the general ledger of the Register, as well as the proper and permanent functioning of the UIS.

Starting in 2021, the above mentioned standards should begin to be implemented in the legislation of the BD. This contributes to the realization of the process of digitalization of company law, which is especially preferred in the process of company registration. However, it must be emphasized that BiH is still facing a problem of a lack of qualified certification bodies and that the process of establishment of the first body which should provide this type of services started at the end of 2018 in RS by the former Agency for Informatical Society of the RS, which was, in December 2018, transformed into a special department of one of the ministries.<sup>77</sup> This process is not yet complete.

Finally, in BiH foreign entities are equated with domestic entities, except in the process of electronic registration, in which they are not included yet. In the process of paper registration, foreign natural and legal persons additionally used to have to fulfill only one requirement, which consisted of reporting their investment to the Ministry of Foreign Trade and Economic Relations of BiH. Therefore, this sub-variant of the normative system of incorporation of companies was named as the reporting system.<sup>78</sup> Now this procedure is carried out by the registration court, i.e. the AIIFS, depending on whether the incorporation is carried out in the RS or the FBiH.<sup>79</sup>

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<sup>75</sup>Electronic Commerce Act of the RS, „Official Gazette of R. Srpska“, No. 59/09 and 33/16.

<sup>76</sup> In cooperation with the Government of the RS.

<sup>77</sup>Ministry of Science and Technology Development, Higher Education and the Informatical Society of RS.

<sup>78</sup>See M. Vasiljević, *Poslovno pravo*, Belgrade 1999., 53.

<sup>79</sup>See Art. para. 3 of the RBEA of FBiH and Art. 25 para. 2 of the RBEA of RS.



#### **4.2. Details of the Registration Process in BiH**

As pointed out, the registration process in BiH is not uniformly regulated, but there are different procedures in the entities and BD. The registration process in the RS begins with the submission of an application to the AIIFS. This can be done directly at the premises of the AIIFS, by mail, or electronically. Signing the electronic application and documents, as well as the attachment and verification of electronic documents, shall be done in accordance with the regulations governing the electronic document and electronic signature. In addition to the qualified electronic signature, a qualified electronic seal of the legal entity should be placed on the application form.<sup>80</sup> The application must be duly completed and accompanied by all the required documentation, depending on the legal form of the business entity. Exceptionally, according to Art. 6, para. 7 of the RBEA of RS, the applicant in the electronic registration procedure has no obligation to submit documents when, for the purposes of proving the fulfillment of the conditions for registration, the registering authority may electronically use data from the relevant registers of other competent authorities, what shall be notified to the applicant through UIS.<sup>81</sup> In any case, for each of the organizational forms of business entities, banks, insurance companies, public enterprises, cooperatives and other legal entities, as well as business units of companies, the documentation required for entry in the Register is specifically prescribed. In the case of the submission of documents in a foreign language, translation by a certified court interpreter is required, and foreign public documents are not subject to repeated verification, under condition of reciprocity.

Pursuant to Art. 7, para. 4 of the Framework Act on Registration of Business Entities in BiH, the application may be submitted to any registration court, regardless of the seat of the subject of registration, in which case it shall be forwarded, without delay, to the competent court. Accordingly, the application may be submitted to any organizational unit of the AIIFS regardless of the registered office of the entity subject to registration. The AIIFS itself will then refer the case to the competent court in writing and electronically for decision making. The AIIFS is required to obtain a PIN from the competent tax authority before delivering the application to the court. The competent tax authority shall, if there are no obstacles, issue the PIN on the same day after the receipt of the

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<sup>80</sup>Art. 6 para. 5 of the RBEA of RS.

<sup>81</sup> Thus, for example, informations on first and last name, Personal Identification Number (PIN), address of residence, number of identification document, etc., in the case of natural persons are checked in appropriate records through the Ministry of the Internal Affairs. Also, in the same way, through the Registry of Fines, it is checked whether all fines and other costs have been paid for offenses committed in the field of economic and financial operations.

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application, and within two days at the latest.<sup>82</sup>

In the FBiH and BD, the application is submitted directly to the register,<sup>83</sup> and it can be done by the founders themselves or through an authorized representative/agent or proxy. According to Art. 48, para. 1 of the RBEA of FBiH, only a lawyer or a notary can be a proxy, what is in accordance with the rules of civil procedure. However, it must be emphasized that, in the aforementioned manner engaged, a lawyer or notary do not have the role of a company promoter (founder).<sup>84</sup> Neither do they have such a role in English law, where this institute comes from, if they act in a purely ministerial capacity.<sup>85</sup>

The application form for registration should be available in the registration courts or on the relevant websites (of registration courts or the AIIFS of RS) and it cannot be traded, as prescribed by Art. 16, para. 3 of the Framework Act on Registration of Business Entities in BiH. In the FBiH, the procedure for submitting an application for registration electronically has not yet been defined, leaving only the legal possibility for such an act. However, courts will not be obliged to issue registration decisions on the basis of such applications until the identity of the applicant or founder has been verified.<sup>86</sup> In the BD, on the other hand, the new RBEA regulates the electronic registration procedure, and, similarly to the RS, it is in Art. 65, para. 2 prescribed that the verification of the applicant's identity and verification of registration documents is performed in accordance with regulations governing electronic signature and electronic document.

The competent registry court in RS also has a time limit of two days starting from the date of receipt of the application, to examine and determine whether the conditions for entry in the court register are fulfilled and, if so, to make a decision on entry. This is a shorter period than the one prescribed by Art. 20, para. 1 of the Framework Act on Registration of Business Entities in BiH, which is five working days from the duly submitted application.<sup>87</sup> If, however, the registration requirements are not met, the application is refused. This fulfills the requirement

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<sup>82</sup> See Art. 9, para. 2 of the RBEA of RS.

<sup>83</sup> The application for registration may be submitted to any registration court, regardless of the seat of the subject of registration, because in any case the incompetent registration court is obliged to submit it *ex officio* and without delay to the competent registration court. See Art. 8, para. 4 of the RBEA of FBiH and Art. 6, para. 4 of the RBEA of BD BiH, in accordance with Art. 7, para. 4 of the Framework Act on Registration of Business Entities in BiH.

<sup>84</sup>For more about promoters, see N. Jovanović, „Treba li u Srbiji pravno urediti promotere“, *Pravo i privreda*, 4-6/2019, 124-131.

<sup>85</sup>See P. L. Davies, *Gower and Davies' Principles of Modern Company Law*, Sweet & Maxwell, London 2008, 106.

<sup>86</sup>See Art. 48, paras. 2 and 3 of the RBEA of FBiH.

<sup>87</sup> The same deadline is prescribed in Art. 81, para. 2 of the RBEA of FBiH. On the other hand, in the BD, as in the RS, a deadline of 2 working days is prescribed. See Art. 84, para. 1 of the RBEA of BD BiH.

of Art. 10 of Directive 2017/1132 to organize preventive control on the foundation of companies at national level. The application for entry in the register is decided by the individual judge, who values the fulfillment of the formal<sup>88</sup> and material<sup>89</sup> conditions for registration, but also checks whether it is registered or just reserved the same or similar company name of another existing or future company performing or ought to perform the same or similar activities (business), which could cause confusion with respect to the identity of such companies in legal transactions. Also, in case of doubt as to the authenticity of an act proving the fact that is the subject of the registration or the lawfulness of the procedure in which the act was enacted or of the legal action that is the subject of the registration, the registry court may hold a hearing, after which it makes a decision on registration. Issues relating to the conducting of the registration process are decided by the registry in the form of a conclusion.

The competent court decides on entry in the Register by a decision, which is issued in material and electronic form<sup>90</sup> containing basic information about the subject of entry. Such a decision, as well as all documents issued by the competent registration court in the electronic registration procedure, have the status of a public document (as well as a printed copy) and their legal validity cannot be disputed due to the fact that they were issued in the form of an electronic document. An electronic copy of the decision on registration shall, immediately after its issuance, be submitted to the tax authority, local self-government unit and the pension and disability insurance institute, according to the seat of the subject of registration, as well as to the statistical authority of entity or BD, the competent customs authority (if the subject of registration registers foreign trade operations), and to the competent regulatory bodies, in accordance with special regulations, which regulate the conditions for performing certain activities, if the subject of registration registers such activity.

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<sup>88</sup>Under formal conditions is implied that the application is submitted on the prescribed form and signed by the applicant, that the application is accompanied by all necessary documents in the original or a certified photocopy, and that they were drafted in the prescribed procedure and with the prescribed content, and that other formal conditions prescribed by the acts applicable in the registration procedure are met. In the case of electronic registration the application and supporting documents must be made in accordance with the regulations governing the subject matter (creating an electronic signature and electronic document).

<sup>89</sup> Under material conditions, it is understood that the request for entry of certain data is in accordance with the law on registration and other laws governing the area of entry of such data, as well as in accordance with the provisions of general acts governing data, ie changes of data entered in court register. See: Art. 11, para. 3 of the RBEA of RS, Art. 53, para. 3 of the RBEA of FBiH and Art. 55, para. 3 of the RBEA of BD BiH.

<sup>90</sup> Which is delivered to the applicant in the form of electronic document signed by electronic signature of the judge with electronic seal of the registry court. See Art. 63a, para. 1, it. a) of the RBEARS and Art. 65, para. 3 of the RBEA of BD BiH. This action also completes the process of electronic registration.

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The court's decisions can be delivered to the applicant in printed version, electronically or through the AIIFS in RS, which may, by highlighting the notice on its website or posting it on the notice board, invite the applicant to take a decision on the AIIFS's premises if the applicant opted for such a method of delivery.<sup>91</sup> Regardless of the chosen method of delivery, all decisions of the registration courts made during the registration process are published on the AIIFS's website, what is in accordance with the principle of the public and availability of data without charge. The publicity principle is one of the most important principles of the registration procedure. It means that data from the General Ledger of the Register are public and accessible to all interested persons, without the need for proving legal interest, in accordance with special regulations governing the protection of personal data, while access to the Collection of documents of the subject of entry can be made if there is a justified legal interest.<sup>92</sup> Excerpts, as well as certificates and receipts from the register, are public documents, whether in hard copy or in electronic form. The public is additionally provided with the obligation to publish the entry in the FBiH and BD official gazettes, as well as on the website of the court register in the BD. The insight into data published via the website is free of charge, and in the BD it is explicitly prescribed that the right to inspect public data of the general ledger is also free of charge.<sup>93</sup>

An interested party (a subject of entry and a person having a legal interest – e.g., creditors from the phase of incorporation, etc.) may file an appeal against the decision on entry in the Register, to the second-instance court (Higher Commercial Court in the RS, District Court in FBiH and Court of Appeals in the BD), within eight days of the receipt of the first instance decision.<sup>94</sup> Also, a person who believes that registration decision violated his rights and interests based on law and has not been provided with a transcript of the decision, can file an appeal within longer terms that count from the cognition for registration or publication of decision on the registration.<sup>95</sup> In the second instance, a panel of three judges decides. The deadline for adjudication based on appeal is 30 days. The procedure for entry in the register is not allowed to be restored (*restitutio in integrum*) and extraordinary legal remedies, such as revision and reopening of the procedure, are not allowed. The provisions of the Civil Procedure Act of the

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<sup>91</sup>If the applicant does not take the decision within eight days of the highlighting of the notification, the Agency shall accomplish delivery by publishing decision on the applicant's charge in the Official Gazette of the RS, as well as on its website and the notice board. Delivery shall be considered completed after 15 days from the date of such publication. See Art. 14, paras. 3-5 of the RBEA of RS.

<sup>92</sup>See Art. 3, it. e) of the RBEA of RS.

<sup>93</sup>In principle, these data are available through a browser on the registry's website. See Art. 9 of the RBEA of BD BiH.

<sup>94</sup>It is the same deadline in all legislations.

<sup>95</sup>See Art. 66, para. 5 of the RBEA of RS and Art. 63, para. 3 of the RBEA of FBiH.

RS or the FBiH are accordingly applied to all issues not regulated by the two entity laws on registration of business entities.<sup>96</sup>

The newly established company is registered in the Register of Business Entities, which is a public ledger containing data and documents on business entities on the territory of the BiH entities. It consists of a General ledger and a Collection of documents. Both the General ledger and the Collection of documents in RS are kept both electronically and “in writing”,<sup>97</sup> while in FBiH and BD it is prescribed as an obligation only in the case of General Ledger, while keeping a Collection of documents in electronic form is optional.<sup>98</sup> The General ledger in electronic form is available to all registry courts in BiH and so is established the system of interconnection between the registers in BiH, through which the electronic copies of documents and information shall be made publicly available.

### **4.3. Registration Processes in Neighboring Countries**

BiH, as a former republic of the Socialist Federal Republic of Yugoslavia, located in its central part, borders with the former Yugoslav republics, Serbia, Croatia and Montenegro, with which it shares a long common history and inherits a legal tradition with common roots. Therefore, in the field of company law, these countries have gone through a similar path.

#### **4.3.1. Serbia**

In Serbia, the introduction of the administrative procedure of registration and of the one-stop shop system began in 2004. Registration is done by the Agency for Business Registers (hereinafter: ABR), as an administrative organization.<sup>99</sup> In addition, the ABR is self-sustaining, because it is financed from fees charged for provided services. The amount of fees for provided services is determined in accordance with the principle of cheap provision of public services. The deadline for registration is five working days from the receipt of the application, and in case of non-decision, it is assumed that it has been adopted. The only exceptions are cases of incompetence, submission of data or documents that are not subject to registration or have already been registered, failure to submit the application within the legally prescribed deadline (if the deadline is a

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<sup>96</sup>See Art. 61, para. 8 of the RBEA of RS and Art. 57, para. 6 of the RBEA of FBiH. It is interesting that the RBEA of the BD BiH in Art. 59, para. 6 prescribes the appropriate application of the law governing non-litigious proceedings.

<sup>97</sup>See Art. 20, paras. 2 and 6 of the RBEA of RS. The law uses the term "written", although a more appropriate term would be "paper" form, since the electronic form is ultimately written form.

<sup>98</sup>Art. 10, paras. 2 and 5 of the RBEA of FBiH and Art. 8, paras. 2 and 8 of the RBEA of BD BiH.

<sup>99</sup>This also satisfies the concept that all registers are in one place.

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condition for registration), late submission or submission of incompletely corrected application if the previous application was rejected due to deficiencies or when registration of data or documents is contrary to law or act of the competent authority.<sup>100</sup> This solution introduced the principle of "silence of the administration", in order to improve the efficiency of public administration.

Amendments to the Law on Business Entities, from June 2018, enabled the electronic registration of all legal forms of companies and abolished the use of the business seal in business communication. The possibility of drafting a founding act in electronic form is prescribed, in which case the notarization of the signature is replaced by a qualified electronic signature of the company's members, unless it is contrary to the regulations governing real estate transactions.<sup>101</sup> This practically means that the notaries are still involved, but only in electronic process. Namely, founders draft an act in writing, hand it over to the notary, who digitizes it and, after checking the identity of the founder in accordance with a special law governing the verification of signatures, manuscripts and transcripts, certifies it with his qualified electronic signature or electronic seal.<sup>102</sup> Serbian law does not have binding legal models of founding acts either, but only private ones compiled by the ABR which offers them free of charge to users of its services.<sup>103</sup>

According to Art. 11, para. 1 of the Registration Procedure in the Agency for Business Registers Act, the electronic application for registration is submitted to the ABR through a user application which ensures the receipt of electronic documents and proof of payment of the registration fee. Despite the fulfillment of the normative precondition for electronic registration of all legal forms of business entities, in the beginning it was feasible in practice only in the case of entrepreneurs and from the end of 2018, it is enabled also for one-member LLCs, whose minimum share capital is 100 dinars.<sup>104</sup> Finally, in the middle of 2019, the possibility of conducting the complete electronic registration procedure was introduced for multi-member private limited liability companies, while it is still not possible in the case of public limited liability companies.<sup>105</sup> The possibility of electronic registration of incorporation without physical presence, in the case of the mentioned forms of business subjects, has been functioning since the end of 2018. However, when it comes to foreign legal entities in the capacity of

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<sup>100</sup>Registration Procedure in the Agency for Business Registers Act, „Official gazette of R. Serbia“, No. 99/11, 83/14, 31/19 and 105/21, Art. 15 and Art. 19. in connection with Art. 14, paras. 1, 3, 4 and 10-13.

<sup>101</sup>D. Vujisić, „Digitalizacija kompanijskogprava“, *Pravo i privreda*, 4-6/2019, 150.

<sup>102</sup>Law on Business Entities in Serbia, „Official gazette of R. Serbia“, No.36/11,99/11, 83/14, 5/15, 44/18, 95/18, 91/19 and 109/21, Art. 11, paras. 3 and 4.

<sup>103</sup>See [www.apr.gov.rs](http://www.apr.gov.rs) (26.01.2022).

<sup>104</sup>Less than 1€.

<sup>105</sup>Joint stock companies.

founders, the possibility of electronic registration has been primarily excluded,<sup>106</sup> while it is now allowed for all natural and legal persons, regardless of their nationality.<sup>107</sup> In any case, it can be stated that in Serbia there is a very efficient registration of the establishment of companies, which even before the introduction of electronic registration in 99% of cases was carried out within 24 hours from the submission of the registration application with accompanying documentation.<sup>108</sup> It must be pointed out that electronic registration still does not exclude the possibility of so-called paper registrations, but if the founder opts for electronic registration, all documents must be submitted as electronic or digitized, and never in paper form.<sup>109</sup> Finally, all companies are required to have an e-mail address, through which they communicate with other entities, and which they must register. According to Art. 21 LBE of Rep. Serbia, companies also have to be registered as users of e-government services.

#### 4.3.2. Croatia

Croatian law is the only one of the surrounding countries that specifically regulates a simplified LLC. This form of a company was introduced following the example of the German *Unternehmersgesellschaft haftungsbeschränkt* (abbreviated: *UG*)<sup>110</sup> and may be founded by a maximum of five members through minutes forms filled in by a notary.<sup>111</sup> These forms of minutes were attached to the text of the amendments to the Commercial Entities Act since 2012, which introduced this type of a company, but they were replaced by new forms through amendments of 2019. The main advantage of this form of a company compared to the ordinary LLC is that the share capital is only 10 kuna (HRK),<sup>112</sup> instead of 20,000 kuna (HRK), which is required for the ordinary private LLC, and it is characterized by a simpler incorporation procedure and reduced costs of establishment compared to the ordinary LLC.

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<sup>106</sup>T. Jevremović Petrović (2019), 132.

<sup>107</sup> T. Jevremović Petrović, "Elektronska registracija osnivanja privrednih društava u Republici Srbiji", *Pravo i privreda*, 3/2021, 314.

<sup>108</sup> T. Jevremović Petrović (2019), 121 – 122.

<sup>109</sup>T. Jevremović Petrović (2021), 316. Digitization means the conversion of a document, that is not issued in electronic form, into electronic form. See Art. 2, para. 1, its. 43-44 of the Law on Electronic Document, Electronic Identification and Trust Services in Electronic Business, „Official Gazette of R. of Serbia“, No.94/2017 and 52/2021.

<sup>110</sup>More about this form of company see A. Bartolacelli, „Almost Capital-less Companies in Europe: Trends, Variations, Competition“, *European Company and Financial Law Review*, 1/2017, 203.

<sup>111</sup>Commercial Entities Act of Croatia, „Official Gazette of R. of Croatia“, No.11/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 125/11, 152/11, 111/12, 68/13, 110/15 and 40/19, Art. 390a, para. 1.

<sup>112</sup>Less than 3€.

Amendments to the Commercial Entities Act, for the purpose of administrative relief, abolished the obligation to register business objects in the general ledger of the register of commercial court,<sup>113</sup> but this is entered only as a record, unless it is an activity that can be performed only with consent, permission or another act of the competent authority. The business object, therefore, is no longer an integral part of the founding act. Also, a relief was introduced in terms of the possibility of entering a quarter, instead of the former half of the share capital before the registration, with the remainder having to be paid within a year.<sup>114</sup> Amendments to the Croatian Commercial Entities Act from 2019 are of particular importance for facilitating the establishment of companies in order to develop entrepreneurial activity. Namely, according to Art. 397a, para. 1 of this Act, it is possible to found a company remotely in the form of LLC or a simplified LLC. These forms of companies can be established without a proxy through the website of the court register system, using an authentication system that guarantees high security regarding the identity of the person accessing the said system. In the incorporation procedure, contract models or statements of incorporation are used in electronic form, which are given in the appendix to the Act, and all other documents are submitted in electronic form. In this way, Croatian law enables the establishment of a company without physical presence. This possibility was criticized, primarily by representatives of the notary profession, back in 2017, when the proposal of the Foundation of Remote Companies Act was considered. Among the numerous risks of direct electronic registration, the increased danger of identity theft, the impossibility of easily determining the lack of will of the founder, i.e. whether there are elements of coercion or threat, the impossibility of giving legal advice to an ignorant party, violation of trust in the public register, and thus indirectly in small and medium enterprises registered electronically, which would lead to undesirable consequences in their relations with business partners (especially creditors), etc., were especially cited.<sup>115</sup> Nevertheless, a pragmatic interest prevailed in facilitating the process of incorporation and harmonization with the latest *acquis communautaire*, embodied in the new Directive 2019/1151. The Court Register Act has been harmonized with the changes brought by the amendments to the Commercial Entities Act, so this Act regulates the possibility of establishing a company remotely via the court register website within the START system, that can be accessed using a letter of credit issued by the National

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<sup>113</sup>In Croatian law, otherwise, the concept of court registration has been accepted, as in Austria and Germany, so registration is done in commercial courts competent on the basis of territorial jurisdiction.

<sup>114</sup>See Art. 390, para. 2 of the Commercial Entities Act of Croatia.

<sup>115</sup>M. Grbac/ A. Grbac, „Javni bilježnik i elektroničko osnivanje društava sa ograničenom odgovornošću“, *Javni bilježnik*, 44/2017, 26-27.

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Identification and Authentication System.<sup>116</sup> As in Serbia, the obligation to report an e-mail address, within three months of registration, has been introduced, and access to public data and publication of the document in electronic form must be possible via the register's website, free of charge. Finally, according to Art. 53, para. 1 of the Court Register Act, the deadline for making decision on entry in the court register has been shortened from 15 days to 5 working days from the day of submitting the application for entry in the register. If, on the other hand, the application for registration is submitted electronically via the *e-Tvrtka* system, the registration must be carried out within 24 hours from the day of receipt of the application.<sup>117</sup>

### 4.3.3. Montenegro

In Montenegro, with the amendments to the Business Entities Act since 2011, the registration procedure was transferred from the Commercial Court to the Tax Administration (hereinafter: TA), and it is now conducted according to the rules of administrative procedure. The registration is performed, according to the one-stop shop principle, in the Central Register of Business Entities kept by the TA.<sup>118</sup> This was confirmed by the new Law on Business Entities, which also regulates the process of registration of business entities.<sup>119</sup> The deadline for making a decision is three working days from the day of receiving the documentation and the silence of the TA is considered a proper decision on registration,<sup>120</sup> as in Serbia in the case of silence of the ABR. However, the TA is not an institution that can perform registration tasks in the long run, and in the future these tasks should be transferred to a specialized administrative organization.

Since 2012, the Ministry of Information Society and Telecommunications (as a forerunner of today's Ministry of Public Administration)<sup>121</sup> has launched an application for electronic filing of applications for company registration, which can

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<sup>116</sup>The Court Register Act, „Official Gazette of Republic of Croatia“, No.1/95, 57/96, 1/98, 30/99, 45/99, 54/05, 40/07, 9/10, 90/11, 148/13, 93/14, 110/15 and 40/19, Art. 52a, para. 1 and Art. 52c, para. 2.

<sup>117</sup>In addition, the possibility of electronic registration of companies in Croatia has existed since 2005 when the HITRO.HR office was launched, whose services can only be used to establish LLCs, ordinary or simplified. However, this system did not allow direct registration of companies, but only with the mediation of a notary or HITRO.HR office, see: D. Jurić/ S. Marinac, „Societas Unius Personae – Prijedlog Direktive o društvima s ograničenom odgovornošću s jednim članom“, *Zbornik Pravnog fakulteta Sveučilišta u Rijeci* 1/2015, 458 – 459.

<sup>118</sup>See Art. 83, paras. 1 and 4 of the Law on Business Entities of Montenegro, “Official Gazette of Montenegro”, No.6/02, 17/07, 80/08, 40/10, 36/11 and 40/11.

<sup>119</sup>Law on Business Entities of Montenegro, “Official Gazette of Montenegro”, No.65/20, Arts. 319-324.

<sup>120</sup>Art. 321, paras. 5 and 6 of the LBE of Montenegro.

<sup>121</sup>In cooperation with the Ministry of Finance of Montenegro.

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be used by individuals with qualified electronic certificate. However, through this platform, a scanned payment slip cannot be presented as a proof of registration costs, so the registration process is reduced to the electronic submission of an application for registration, while the original documentation and payment slip must be submitted in paper form.<sup>122</sup> The goal of further reforms is to enable a full electronic registration in which the company's founder should take only two steps: electronically submit documents and data, go to a commercial bank to identify himself and open a transaction account. For this purpose, the technical conditions must be improved. Currently, there are no legal models of founding acts in Montenegro either, but only models recommended by the Chamber of Commerce of Montenegro which can be found on its official web address.<sup>123</sup>

The new LBE also introduced the obligation to submit an e-mail address for all forms of companies when submitting an application for registration.<sup>124</sup> This obligation was imposed in order to facilitate correspondence with other legal entities. On the other hand, the aggravating circumstances and the surplus in relation to the surrounding countries consist in the obligation to submit to the register and the statute, in addition to the founding act, when it comes whether to public or private limited liability companies. However, the new LBE in Art. 320, para. 1 and Art. 323, paras. 3 and 4 brings improvements in the issue of electronic registration, since it prescribes the possibility of submitting an application for registration in either paper or electronic form, as well as accompanying documentation, which is considered original when submitted in form of electronic document. Also, the Central Register of Business Entities is kept in electronic form as a single database and insight into registered data can be achieved at any time through electronic means of communication in accordance with the law regulating e-government and e-business. The novelty of the new Law is establishment of conditions for the application of the system of interconnection of registers of companies, which is, in accordance with the *acquis communautaire*, based on a common electronic-technological platform and portal that represents a single European access point.<sup>125</sup>

#### 4.3.4. Interconnection of Registers

Finally, it is important to point out that the European Bank for Reconstruction and Development has launched a regional project that aims to connect the registers of companies. The registers of Serbia and Northern

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<sup>122</sup> M. Šuković *et al.*, *Analiza stanja u oblasti registracije preduzeća sa mjerama za unapređenje*, Podgorica 2019, 16-17.

<sup>123</sup> See: [www.privredna.komora.me/kako-registrovati-preduzece](http://www.privredna.komora.me/kako-registrovati-preduzece) (23.01.2022.)

<sup>124</sup> Art. 68, para. 2, it. 3), Art. 94, para. 1, it. 6), Art. 116, para. 1, it. 11) and Art. 272, para. 1, it. 8) of the LBE of Montenegro.

<sup>125</sup> See Art. 321, paras. 1-3 of the LBE of Montenegro.

Macedonia were the first to connect, by signing the Agreement on the Establishment of a Regional Portal of Business Registers in October 2018, which was publicly announced in March 2019, under the name BIFIDEX. The goal of these activities is to connect the registers of all countries in the Western Balkans and beyond, and in that sense, other countries in the region have signed the accessions.<sup>126</sup>

#### **4.4. Modernization of Registration of Limited Liability Companies in the European Union**

The latest step in the development of electronic registration procedure at the EU level is the Directive 2019/1151, which is related to the Eidas Regulation<sup>127</sup> in terms of the tools of establishing the identity of the founder, but also expanding the range of electronic identification tools beyond those provided by the Eidas Regulation in the sense that a qualified electronic signature does not have to be the ultimate reach of tools in the process of identifying the founders and their representatives.<sup>128</sup> In fact, this Directive continues the idea of the SUP Directive<sup>129</sup> to enable a complete electronic registration process without the physical presence of the founder, but this time not only for single-member companies, but at least for all private companies.<sup>130</sup> Only in exceptional cases, in order to prevent abuse or change of identity, as well as to ensure compliance with the rules on legal capacity and authorization of the applicant to represent the company, the physical presence of the applicant before the competent national authorities or persons could be required.<sup>131</sup> The official documents of the European Union state that during 2018, i.e. in the period preceding the adoption of the above-mentioned Directive, full electronic registration of the establishment

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<sup>126</sup>M. Šuković *et al.*, 10.

<sup>127</sup>Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, OJ L 257, 28.8.2014.

<sup>128</sup>T. Jevremović Petrović (2019), 128; S.A. Royo-Villanova, 164.

<sup>129</sup>Proposal Directive of the European Parliament and of the Council on single-member private limited liability companies, COM/2014/0212, Brussels, 9.4.2014. The SUP Directive was supposed to repeal the still valid 2009 Directive on Single Members Limited Liability Companies by incorporating its provisions and further expanding them in order to achieve greater harmonization between national legislations. However, there were strong reasons against accepting this Directive, which led to its withdrawal (for more about this, see J. L. Hansen, „The SUP Proposal: Registration and Capital (Articles 13-17)“, *European Company and Financial Law Review*, 2/2015, 179; P. Conac, „The Societas Unius Personae (SUP): A „Passport“ for Job Creation and Growth“, *European Company and Financial Law Review*, 2/2015, 173.).

<sup>130</sup>A. Bartolacelli, „A New Framework on Digitalization in European Company Law“, *Intereulaweast*, 2/2018, 39-40.

<sup>131</sup>See Art. 13b, para. 4 and Art. 13g, para. 8 of the Directive 2019/1151.

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of a company in the European Union was possible in 17 Member States.<sup>132</sup>

The rules on online registration of companies are contained in Arts. 13a to 13h, which have become an integral part of the codified Directive 2017/1132. The advantage of these provisions compared to previous solutions is that they explicitly leave the possibility for notaries to participate in the registration process.<sup>133</sup> This is also emphasized in fns. 19 and 20 of the Explanatory Memorandum of Directive 2019/1151, in terms of respecting the specifics of the registration regime of individual Member States, as well as with the aim of combating fraud and providing safeguards for the reliability and authenticity of documents and information contained in national registers. Also, notaries are slowly realizing that they can get involved in the processes of electronic registration, i.e. that direct communication is not the only way to achieve preventive control, and thus correct incorporation of the company.<sup>134</sup> However, in the event of serious doubts about the identity of the founder, Member States could establish rules under which notaries could require the physical presence of the founder.<sup>135</sup> The Directive 2019/1151 in Art. 13g, para. 7 also prescribes deadlines for the registration of LLCs, which are a maximum of 10 working days, or shorter, 5 working days, if the founders are exclusively natural persons who use legal models of founding acts.

## 5. Conclusion

In company law, one of the most important goals which can be pointed out is reducing of the costs and encouraging of the entrepreneurial activity, while eliminating inequalities in the registration of business entities. These are the goals pursued by the legislation of the European Union, and they have been accepted by the legislation of the surrounding countries, including Bosnia and Herzegovina itself.

In Bosnia and Herzegovina, the complete matter of company law, and thus the process of incorporation of companies, is under the jurisdiction of the entities and the Brčko District, whose legislation is based on the same principles and contains quite similar solutions. In these legislations there are no specialized forms of limited liability companies, but only general forms. Besides, all of the above legislations provide for the establishment of a one-member limited liability company, which falls under the general regime, with several special provisions relating mainly to the manner of management (Art. 131 paras. 2 and 3 of the LBE of RS), concluding contracts between the sole member and the company (Art.

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<sup>132</sup>T. Jevremović Petrović (2021), 308-309.

<sup>133</sup>Art. 13g, para. 4, it. c) of the Directive 2019/1151.

<sup>134</sup>See more C. Teichmann, „The Company Law Package – Content and State of Play“, *European Company and Financial Law Review*, 1- 2/2019, 7.

<sup>135</sup>S.A. Royo-Villanova, 177.

131 para. 4 of the LBE of RS) and the liquidation of the company caused by death or termination of a single member who does not have a legal successor, because the company cannot exist without a single member (Art. 177 of the LBE of RS). Legislators in Bosnia and Herzegovina follow the trends of European Union legislation, as well as the legislation of the surrounding countries, although with delays in implementation. Thus, in Bosnia and Herzegovina, full electronic registration without physical presence is still not possible, unlike the laws of Serbia and Croatia, where it is possible. Also, unlike Croatia, where this issue is regulated as in other EU member states, and Serbia, where this has recently been enabled, electronic registration for foreign natural and legal persons as founders is not implemented in Bosnia and Herzegovina. On the other hand, unlike the law of Serbia, which allows the participation of notaries in drafting a memorandum of association in electronic form, in the Republic of Srpska, as one of BiH legislation, it is allowed to draft a memorandum of association without the participation of a notary if it is a one-member limited liability company. Such an act is sufficient to be provided with a qualified electronic signature.

Finally, probably the most significant difference in relation to the surrounding countries is the fact that the registration procedure in Bosnia and Herzegovina is still conducted as a judicial, while in the Federation of BiH there are even a separate commercial courts. In Republic of Srpska, it is true that the AIIFS was included in the registration procedure, but more in the role of "postman". Therefore, it could be expected that there will be changes in this area in order to relieve the courts and further speed up the registration process.

The subject matter shows a trend of modernization of the entire founding process, starting from simplifying the form of the founding act, especially in case of single-member companies, through reducing the costs of incorporation (both administrative costs and reducing the amount of share capital), to creating preconditions for implementing electronic registration of limited liability companies and speeding up the entire process. These processes have not been completed nor harmonized in all relevant legislations in Bosnia and Herzegovina, so the task remains to continue with accelerated activities in the coming period, in order to facilitate the establishment of companies, as much as possible, and create a favorable entrepreneurial environment at the state level.

## **TRENDOVI I PERSPEKTIVE OSNIVANJA DRUŠTAVA SA OGRANIČENOM ODGOVORNOŠĆU U BOSNI I HERCEGOVINI I SUSJEDNIM DRŽAVAMA**

### **Sažetak**

Autor analizira proces osnivanja privrednih društava u Bosni i Hercegovini, sa naglaskom na društva sa ograničenom odgovornošću, praveći poređenje sa državama okruženja i pravom Evropske unije. Naglašava se da se proces osnivanja ne svodi samo na registraciju i u tom smislu se objašnjava razlika između navedena dva termina, naročito s aspekta definisanja pravnih odnosa iz faze osnivanja i odgovornosti za preuzete obaveze prije sticanja pravnog subjektiviteta. U odnosu na samu proceduru registracije, zaključuje se da se u Bosni i Hercegovini, tj. njenim entitetima i Distriktu Brčko, koji su nadležni za regulisanje analizirane materije, slijede trendovi susjednih država i Evropske unije, kao i da se unaprijeđenje posebno primijeti kod uvođenja elektronske registracije, skraćanja i olakšanja procedure i racionalizacije troškova registracije.

***Ključne riječi:*** osnivanje, društvo sa ograničenom odgovornošću, registracija.