

Company Law Digitalization Act 2023 (GesDigG)

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On July 12th, 2023, the ministerial draft of the Company Law Digitalization Act 2023 (GesDigG 2023) was published for review. However, contrary to what the name suggests, it does not concern digital solutions in corporate law. Instead, it pertains to the (dis)qualification of directors and board members. Thus, it revolves around the implementation of Article 13i of Directive (EU) 2019/1151, which is mandatory by August 1, 2023.

What is it about specifically? The directive aims to protect all individuals interacting with corporations. More precisely, it intends to safeguard the general public and external third parties from "unsuitable" and hence disqualified directors or board members. However, the decision regarding when disqualification applies is left to the discretion of the directive's legislating states. According to the Company Law Digitalization Act 2023 (GesDigG 2023), a person is considered "disqualified" if they have been sentenced to a term of imprisonment exceeding six months for specific "economically related" offenses. These offenses include embezzlement, social fraud, and money laundering. Such disqualification carries far-reaching consequences as it becomes effective "ex lege" (by law) upon the verdict's legal validity. Consequently, the individual is prohibited from acting as a director or board member and cannot be registered as such in the commercial register for three years following the verdict's legal validity. Disqualified directors or board members subsequently cannot hold these positions and must step down. If this obligation is not fulfilled, the affected person can be removed for good cause. However, representation actions taken up to that point remain effective.

According to the draft, the competent commercial register court must conduct a mandatory review to determine whether individuals who are registered or are intended to be registered as authorized representatives are disqualified. This assessment also takes into account convictions in other countries. Through the Business Registers Interconnection System (BRIS), it shall also be possible to obtain information regarding any disqualifications in other EU or EEA member states. For inquiries originating from EU or EEA countries, the Commercial Court of Vienna shall have central jurisdiction, with the entire process expected to be largely automation-assisted.

In summary, this legislation aims to achieve the long-awaited equality between employees subject to instant termination upon conviction and individuals occupying leadership positions. As a result of the law and the associated changes in relevant corporate legal norms, not only individuals already registered as managing directors or board members must anticipate consequences, but also candidates

to be appointed will face an examination along with its repercussions. Specifically, when a criminal conviction exceeding the threshold of significance is present. Moreover, the international dimension is noteworthy for its positive implications, given that the exchange of information across borders is anticipated to foster increased cooperation throughout the EU.



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