

## LEGAL ALERT

# DATABASE OF DISQUALIFICATIONS AND DISMISSALS

## DECREE-LAW NO. 114-C/2023, OF DECEMBER 5

On December 5, 2023, [Decree-Law no. 114-C/2023](#) was published in the Official Gazette, **which is already in force**<sup>1</sup>, with the aim of transposing Article 13-I of [Directive \(EU\) 2017/1132](#), as amended by [Directive \(EU\) 2019/1151](#), thus creating a database of disqualifications and dismissals (BDID).

This transposition, with the consequent creation of the BDID, introduces a set of rules into our legal system, mainly regarding the organization and exchange of relative information:

1. **The permanent disqualification of natural persons**<sup>2</sup> from (a) carrying on business, being a manager, director or other member of a corporate body subject to registration (e.g. the supervisory body), and (b) administering the assets of others; and
2. **Judicial dismissals** of company officers that have become final and unappealable<sup>3</sup>.

Of note is the provision for:

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<sup>1</sup> It entered into force the day after its publication (i.e. December 6, 2023).

<sup>2</sup> The respective data will be kept for 20 years and can be consulted during the period of the respective disqualification. Access to the register of disqualifications issued in the last 20 years will also be given to judicial magistrates and public prosecutors, as well as administrative bodies with the power to issue disqualifications.

<sup>3</sup> In this case, the data is kept for 5 years.

- **Compulsory consultation of the BDID by the commercial registry services** when promoting the registration of the commencement and alteration of the individual traders activity, the registration of the appointment or reappointment of a manager, director or other member of a corporate body subject to registration. Registration must be refused if (i) a declaration is not submitted stating that there is no knowledge of any circumstances which may prevent the person from holding the position<sup>4</sup>, or (ii) it is found, by consulting the BDID or the registers of other Member States, that the person is prevented from holding the position, in particular, from being bound, represented in court and taking part in the administration, supervision or inspection of the company.
- **The possibility of access to the BDID by notaries, lawyers and solicitors**, to prevent those who are disqualified or have been judicially dismissed from intervening in acts that are forbidden to them.

In fact, the creation of the BDID is intended to ensure that this information on disqualifications and dismissals is centralized and accessible for consultation by the entities that need it to exercise their legal powers; and, on the other hand, to facilitate the exchange of this information between the Member States of the European Union, through the system of interconnection of central, commercial and company registers<sup>5</sup>.

We remain at your entire disposal for further clarification.

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<sup>4</sup> It should also be noted that although the need for this declaration is not exactly new, with the changes introduced by this Decree-Law, not only has its absence become an express reason for refusing these registrations, but its scope of application has also been clearly extended (e.g. the members of supervisory bodies are now also obliged to issue it).

<sup>5</sup> By which a national trade register can request and obtain this information from another Member State, and also communicate it at the request of another Member State. This is particularly relevant considering that Directive (EU) 2019/1151 now provides for the possibility of a Member State being able to refuse the appointment of a director subject to a disqualification from holding office in another Member State.

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