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Reform of the National Classification of Activities



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Introduction

The Croatian system for incorporating companies continues to be based on the assumption that, at the time of incorporation, a company must specify in advance the economic activities it intends to carry out. While this may appear reasonable, in practice it creates unnecessary barriers. This assumption no longer reflects the way in which modern businesses develop, the legal nature of the court register, the function of the National Classification of Activities (NKD), or the principles of freedom of enterprise and the European Union's internal market.

In practice, the issue arises at two interconnected but legally distinct levels.

- (i) The first concerns the National Classification of Activities (NKD), which is, by its very nature, a statistical standard but has in practice become an administrative prerequisite for incorporating a company and commencing business operations.
- (ii) The second concerns the corporate purpose and the list of business activities that a company is required to specify upon incorporation. The Companies Act¹ formally treats this list as information recorded for registration purposes, while other legislation, in particular the Act on the Prohibition and Prevention of Unregistered Activities², effectively turns it into a restriction on the business activities a company may carry out.

Through this position paper, AmCham proposes substantially simplifying the manner in which unregulated activities, i.e., activities that may be carried out without the prior authorization, consent, or license of a competent authority, are specified in the court register. Instead of requiring an extensive list of individual activities, the company's corporate purpose should be capable of being defined through a general, declaratory statement describing its area of business, without the need to catalog each individual activity in detail. At the same time, unregulated activities should neither be subject to substantive review by the court of registration nor constitute grounds for sanctions under the legislation governing unregistered activities.

The court register should retain a constitutive function, and the registration court a substantive decision-making role, only where this serves a genuine legal purpose, namely in relation to regulated activities for which specific legislation requires prior authorization. For all other, unregulated activities, a general and declaratory description of the company's area of business should be sufficient, without the need for a detailed list and without sanctions where the company carries out an activity that has not been expressly specified.

Existing Legal Framework and the Underlying Tension

The Companies Act (ZTD) is based on the general principle of freedom to carry on business activities. A company may carry on any activity that is not prohibited by law or contrary to public morals (Article 32 of the Companies Act).

Accordingly, under the general principle of freedom of enterprise, all activities are permitted unless expressly prohibited or subject to specific regulatory requirements.

The Companies Act distinguishes between unregulated activities and those for which a specific authorization from a competent authority is required. Article 32(4) of the Companies Act provides that activities which, under the law, may be carried on only on the basis of consent, a license or another act issued by the competent authority may be performed only by companies that have obtained such authorization. In such cases, the state has a legitimate interest in verifying, before

¹ Companies Act (OG Nos 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 152/11, 111/12, 125/11, 68/13, 110/15, 40/19, 34/22, 114/22, 18/23, 130/23, 136/24; "ZTD")

² Act on the Prohibition and Prevention of Unregistered Activities (OG Nos 61/11, 66/19; "ZZSO")

the relevant activity begins, whether the company meets the prescribed requirements (e.g., banking, healthcare and energy).

However, an unnecessary additional burden arises because the same system is applied, both formally and in practice, to activities that are not regulated. This is despite the fact that the Companies Act itself does not treat an exhaustive list of activities as an essential element of a company's legal identity and, in Article 33(2), expressly permits the corporate purpose to be defined either by listing the activities the company intends to carry out or by means of a general provision without such a list.

Despite this, companies are still required to submit a detailed list of activities, registration courts continue to review the business activities comprising the company's corporate purpose, and other legislation and administrative practice continue to operate on the assumption that an unregistered unregulated activity is not permitted.

The clearest example of this inconsistency can be found in the Court Register Act³. Article 43(3)(7) provides that an application for registration is well-founded if the corporate purpose is not prohibited by law and is not contrary to public morals, while Article 43(5) expressly provides that the court of registration must review the business activities comprising the corporate purpose even when the corporate purpose is not entered in the main register.

This creates a paradox: The Companies Act treats the registration of unregulated activities as a matter of record, yet the Court Register Act still requires the registration court to review such activities despite the absence of any genuine constitutive legal effect. The result is an unnecessary administrative burden and the continued impression that a company may carry out only those activities that it has expressly specified in advance.

Corporate Purpose as a Matter of Record with Disproportionate Sanctions

As noted above, under the Companies Act, the corporate purpose in relation to unregulated activities should serve merely as a matter of record. Article 34(1) of the Companies Act expressly provides for this, while Article 35(3) further provides that legal transactions entered into by a company with third parties outside the activities comprising its corporate purpose remain valid. Croatian law has thus largely abandoned the logic of the *ultra vires* doctrine, under which a company could legally act only within the scope of its previously specified corporate purpose.

By contrast, the Act on the Prohibition and Prevention of Unregistered Activities (ZZSO) treats this information far more strictly. Article 1(1) of the ZZSO provides that carrying out an unregistered activity is prohibited, while Article 5(1) defines as an unregistered activity a situation in which a legal person carries out an activity that is not entered in the court register or another appropriate register.

The resulting sanctions are not merely theoretical. Article 9 of the ZZSO provides that, where a legal person carries out an activity that is not entered in the court register or another appropriate register, the competent inspector shall issue an oral order prohibiting that activity. The order is enforceable immediately, including by sealing the premises, plant, machinery or other work equipment, or by other appropriate means. The prohibition remains in force until the deficiencies have been remedied and for a minimum of 30 days. An appeal does not stay enforcement.

In addition, Article 10 of the ZZSO provides for monetary penalties. A legal person carrying out an activity not entered in the court register or another appropriate register is liable to a fine of HRK 20,000.00 to HRK 50,000.00 (as stipulated in the original text of the Act, corresponding to approximately EUR 2,654.46 to EUR 6,636.14), while the responsible person within the legal person is liable to a fine of HRK 5,000.00 to HRK 20,000.00 (approximately EUR 663.61 to EUR 2,654.46).

³The Court Register Act (OG Nos 1/95, 57/96, 1/98, 30/99, 45/99, 54/05, 40/07., 91/10, 90/11, 148/13, 93/14, 110/15, 40/19, 34/22, 123/23; "ZSR")

Article 5(2) of the ZZSO provides for an exception under which activities that support a registered activity are not considered unregistered activities, provided that they are carried out on a “smaller scale” or are “customarily carried out” in connection with the registered activity. However, these terms are not sufficiently precise to provide legal certainty. If the proposed reform is implemented, this exception would become unnecessary in relation to unregulated activities.

This is precisely why companies have a rational incentive in practice to register the broadest possible list of activities upon incorporation, not because the list reflects their actual business operations, but as a defensive response to the risk of sanctions. Such a system places an unnecessary burden on both companies and the courts, while at the same time reducing the informational value of the register. A shift towards a general, declaratory description of the company’s area of business would remove this incentive and improve the quality of the information contained in the register.

For regulated activities requiring a permit, consent, license or another act issued by the competent authority, it is justified for the activity to be recorded separately and for carrying it on without the requisite authorization to be subject to sanctions. This is already addressed by Article 34(3) of the Companies Act, while the penalty provision in Article 630(1)(3) of the Companies Act provides for sanctions where an activity is carried on without the consent, permit or other authorization required by law.

For unregulated activities, however, there is no justification for requiring a detailed list of activities and their registration in the court register before the activity may be carried out. Where an activity is permitted, is not prohibited by law or contrary to public morals, and does not require any specific authorization, it should be sufficient for the company to provide a general description of its area of business, without having to catalog every individual activity and without facing the risk of sanctions for carrying on an activity that has not been expressly specified.

NKD as a Statistical Standard That Has Outgrown Its Intended Purpose

The second aspect of the problem concerns the National Classification of Activities (NKD). The Act on the National Classification of Activities⁴ and the Decision on the National Classification of Activities 2025 (NKD 2025)⁵ establish the NKD as a statistical standard. Its purpose is to classify economic activities for the collection, processing, comparison, and publication of statistical data, not to determine the scope of a company’s legal capacity or whether a particular activity may lawfully be carried on. Article 1 of the Act on the National Classification of Activities (ZNK) provides that the National Classification may not be used to determine the rights and obligations of legal or natural persons.

In practice, however, the NKD produces effects that extend beyond its statistical function. Already at the time of incorporation, a founder is required to propose the company’s principal activity under the NKD. Article 35 of the Ordinance on the manner of entry in the court register⁶ provides that the application form must contain, among other things, the company’s corporate purpose. The same Article, in the provisions governing the content of the form, also refers to a “proposal for the principal activity according to the NKD.”

It is important to distinguish between two matters that are often conflated in practice. Under the Ordinance, a company’s corporate purpose may also be stated in general terms, including through a general description of a category of activities, such as the purchase and sale of goods. This means that the corporate purpose itself does not necessarily have to be defined at a highly granular level. NKD classification, however, does not operate at that general level. It requires the selection of a specific primary activity within a classification system structured into sections, divisions, groups,

⁴ the Act on the National Classification of Activities (OG No. 98/94; “**ZNK**”)

⁵ the Decision on the National Classification of Activities 2025 – NKD 2025 (OG No. 47/24; “**Ordinance on the NKD**”)

⁶ the Ordinance on the manner of entry in the court register (OG Nos. 121/19, 2/23, 56/25; “**the Ordinance**”)

classes and subclasses. For NKD purposes, therefore, stating that a company engages in the “purchase and sale of goods” is not equivalent to determining whether the relevant activity is wholesale trade, retail trade, online trade, trade intermediation, or trade in specific categories of products. This degree of precision is required from founders who, in many cases, have not yet commenced business operations.

This is precisely where the practical issue arises. At the time of incorporation, a founder often does not yet know which activity will ultimately become its principal activity. This is particularly common in the case of start-ups, digital business models, holding structures, platform companies, consulting firms, e-commerce businesses, and companies established for future projects whose commercial models are still being developed. The founder is therefore required, before the business has even begun, to select a statistical classification code that is intended only later to reflect the company’s actual business activity.

The same or closely related information must then be submitted again to the Croatian Bureau of Statistics (DZS). Article 9 of the Ordinance on the classification of business entities according to the National Classification of Activities 2025 – NKD 2025 ⁷ requires a separate application for the classification of a business entity under the NKD, to be submitted within 15 days of receipt of the decision on registration in the competent register. A company must therefore first complete the incorporation process and propose its principal activity as part of the registration procedure, and then undergo a separate classification procedure before the DZS. In practice, a newly incorporated company cannot open a business bank account without first being classified by the DZS and obtaining the corresponding certificate. Although this requirement does not arise directly from a statutory provision, but rather from established banking practice and the internal procedures of credit institutions, its practical effect is the same: NKD classification effectively becomes a prerequisite for commencing business operations.

Such a model creates a double administrative burden. The court register receives information on the company’s principal activity under the NKD, while the DZS subsequently conducts its own separate classification procedure. This conflation of the registration and statistical functions creates procedural complexity without enhancing legal certainty.

Data quality presents an additional problem. As noted above, the NKD code selected at the time of incorporation often does not reflect the company’s actual business activities, but merely the founder’s initial assessment. If the business model subsequently changes, the company should update its classification. In practice, however, this is often not done because the process requires additional time and administrative effort. As a result, a system intended to produce high-quality statistical data instead generates formal classifications that no longer reflect the actual state of affairs.

It is particularly problematic where the NKD is used as an eligibility criterion for participation in public tenders, support programs or other procedures for accessing public funding. Where eligibility to participate is linked to a specific NKD code, statistical information effectively acquires legal consequences. A business that genuinely carries on the relevant activity but selected a related or incorrect NKD code at the time of incorporation or classification may be excluded from a market opportunity on the basis of information that was never intended to determine rights and obligations.

The case for reform is further strengthened by the development of fiscalization and mandatory e-invoicing. If, from 2026 and 2027 respectively, the fiscalization and e-invoicing systems collect structured data on issuers, recipients, transactions and related classifications, including the NKD or another activity classification code, the state will have access to operational data of significantly higher quality than the information collected at the time of incorporation. Data contained in an e-invoice are based on an actual transaction, whereas information provided at the time of incorporation is declaratory, based on an advance estimate and often becomes outdated.

The NKD should therefore be returned to its original function as a statistical standard. A company should no longer be required to propose its principal activity in the application for registration in the court register. Instead, classification should be carried out by the Croatian Bureau of Statistics (DZS)

⁷ Ordinance on the classification of business entities according to the National Classification of Activities 2025 – NKD 2025 (OG No. 81/24; “**Ordinance on the NKD**”)

on the basis of available administrative and operational data, including data from the fiscalization system, e-invoices, tax returns, and other relevant sources.

Comparative-Law Approaches to Defining a Company's Corporate Purpose

To identify possible approaches to regulating a company's corporate purpose upon incorporation, approaches adopted in other legal systems have also been considered. A comparative-law analysis helps identify different regulatory models and assesses their advantages and potential shortcomings in relation to the approach proposed for Croatia.

A review of the applicable legislation and legal literature in the Republic of Austria indicates that **Austrian law** clearly distinguishes between a company's line of business (*Geschäftszweig*) and its corporate purpose (*Unternehmensgegenstand*), treating them as distinct legal concepts that perform different functions within the legal system.

The Commercial Register (*Firmenbuch*) is the central, publicly accessible electronic register containing information on Austrian businesses and companies. Its primary purpose is to ensure make key information on legal entities participating in legal and commercial transactions publicly available. The Commercial Register is maintained by the courts having jurisdiction over registration proceedings.

The Commercial Register includes Austrian corporations, namely limited liability companies (*Gesellschaft mit beschränkter Haftung, GmbH*), stock corporations (*Aktiengesellschaft, AG*) and flexible capital companies (*Flexible Kapitalgesellschaft, FlexKapG*), as well as partnerships (*Offene Gesellschaft, OG*) and limited partnerships (*Kommanditgesellschaft, KG*), and cooperatives. Foreign legal entities are also subject to registration under certain conditions where they establish a branch in the Republic of Austria.

Pursuant to Section 3(1)(5) of the Austrian Commercial Register Act⁸, all entities subject to registration must enter a brief description of their line of business, as stated by the entity itself (*kurze Bezeichnung des Geschäftszweigs nach eigener Angabe*). Austrian law, therefore, does not require the Commercial Register to contain a detailed description of every activity that a company may carry out. Instead, only a brief indication of its line of business or general area of business is recorded.

By contrast, the company's corporate purpose (*Unternehmensgegenstand*) forms part of its internal corporate framework and is defined in its constitutive document or articles of association. Pursuant to Section 4(1)(1) of the Austrian Limited Liability Companies Act⁹, the articles of association must contain provisions on the company name and registered office, its corporate purpose, the amount of its share capital and the amount of the shareholders' capital contributions.

Austrian legal literature emphasizes the importance of appropriately defining the company's corporate purpose. Its wording must be sufficiently specific to clearly identify the company's area of activity, while also being broad enough not to unduly restrict the future development of its business. Austrian practice, therefore, favors a combination of a core area of activity (*Kernbereich*) and related ancillary or supporting activities (*Neben- bzw. Hilfstätigkeiten*). For example, a corporate purpose may be formulated as follows: "The corporate purpose comprises the development and management of real estate projects, all related activities, and the trade in goods of all kinds."

The corporate purpose, therefore, defines the field of activity through which the company pursues its economic purpose. The relationship between the company's line of business and its corporate

⁸ The Commercial Register Act (*Firmenbuchgesetz, FBG*; Austrian Federal Law Gazette (BGBl.) No. 10/1991, as last amended by Austrian Federal Law Gazette, Part I (BGBl. I) No. 179/2023; the "**Austrian Commercial Register Act**").

⁹ Limited Liability Companies Act (*GmbH-Gesetz, GmbHG*; Imperial Law Gazette (RGBl.) No. 58/1906, as last amended by Austrian Federal Law Gazette (BGBl.) No. 10/1991; the "**Austrian Limited Liability Companies Act**").

purpose can be understood as a relationship between ends and means: the corporate purpose defines the framework of activities (the “means”) through which the company pursues its broader business purpose (the “end”). Unlike the corporate purpose, the company’s line of business does not have to be expressly set out in the articles of association.

A distinctive feature of the Austrian framework is that the corporate purpose has not been transformed into a detailed item of information in the public register. Instead, it remains part of the company’s foundational corporate document, while the brief description of its line of business entered in the Commercial Register provides participants in legal and commercial transactions with the relevant basic information about the company. This strikes a balance between the requirements of transparency and legal certainty, on the one hand, and the need for business flexibility, on the other. A company must define the general scope of its activities through its corporate purpose in its constitutive instrument, but it is not required to set out in advance in the public Commercial Register an exhaustive catalog of every individual activity it may carry out in the future.

The Austrian model therefore demonstrates that the purpose of the Commercial Register is not to record a comprehensive list of all activities that a company may carry out, but to provide essential information relevant to legal transactions. The information entered in the Commercial Register is limited to a brief description of the company’s line or general area of business, based on the company’s own declaration, while its corporate purpose is defined in greater detail in its constitutive document. However, as noted above, even the constitutive document is not required to contain an exhaustive description of every individual activity. Within the limits of applicable law, this affords companies a degree of discretion, autonomy, and entrepreneurial freedom in determining the scope of the business activities without compromising legal certainty.

Proposed Reform

The reform should be implemented through coordinated amendments to the Companies Act (ZTD), the Court Register Act (ZSR), the Act on the Prohibition and Prevention of Unregistered Activities (ZZSO), and the secondary legislation governing the court register and NKD classification. The purpose of the reform is not merely to reduce the administrative burden, but also to establish clearly that the court register is not an instrument for the ex ante scrutiny of business models.

1) General Description of Unregulated Activities

The general principle laid down in Article 32 of the Companies Act, under which a company may carry out any activity permitted by law, should be retained. At the same time, Article 34 should be amended to abolish, in respect of unregulated activities, the requirement to submit a detailed list of individual activities. Instead, the company’s corporate purpose should be capable of being defined by means of a general, declaratory statement describing its area of business, for example by referring to areas such as trade, consulting or management. For regulated activities, a separate entry in the main register would continue to be required, subject to prior consent, a license or another appropriate authorization.

- **Recommendation:**

Allow the corporate purpose in respect of unregulated activities to be defined by means of a general, declaratory statement, without requiring a detailed list of each individual activity, while retaining the specific registration regime applicable to regulated activities.

2) Abolition of the Requirement to Submit a List of Unregulated Activities

Article 394 of the Companies Act should be aligned with the proposed declaratory approach. The application for registration of a limited liability company already requires regulated activities referred to in Article 34(3) of the Companies Act to be specified separately. However, paragraph 7 of the same Article still requires the submission of the decision determining the company’s corporate purpose and a list of activities. This provision should be amended so that a list of individual activities

is required only where the company seeks registration of a regulated activity or where specific legislation expressly requires registration subject to prior authorization.

- **Recommendation:**

Abolish the requirement to submit a list of unregulated activities upon incorporation, while retaining the requirement to specify individual activities only where carrying them out is subject to prior consent, a license or another act of the competent authority.

3) Limit the Scope of Review by the Court of Registration

Article 43(5) of the Court Register Act should be repealed or substantially narrowed. The court of registration should not review activities that are not entered in the main register and that are not subject to prior regulatory authorization. The court would continue to review all legally relevant requirements for incorporation, including the company name, registered office, legal form, share capital, powers of representation, legal impediments to incorporation and regulated activities. This would not weaken safeguards against abuse, since those safeguards are unrelated to the review of a general list of unregulated activities.

- **Recommendation:**

Limit the registration court's review to the legally relevant requirements for company incorporation and to regulated activities, without reviewing individual unregulated activities that are not entered in the main register.

4) Sanctions Only for Genuinely Unregistered Activities

The ZZSO should be amended so that a legal person's carrying out of a permitted activity that is not individually specified in the court register is not deemed to constitute an unregistered activity. Only an activity for which registration, a permit, consent, license or another act of the competent authority is required by law, where that requirement has not been met, should be regarded as an unregistered activity. This would restore the ZZSO to its legitimate purpose: combating genuinely unlawful or concealed business activities rather than sanctioning companies for carrying on permitted, unregulated activities.

- **Recommendation:**

Exclude permitted unregulated activities from the sanctions regime under the ZZSO and limit prohibitions and penalties to activities carried out without the registration, permit, consent, license or other authorization required by law.

5) Remove NKD Classification from the Company Incorporation Procedure

The Ordinance on the manner of entry in the court register should be amended to remove the proposed principal activity under the NKD from the application for registration. Alternatively, this information should be clearly designated as being provided solely for statistical purposes, should not be subject to review by the court of registration, and should have no legal consequences for whether an activity may lawfully be carried out. If the Croatian Bureau of Statistics (DZS) requires initial information on a company's activities, such information should be collected as part of the statistical classification procedure or obtained from interoperable administrative data sources, rather than through the court register as a prerequisite for incorporation.

- **Recommendation:**

Remove the proposed principal activity under the NKD from the application for registration in the court register or clearly designate it as information provided solely for statistical purposes, not subject to review in the registration procedure and having no bearing on whether an activity may lawfully be carried out.

6) Classification Based on Actual Business Activities

The Ordinance on the classification of business entities should be aligned with the development of digital and operational data sources. The Croatian Bureau of Statistics (DZS) should be able to determine, verify, and update NKD classifications on the basis of a company's actual business activities, using data from the fiscalization system, e-invoices, tax returns, and other available administrative sources. This would improve the quality of statistical data and reduce reliance on the founder's initial assessment, which often does not reflect the subsequent development of the company's business activities.

- **Recommendation:**

Enable the Croatian Bureau of Statistics (DZS) to determine and regularly update NKD classifications on the basis of data reflecting a company's actual business activities, including data from the fiscalization system, e-invoices, tax returns, and other interoperable administrative data sources.

Expected Effects of the Reform

The proposed reform would have several direct positive effects. Company incorporation would become simpler and faster. Registration courts would no longer be required to review detailed lists of activities that have no constitutive legal effect, and procedures for amending business activities would be limited to cases involving a complete change in the company's area of business or the registration of a regulated activity. Companies would no longer have an incentive to register lengthy lists of activities merely to protect themselves against the risk of regulatory enforcement, while the court register would become clearer and more transparent by containing only legally relevant information.

At the same time, the quality of statistical data could improve. Instead of relying on information provided at the time of incorporation, the Croatian Bureau of Statistics (DZS) could base classifications on actual business activities and transactional data. This is particularly important in an economy in which business models evolve rapidly and a company established to carry on one activity may very quickly develop another, complementary or entirely new principal activity.

The reform would not weaken the protection of the public interest. Regulated activities would remain subject to the applicable regulatory requirements. A company wishing to carry on an activity for which a license or other authorization is required would still have to obtain that authorization before commencing the activity, and the activity would continue to be entered in the main register. Inspection authorities would likewise retain the power to prohibit an activity carried out without the required authorization. What would be eliminated is the requirement to provide an exhaustive list of every individual unregulated activity, together with the possibility of sanctioning companies for carrying on a permitted activity solely because it is not expressly specified in their corporate purpose.



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