

ROADMAP

Title of the initiative: **The interconnection of business registers – amendments to the First and Eleventh Company law Directives**

Lead DG: DG MARKT

Expected date of adoption of the initiative (month/year): January 2011

Date of modification:

Version No:

Initial IA screening & planning of further work

A. Context and problem definition

What is the political context of the initiative? How does this initiative relate to past and possible future initiatives, and to other EU policies?

The current financial crisis again highlighted the importance of transparency in the markets. In the context of the measures for financial recovery¹, improving access to up-to-date and official information on companies can be seen as a means to restore confidence in the markets all over Europe.

In November 2009, the Commission adopted a Green Paper² and a Progress Report³ on the interconnection of business registers. The Green Paper formed the basis of a public consultation that ended on 31 January 2010.

Directive 2009/101/EC⁴ contains EU rules on business registers and business registration. Directive 2005/56/EC on cross-border mergers, regulations 2001/2157 and 2003/1435 on the European Company (SE) and the European Cooperative Society (SCE) require the cooperation of business registers in different Member States. Directive 89/666/EEC on the registration of foreign branches requires companies to add and update information on the company in the business register of the foreign branch.

Facilitating cross-border access to company information for citizens and businesses is also in line with the objectives of the e-Justice initiative.

The High Level Group of Independent Stakeholders on Administrative Burdens identified facilitating cross-border access by electronic means to business information as a means of facilitating cross-border economic activities. Citing possible savings of €161m regarding certain information obligations stemming from the Eleventh Company law Directive (89/666/EEC), the experts were fully in support of achieving interoperability between trade registers throughout Europe⁵.

What are the main problems identified?

Cross-border access to information:

Businesses increasingly expand beyond national borders using the opportunities offered by the Single Market and thus there is an increasing demand for access to information on companies in a

¹ Commission Communication for the 2009 Spring European Council, "Driving European recovery" - COM(2009) 114.

² COM(2009) 614 final

³ SEC(2009) 1492

⁴ Directive 2009/109 is the codified version of the First Company law Directive (Directive 68/151/EEC).

⁵ Opinion of the High Level Group of Independent Stakeholders on Administrative Burdens ("Stoiber Group") on the priority area company law / annual accounts, 10 July 2008, § 22,

cross-border context, either for commercial purposes or to facilitate access to justice. However, official information on companies is not always easily available across borders. Even if the registers are available online, stakeholders have to deal with different languages, search conditions, structures. There is already a voluntary network of 24 European business registers, however only 18 Member States (and six other European jurisdictions) take part in it. Furthermore, the quality of the provided data is not even, i.e. the information transmitted by the business registers to the network is not always standardised, updated and sufficiently reliable.

Cross-border cooperation between business registers:

Operations such as cross-border mergers or seat transfers and the establishment of branches in other Member States have made the day-to-day cooperation of national, regional or local authorities and/or business registries a necessity. However, there are no established channels of communication that could accelerate procedures, help overcome the language problems and enhance legal certainty. In the case of the registration of foreign branches, there is no legal obligation on the business registers to cooperate with each other. This leads to problems for third parties where for that reason changes regarding the company (e.g. names of legal representatives or winding-up and insolvency) are not reflected in the register of the branch.

Is EU action justified on grounds of subsidiarity?

Yes. The objectives of the initiative are to facilitate cross-border access to reliable business information and to establish channels of cross-border communication between business registers in different Member States. In order to achieve these objectives, EU action is necessary. Action by individual countries would be insufficient to achieve the objectives. By reason of its scale and effect, it can be better achieved at EU level.

B. Objectives of EU initiative

What are the main policy objectives?

Facilitating cross-border access to registered business information has the objective of increasing transparency in the markets and consequently making it easier for consumers, citizens, creditors, suppliers or other business partners to access reliable information about companies, regardless of their country of registration.

Facilitating communication between business registers in cross-border procedures, such as mergers, seat transfers or foreign branch registration has the objectives of accelerating procedures and increasing legal certainty.

Does the objective imply developing EU policy in new areas or of strategic importance?

No.

C. Options

What are the policy options? What legislative or 'soft law' instruments could be considered? Would any legislative initiatives go beyond routine up-date of existing legislation?

Policy options for cross-border access to information:

1. No action. In this case the Commission would not present any initiative.
2. Lay down a requirement for Member States to participate in a network of business registers providing for a unique entry portal to business information and allow the participants to determine the details of such cooperation.
3. In addition to a requirement for Member States to participate in a network, the details of the cooperation would also be determined by law.

Policy options for cross-border cooperation between business registers:

1. No action. In this case the Commission would not present any initiative.
2. Recommend best practices how business registers can cooperate most efficiently with each other in cross-border procedures.
3. Lay down additional legal requirements on the cooperation between business registers in terms of scope (11th Company law Directive, branches).
4. Lay down additional legal requirements on the cooperation between business registers not only in terms of scope, but also methods/channels to use.

The legislative or soft law instruments that could be considered are the following:

1. Recommendation. This would allow Member States to decide if and to what extent they implement the proposed EU rules.
2. Directive. Member States could choose the means for achieving the objectives set by EU law.
3. Regulation. The EU rules would be directly applicable in the Member States.

Since there are already European rules on business registers in Directive 2009/101/EC and on foreign branches in Directive 89/666/EEC, the update of the existing legislation seems the best way to achieve the objectives.

Does the action proposed in the options cut across several policy areas or impact on action taken/planned by other Commission departments?

The initiative is complimentary to the e-Justice project of DG JLS which inter alia aims at facilitating access to information and to justice for citizens. A network of business registers where reliable information is available in as many languages as possible would be an important contribution to this initiative.

There may be ways to contribute to the improvement of the network of business registers by making use of the ISA programme. This issue will be examined in cooperation with DG DIGIT.

Do the options respect the proportionality principle?

Yes. This question will be explored further in the impact assessment.

D. Initial assessment of impacts

What are the significant impacts likely to result from each policy option (cf. list of impacts in the impact assessment guidelines), even if these impacts would materialise only after subsequent Commission initiatives?

Cross-border access to information:

1. No action. In this case the current voluntary cooperation would continue. Looking at the development in the past it can be expected that it would evolve slowly and it is unlikely to be able to overcome the problems related to the uneven quality of data in the different Member States. Without the participation of all 27 Member States, the cooperation would continue to have limited value.
2. Lay down a requirement for Member States to participate in a network of business registers providing for a unique entry portal to business information and allow the participants to determine the details of the cooperation. A light-touch regulation would respect the specificities of national business registers and allow Member States to form the network in the most pragmatic and flexible way. The quality of the transmitted data could be improved across the EU. Citizens will have better access to company information and will thus be enabled to make more informed choices.
3. In addition to a requirement for Member States to participate in a network, the details of the cooperation would be determined by law. The terms and conditions of the cooperation would be less flexible; any change would require an amendment to the relevant piece of legislation. The quality of the transmitted data could be improved across the EU. Citizens will have better access to

company information and will thus be enabled to make more informed choices.

Cross-border cooperation between business registers:

1. No action. Informal cooperation would continue between the business registers. In the case of the registration of foreign branches there would continue to be no obligation for business registers to cooperate.
2. Recommend best practices how business registers can cooperate most efficiently with each other in cross-border procedures. Through an informal exchange and peer pressure a better cooperation could be achieved. The past experience shows, however, that progress can be slow and that some Member States may be reluctant to achieve results on a voluntary basis only.
3. Lay down additional legal requirements on the cooperation between business registers in terms of scope (11th Company law Directive, branches). There would be a requirement for business registers to cooperate on a continuous basis in the case of the registration of foreign branches. A standardised way for the communication between business registers in cross-border procedures could be established.
4. Lay down additional legal requirements on the cooperation between business registers not only in terms of scope, but also methods/channels to use. There would be a requirement for business registers to cooperate on a continuous basis in the case of the registration of foreign branches. A standardised way for the communication between business registers in cross-border procedures would be decided and enforced. There would be a high degree of legal certainty.

Could the options have impacts on the EU-Budget (above 5 Mio €) and/or should the IA also serve as the ex-ante evaluation, required by the Financial Regulation?

The initiative won't create any new obligations for the EU budget. For certain building blocks, there may be some contribution from the ISA programme (DG DIGIT).

Could the options have significant impacts on simplification/administrative burden or on relations with third countries?

Administrative burden reduction: Yes, the High Level Group of Independent Stakeholders on Administrative Burdens identified facilitating cross-border access by electronic means to business information as a means of facilitating cross-border economic activities. Citing possible savings of €161m regarding certain information obligations stemming from the Eleventh Company law Directive (89/666/EEC), the experts were fully in support of achieving interoperability between trade registers throughout Europe. Action in that field would therefore be in line with the Commission's simplification agenda.

Relations with third countries: Yes, if the policy option of building on the existing network is chosen. Currently six European jurisdictions take part in the cooperation which are not members of the EU.

Who is affected?

The business registers of the Member States, companies, public authorities and citizens are affected, also in their capacity as consumers, creditors, suppliers, business partners, investors, etc.

E. Planning of further impact assessment work

What information and data is already available? What further information needs to be gathered? How will this be done (e.g. internally or by an external contractor) and by when? What type and level of analysis will be carried out (cf. principle of proportionate analysis)?

The current state of the network of business registers (including the costs of joining and running the services of the European Business Register), the IMI and the e-Justice portal were described in the Progress Report accompanying the Commission's Green Paper on the interconnection of business registers.

Data will need to be gathered on the costs of accessing business information in the Member States and through the European Business Register, on the population of the concerned businesses and on the current traffic on the network. Information will need to be gathered on the laws of the Member States regulating the quality and legal value of registered/disclosed business information. The research will be done internally.

Which stakeholders & experts have been/will be consulted, how and at what stage?

Based on the Green Paper of the Commission, a public consultation was conducted between 5 November 2009 and 31 January 2010 which showed broad support for the initiatives.

Experts from business registers and the company law experts of the Member States were consulted several times at the meetings of the Commission's Company Law Expert Group. Consultations in this forum will continue.