



EUROPEAN COMMISSION

Internal Market and Services DG

FREE MOVEMENT OF CAPITAL, COMPANY LAW AND CORPORATE GOVERNANCE

**SYNTHESIS OF THE COMMENTS ON THE GREEN PAPER OF
THE EUROPEAN COMMISSION**

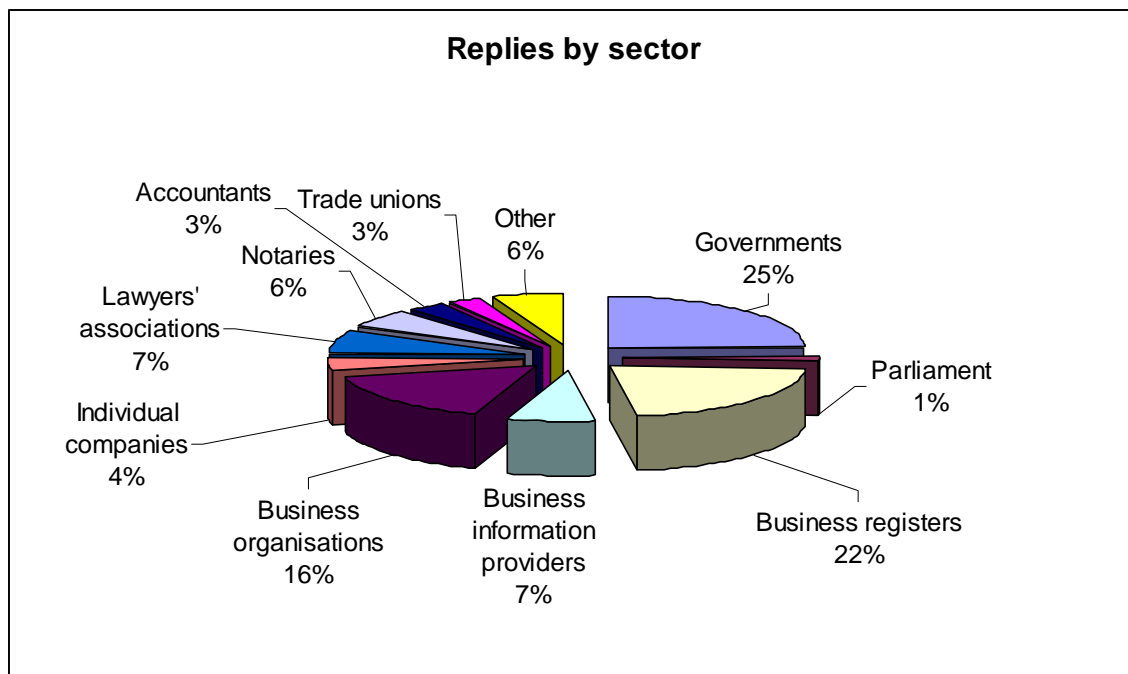
ON

THE INTERCONNECTION OF BUSINESS REGISTERS

APRIL 2010

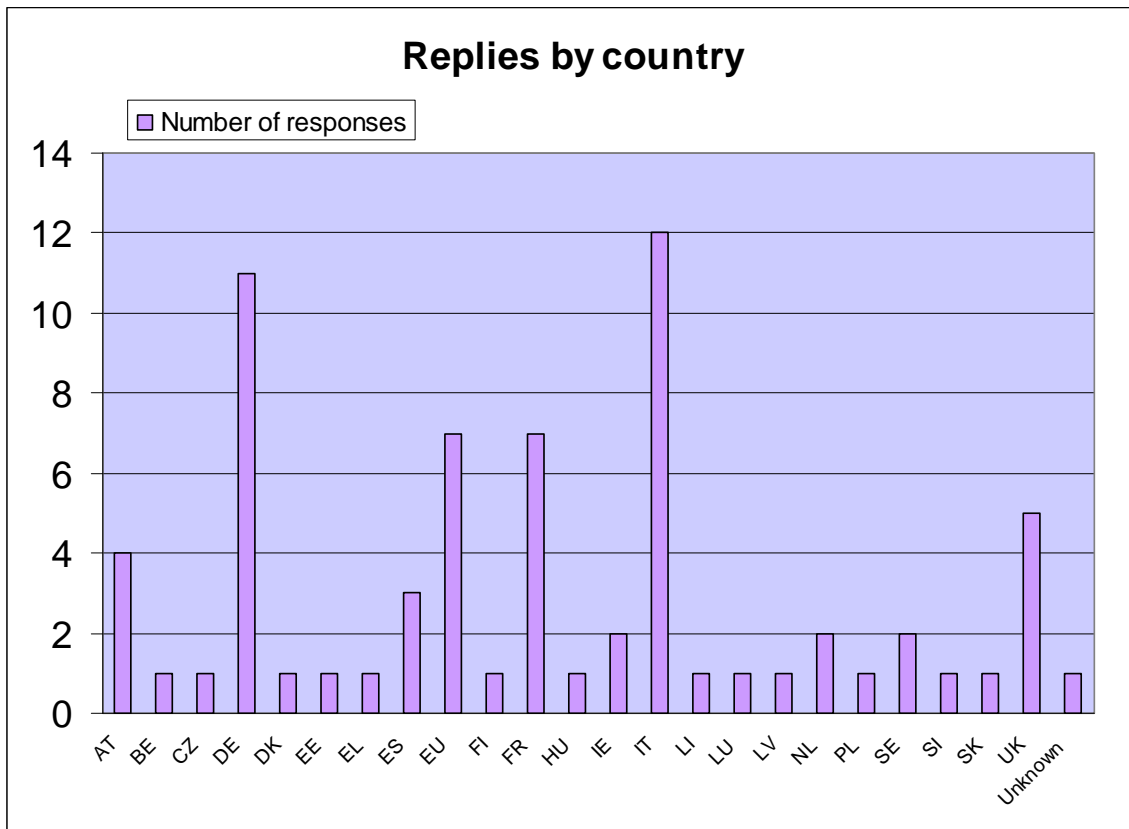
On 4 November 2009 the European Commission adopted a Green Paper¹ and launched a public consultation in order to assess the need for an improved cooperation between the business registers of the Member States of the EU. Business registers register, examine and store company information, such as information on a company's legal form, its seat, capital and legal representatives, and they make this information available to the public. Accordingly, they have a key role in ensuring transparency across the markets and thus restoring trust following the financial crisis.

Despite the technical nature of the Green Paper, DG Internal Market and Services received 69 responses to the consultation that ended on 31 January 2010. Seventeen Member State governments commented on the considerations set out in the Green Paper and approximately the same number of replies arrived from business registers and business organisations or companies. Other respondents to the consultation include professional advisors (e.g. lawyers, notaries and accountants) and trade unions. It should be noted that a significant number of the contributions from business registries were standard answers and thus identical or quasi identical.



The contributions originated from 22 countries, including 21 Member States. A number of contributions were submitted by European bodies and associations.

¹ COM(2009)614final, http://ec.europa.eu/internal_market/company/business_registers/index_en.htm



DG Internal Market and Services would like to thank the respondents for their contributions.

This report summarises the results of the consultation. The report does not provide detailed statistical data but rather seeks to give a qualitative presentation of the contributions received. It does not give any indication of potential initiatives, if any, which the Commission may undertake in the future in this area.

EXECUTIVE SUMMARY

Access to information – network of business registers

Nearly all respondents to the consultation expressed their support for the improvement of the interconnection of business registers in the EU. There was a broad agreement that such a network only has real added value with respect to market transparency if it links the business registers of all 27 Member States. Many respondents pointed out that subject to a cost-benefit analysis in an impact assessment, a legal requirement for the participation of all Member States could also be envisaged.

There was less interest in taking a position on the technical details of the cooperation. The vast majority of those who expressed a view considered, however, that a governance agreement was a good solution to determine the terms and conditions of the cooperation.

There was also some support for the connection of the network of business registers to the electronic network set up under the Transparency Directive storing regulated information on listed companies. This could, however, only be envisaged in the longer term.

Cooperation of business registries in cross-border procedures

As regards improving the communication between business registers in cross-border procedures, two thirds of those who took a stand considered that it is more reasonable to build on the results of the BRITE project as it was developed specifically for the needs of business registers and makes automated data transmission possible. Most of the remaining replies supported the combined use of the BRITE project and the Internal Market Information System (IMI) in cross-border merger and seat transfer procedures.

As regards the disclosure of foreign branches, nearly all of those who replied recognised the need for an automated notification system between the register of the company and the register of its foreign branch. Many respondents argued in favour of the creation of a firm legal basis for the data exchange.

Comments on data quality

An important proportion of the respondents expressed their concerns over the uneven quality of data in the business registers of the Member States. They insisted that the interconnection of business registers would only have real added value if all the information, regardless of its country of origin, transmitted through the network were updated, reliable, standardised and available in the relevant language across the Member States. A significant number of stakeholders asked for standards to be set at European level.

1. GENERAL REMARKS

With a few exceptions, **respondents welcomed the Commission's initiative** and the approach taken in the Green Paper. Most contributions recognised that the issue at stake, due to its cross-border nature, requires a pan-European solution. Nonetheless, a number of respondents stressed that thorough impact assessments should be established in order to support any legislative proposal and that the initiative should not put additional burden on businesses. A few respondents considered the provision of business information as a commercial activity and protested against the intervention of the EU or the Member States in this area. Two respondents considered informal cooperation sufficient.²

The **uneven quality of data** in the business registers of the 27 Member States seems to create serious problems for the users of business information (in particular, businesses and professional advisors) and business registers. These respondents insisted that the interconnection of business registers would only have real added value if all the information, regardless of its country of origin, transmitted through the network were updated, reliable, standardised and available in the relevant language across the Member States. A significant number of stakeholders asked for standards to be set at European level. Moreover, a few respondents considered that information on the legal value of the registered data in the Member State of registration should be made available.³

2. ACCESS TO INFORMATION – THE NETWORK OF BUSINESS REGISTERS

Interested parties are invited to give their views on

- **whether an improved network of the business registers of the Member States is necessary,**
- **whether the details of such a cooperation could be determined by a "governance agreement" between the representatives of the Member States and the business registries,**
- **whether they see any added value in connecting, in the long term, the network of business registers to the electronic network set up under the Transparency Directive storing regulated information on listed companies.**

2.1 The fact that the existing **network of business registers** covers only 18 Member States and six other European jurisdictions was identified by the Green Paper as the most important factor reducing the value of the accessible business information. The vast majority of Member States and stakeholders shared this assessment and argued in favour of requiring all Member States to participate in the cooperation of business registers. A number of answers pointed out that the participation of the 27 Member States could be

² Those respondents who disagreed with the improvement of the network of business registers were also against the specific proposals of the Green Paper. Their remarks will not be repeated at each point.

³ See also section 4.1.

best achieved by an amendment to the First Company Law Directive,⁴ subject to a cost-benefit analysis in a prior impact assessment. Such an initiative could increase transparency in the markets and reduce administrative burden on companies. On the other hand, a few replies were in favour of continuing the current voluntary cooperation either because they found it satisfactory or because they were concerned about the costs of the extension of the network or they considered the provision of cross-border business information a purely commercial activity.

Many respondents underlined the importance of a single access point to the network of registers. According to some, the future e-Justice portal could become the gate to the relevant services. More generally, a number of replies pointed out that any future solution should be linked to or be compatible with the e-Justice initiative. A few respondents emphasised the need for a single user identification and a uniform billing system.

Approximately a quarter of the respondents pointed out that the information transmitted through the network of business registers can only be trusted if all European companies have a unique company identifier. Most of these respondents argued in favour of using the REID (Registered Entity Identifier) developed by the European Business Register (EBR).⁵

A dozen replies or so stressed the potential added value of a centralised register of business registers that would help the identification of the competent register and indicate the location of the relevant business information.

Many answers underlined the importance of offering a user-friendly solution. Accordingly, these voices stressed that business information should be made available in as many languages as possible. A couple of respondents argued in favour of limiting the number of languages, e.g. to English, French and German.

Finally, some respondents highlighted the need to keep the network open to third countries and reminded of the importance of the protection of personal data.

2.2 While all respondents took a stand on the need for an improved network of business registers, 70 percent replied to the question on the possible practical arrangements of the interconnection. While the Green Paper considered that building on the results already achieved by EBR was reasonable, improving its efficiency by regulatory means was difficult because of the dominantly private nature of the cooperation. Consequently, the details of the cooperation could be determined in a **governance agreement** between the Member States and/or their registries.

The vast majority of those who responded to this question consider the governance agreement to be a good solution to lay down the technical details of the cooperation between registers. However some respondents emphasised that the governance

⁴ Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent (*OJ L 258, 1.10.2009, p. 11–19*)

⁵ <http://www.ebr.org>

agreement cannot replace essential legislation and there were two Member States who judged the contractual solution too soft and suggested considering a legislative solution.

Only a very few responses questioned the idea of building on the results of EBR, however the existing network was criticised for the lack of uniform datasets and the non-satisfactory level of services. A number of replies from governments and business registries stressed the need for a solution that does not require membership in the EBR EEIG.

2.3 Only about half of the respondents took a position on the **connection of the network of business registers to the electronic network set up under the Transparency Directive** storing regulated information on listed companies. 80 percent of those who replied were in favour of the connection of the two networks pointing out that linking legal and financial information would increase transparency in the markets. However a third of the replies underlined that the interconnection of business registers should enjoy priority. A number of respondents reminded of the technical difficulties of the interconnection of the two types of databases and some expressed a view that only integration of the networks would have real added value. Those who considered this option unnecessary pointed out that while financial information is addressed to investors, legal information is mainly addressed to other stakeholders. Connecting or integrating the networks would therefore not bring any added value. One critic even explained that this combination of networks could lead to an information overload for the user and as a consequence to less transparency.

3. COOPERATION OF BUSINESS REGISTERS IN CROSS-BORDER MERGERS, SEAT TRANSFERS AND FOREIGN BRANCH REGISTRATION

Interested parties are invited to give their views on

- which solution or a combination of those solutions they favour to facilitate communication between business registers in the cases of cross-border mergers and seat transfers,**
- whether they support the proposed solution on the disclosure of branches.**

3.1 The second major objective of the Green Paper was to explore ways to establish standard channels of **communication between business registries** in different Member States in order to facilitate cross-border procedures such as mergers or seat transfers. The Green Paper outlined three options: The first one would build on the results of the BRITE project (Business Operability Throughout Europe)⁶; the second one would use the Internal Market Information System (IMI)⁷ and the third one would combine the two solutions.

Four fifths of the respondents took a stand on this question and two thirds of those who replied were in favour of building on the results of the BRITE project. They argued that

⁶ <http://www.briteproject.eu>

⁷ http://ec.europa.eu/internal_market/imi-net/index_en.html

IMI is a passive query system while BRITE makes automated data exchange possible. BRITE has also been developed specifically for the purposes of business registers. Some respondents also stressed the investments already poured into the development of BRITE. An additional 20 percent of the replies argued in favour of the combined use of BRITE and IMI, at least as a temporary solution. Those few who favoured the use of IMI alone stressed the lower implementation cost and underlined that the system was already used which was an asset in terms of acceptance. A couple of respondents did not find any of the options acceptable or necessary. In their view, establishing a centralised register of business registers is sufficient.

3.2 As regards the **disclosure of branches** of foreign companies, three quarters of the respondents gave an answer. Nearly all of them recognised the need for an automated notification system between the register of the company and the register of its foreign branch and more than a third of the replies pointed out the need for the creation of a firm legal basis for the data exchange in the Eleventh Company Law Directive.⁸ A couple of replies supported the initiative but were not in favour of amending the relevant Directive. A few respondents explicitly promoted the so-called Branch Disclosure Service that has been developed in the context of the BRITE project and is already in use in some Member States.

4. ADDITIONAL SUGGESTIONS

4.1 As it was underlined in section 1, a recurring comment was related to the uneven quality of data in the business registers of the 27 Member States. A few respondents suggested that a **minimum set of data** should be harmonised at European level that must be made available across the EU through the network of registers. A number of respondents emphasised that the use of XBRL would facilitate standardisation and increase the comparability of data.

The not sufficiently frequent **updates** of the content of the business registers have also been identified as a problem by several replies.

One key component of the quality of the transmitted data is the information on its **legal value**. As one respondent pointed out, in some countries, the register simply states the content of the registered data, whereas in other Member States the information provided by a register has a "public" character and rebuttable or even non-rebuttable presumptions are attached to it ("public trust"). Information on this matter should be made available to the users of registered business information. At the same time, there should be legal certainty as regards the law applicable to the transmitted information. It was also proposed to adopt European rules on the legal value of registered business information.

4.2 A couple of respondents argued in favour of a **central European business register**, either for all companies or only for European legal forms⁹, as it would be the best

⁸ Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State (*OJ L 395, 30.12.1989, p. 36–39*)

⁹ European Company (SE), European Cooperative Society (SCE), European Economic Interest Grouping (EEIG)

solution to provide standardised, reliable, easily accessible business information. A similarly low number of responses took a clear stand against a centralised European register.

Some suggested developing a **central database for disqualified directors**.

4.3 Approximately a quarter of the respondents put forward proposals to introduce a "**European business certificate**", i.e. an extract from the business registers standardised at European level. They argue that such a measure would increase transparency and constitute important simplification for businesses.

4.4 A few respondents asked for an even more ambitious approach with respect to the review of the Eleventh Company law Directive on the registration of foreign branches. They argued in favour of new rules allowing for the **registration of a foreign branch in the register of its "parent company"**. Consequently, no further registration would be necessary in the jurisdiction where the branch is located.

4.5 Some comments asked for **free access to registered business information** all over the EU while others argued in favour of ensuring free access for public authorities to the registered data.

4.6 There were some suggestions that were not strictly related to the interconnection of business registers but belonged to the broader area of simplification and administrative burden reduction. In particular they asked for the **reduction of filing requirements** for businesses.

4.7 Finally, some suggested developing a **Europe-wide policy on company names**.

5. NEXT STEPS

The European Commission will prepare evidence on the advantages and disadvantages of the possible policy options by assessing their potential impacts. The results of this process will be summarised and presented in an impact assessment report, which will be made public.