

CONSULTATION ON THE CROSS-BORDER TRANSFERS OF REGISTERED OFFICES OF COMPANIES - Consultation by DG MARKET

Introduction

Preliminary Remark: The following document has been drafted by the Services of the Internal Market Directorate General in order to assess the need for a legislative instrument concerning the cross-border transfer of seats of companies. It does not reflect the views of the European Commission and will not prejudice its future decisions, if any, on further measures concerning the transfer of seats.

In its [2012 Action Plan on European company law and corporate governance](#), the Commission announced further investigation of the need for and feasibility of a directive on the cross-border transfers of registered offices.

This issue was already addressed in a more general public consultation on the priorities for the Action Plan carried out from February to May 2012. The majority of respondents were in favour of the legislative instrument regulating the question of the cross-border transfer of registered offices. The [results of the consultation are available on European Commission's web-site](#).

In addition, the European Parliament in its resolution from February 2012 ([Rapport Regner](#)) called on the Commission to propose legislation.

Substantive work was also already carried out on this issue in the past. For instance, the Commission published an impact assessment for a Directive on the cross-border transfer of registered offices in December 2007, presenting the advantages and disadvantages of possible policy actions, including an evaluation of the consequences of not undertaking any regulatory action in this field. Finally, the work on this initiative was not continued as it was considered that the development of the ECJ case-law together with the cross-border merger directive should provide sufficient basis for the cross-border transfer of registered offices of companies. There were also [two reports of the High Expert Groups in 2002 and 2011](#) which dealt with the issue.

Due to the complexity of the issues involved the Commission has not taken any decision yet as to the need for and feasibility of the legislative instrument on the cross-border transfer of registered offices. In addition to the views already collected during the recent public consultation, the Commission needs to further analyse, in particular whether the costs of such legislation would not outweigh its benefits. Before taking its final decision, it will need to be clear to the Commission that a possible future initiative would bring a real added value to European companies, taking into account existing legislation and the developments of the ECJ case-law.

The purpose of the consultation is to get more in-depth information on the costs currently faced by companies transferring their registered offices abroad and on the range of benefits that could be brought by the EU action on the cross-border transfer of them. The responses will be taken into account in assessing the need for and impact of a possible new instrument.

The questionnaire contains questions about the need for a legislative instrument at EU level, together with questions about its possible content and barriers that currently exist for companies that want to transfer their registered offices across borders.

Responses to this consultation should be concise, focused specifically on the questions raised and sent **no later than 16/04/2013**. The answers to the questionnaire (to be found below) should be given on-line or sent to DG Internal Market and Services, Unit F2, European Commission, B-1049 Brussels by e-mail to: markt-consultation-ts@ec.europa.eu

[See specific privacy statement](#).

Questions marked with an asterisk * require an answer to be given.

Please fill in the following questionnaire:

What kind of entity are you? *

- A company
- A business organisation, a trade union, a university, an individual, etc. (i.e. any kind of entity or person other than a company)

I. Information about your company/organisation

1. Size of the company/organisation and number of employees: *

- micro (0-9)
- small (10-49)
- medium-sized (50-249)
- big (more than 250)

2. Legal form

*

- sole trader
- private limited company
- public limited company
- European Company (SE)
- other (unlimited company, partnership, etc)

3. Field of activity *

- goods
- services
- other



3.1. - Please specify your sector of activity (maximum 500 characters)

4. Country of your current registered office ? *

- | | | |
|--------------------------------------|------------------------------------|--------------------------------------|
| <input type="radio"/> Austria | <input type="radio"/> Hungary | <input type="radio"/> Poland |
| <input type="radio"/> Belgium | <input type="radio"/> Iceland | <input type="radio"/> Portugal |
| <input type="radio"/> Bulgaria | <input type="radio"/> Ireland | <input type="radio"/> Romania |
| <input type="radio"/> Cyprus | <input type="radio"/> Italy | <input type="radio"/> Slovakia |
| <input type="radio"/> Czech Republic | <input type="radio"/> Latvia | <input type="radio"/> Slovenia |
| <input type="radio"/> Denmark | <input type="radio"/> Lichtenstein | <input type="radio"/> Spain |
| <input type="radio"/> Estonia | <input type="radio"/> Lithuania | <input type="radio"/> Sweden |
| <input type="radio"/> Finland | <input type="radio"/> Luxembourg | <input type="radio"/> Switzerland |
| <input type="radio"/> France | <input type="radio"/> Malta | <input type="radio"/> United Kingdom |
| <input type="radio"/> Germany | <input type="radio"/> Netherlands | <input type="radio"/> Other |
| <input type="radio"/> Greece | <input type="radio"/> Norway | |



Specify the country * (maximum 500 characters)

5. Is your business engaged already in cross-border trade in the EU? *

- yes
- no
- not applicable

6. Are you planning to be engaged in cross-border trade in the foreseeable future? *

- yes
- no
- do not know
- not applicable

II. Your experience with the transfer of registered offices within EU

1. Has your company transferred within last 3 years to another EU Member State? *

- its registered office only
- its registered office and headquarters (main office)
- its registered office and headquarters (main office) together with their business activities (e.g. production site)
- no

 why? (maximum 500 characters)

 1.1. When did the transfer take place ? (specify the year) * (maximum 500 characters)

 1.2. Has your company used the existing provisions of the Cross-Border Merger Directive to transfer its registered office from one Member State to another? *

- yes
- no
- do not know

 why? (maximum 500 characters)

 1.2.1. How much did such transfer cost you? *

- less than 10,000 euro
- between 10,000 – 50,000 euro
- between 50,000 – 100, 000 euro
- more than 100, 000 euro
- do not know

 1.3. Has your company carried out a direct cross-border transfer of a registered office (most often accompanied by winding up and subsequent re-incorporation) ? *

- yes
- no
- do not know

 1.3.1. How much did such transfer cost you? *

- less than 10,000 euro
- between 10,000 – 50,000 euro
- between 50,000 – 100, 000 euro
- more than 100, 000 euro
- do not know



why? (maximum 500 characters)



1.4. Has your company used the options provided by the Statute of the European Company (SE) to transfer its registered office from one Member State to another? *

- yes
- no
- I am not aware of this possibility
- do not know



1.4.1. How much did such transfer cost you? *

- less than 125,000 euro
- between 125,000-200,000 euro
- between 200,000 – 300, 000 euro
- more than 300, 000 euro
- do not know



why? (maximum 500 characters)

 1.5. How many administrative steps (e.g. registration, notary) did you need to undertake to transfer your company registered office from one Member State to another? *

- less than 10
- between 10-19
- between 20-29
- 30 or more
- do not know

 1.6. Do these costs and administrative requirements present for your company the main obstacles discouraging you from transferring your registered office abroad? *

- yes
- no
- do not know

 if not, what else then? (maximum 500 characters)

 1.7. What was your main motivation to transfer your registered office abroad?

(you can choose more than one answer) *

- favourable company law regime
- favourable insolvency law regime
- favourable "business climate"
- favourable taxation regime
- tax mitigation
- favourable social law regime
- stable legal framework
- others
- do not know



please specify (maximum 500 characters)



1.8. Is there in the EU, according to your experience, an adequate procedure for the direct cross-border transfer of registered offices? *

- yes
- no
- do not know

III. The plans for the transfer of a registered office to another EU Member State

1. Would your company consider transferring its registered office to another EU Member State in the foreseeable future (e.g. next 3 years)? *

- yes
- no
- do not know

1.1. Would your company consider transferring its registered office to a country outside the EU ?

*

- yes
- no
- do not know

1.2. Would your company consider transferring its registered office, if a specific EU instrument on the direct cross-border transfer of registered offices were available? *

- yes
- no
- do not know



1.2.1. Would your company envisage transferring to another Member State: *

- its registered office only ?
- its registered office and headquarters (main office) ?
- its registered office and headquarters (main office) together with their business activities (e.g. production site) ?



why? (maximum 500 characters)



1.3. Would the cross-border transfer of your company's registered office imply a change in its tax regime?

*

- yes
- no
- do not know



1.4. What would be your company's main motivation to transfer its registered office abroad?

(you can choose more than one answer)

*

- favourable company law regime
- favourable insolvency law regime
- favourable "business climate"
- favourable taxation regime
- tax mitigation
- favourable social law regime
- stable legal framework
- others
- do not know



please specify (maximum 500 characters)



1.5. Where would your company transfer its registered office to?

- | | | |
|--------------------------------------|------------------------------------|--------------------------------------|
| <input type="radio"/> Austria | <input type="radio"/> Hungary | <input type="radio"/> Poland |
| <input type="radio"/> Belgium | <input type="radio"/> Iceland | <input type="radio"/> Portugal |
| <input type="radio"/> Bulgaria | <input type="radio"/> Ireland | <input type="radio"/> Romania |
| <input type="radio"/> Cyprus | <input type="radio"/> Italy | <input type="radio"/> Slovakia |
| <input type="radio"/> Czech Republic | <input type="radio"/> Latvia | <input type="radio"/> Slovenia |
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| <input type="radio"/> Estonia | <input type="radio"/> Lithuania | <input type="radio"/> Sweden |
| <input type="radio"/> Finland | <input type="radio"/> Luxembourg | <input type="radio"/> Switzerland |
| <input type="radio"/> France | <input type="radio"/> Malta | <input type="radio"/> United Kingdom |
| <input type="radio"/> Germany | <input type="radio"/> Netherlands | <input type="radio"/> Other |
| <input type="radio"/> Greece | <input type="radio"/> Norway | |



specify the country (maximum 500 characters)



1.6. Would a specific EU instrument on the direct cross-border transfer of registered offices of companies (direct transfer without the need of winding-up or a cross-border merger) contribute to the reduction of transfer costs?

*

- yes
- no
- do not know



1.6.1. Would the change be in your view:

*

- significant
- minor



1.6.1.1. Estimate the saved amount in EUR (maximum 500 characters)

IV. The current possibilities to transfer registered offices abroad

1. How many companies have transferred their registered offices from your country to another EU Member State within last 3 years?

*

- less than 50
- between 50 – 500
- between 500 - 5,000
- between 5,000 - 50,000
- more than 50,000
- do not know



specify the number of companies (maximum 500 characters)

1.1. How many companies have transferred their registered offices from your country to another EU Member State by winding up the old company and creating a new one ? *

- less than 50
- between 50 – 500
- between 500 - 5,000
- between 5,000 - 50,000
- more than 50,000
- do not know



specify the number of companies (maximum 500 characters)

1.2. How many companies have transferred their registered offices from your country to another EU Member State by doing cross-border mergers ? *

- less than 50
- between 50 – 500
- between 500 - 5,000
- between 5,000 - 50,000
- more than 50,000
- do not know



specify the number of companies (maximum 500 characters)

1.3. How many companies have transferred their registered offices from your country to another EU Member State by using the European Company Statute ?

*

- less than 50
- between 50 – 500
- between 500 – 5,000
- between 5,000 – 50,000
- more than 50,000
- do not know



specify the number of companies (maximum 500 characters)

2. Have the majority of companies transferred cross-border their: *

- registered office;
- registered office and at the same time their headquarters (main office) ;
- registered office and headquarters (main office) together with their business activities (e.g. production site) ?
- do not know

3. How many companies, according to your information, would consider transferring their registered office, if a specific EU instrument on the direct cross-border transfer of registered offices were available ? *

- less than 50
- between 50 – 500
- between 500 – 5,000
- between 5,000 – 50,000
- more than 50,000
- do not know

4. Would the majority of companies, according to your information, consider cross-border transfers of their: *

- registered office;
- registered office and at the same time their headquarters (main office) ;
- registered office and headquarters (main office) together with their business activities (e.g. production site) ?
- do not know

5. Does the recent ECJ case-law (e.g. judgement in case VALE) provide an adequate solution for cross-border transfer of registered offices ? *

- yes
- no
- no opinion

 Why: *

6. What is the main motivation for companies to transfer their registered office abroad?

(you can choose more than one answer) *

- favourable company law regime
- favourable insolvency law regime
- favourable "business climate"
- favourable taxation regime
- tax mitigation
- favourable social law regime
- stable legal framework
- others
- do not know



please specify (maximum 500 characters)

7. How much does the average cross-border transfer of registered office through the merger cost?

*

- less than 10,000 euro
- between 10,000 – 50,000 euro
- between 50,000 – 100, 000 euro
- more than 100, 000 euro
- do not know

8. How much could an average company save in terms of costs, if a specific EU instrument on the direct cross-border transfer of registered offices were available (in comparison to the transfer of the registered office by a cross-border merger)? *

- less than 5,000 euro
- between 5,000 – 10,000 euro
- between 10,000 - 50,000 euro
- more than 50,000 euro
- do not know

V. The design of an instrument - What should an EU instrument on the direct transfer of registered offices of companies look like?

1. Should the transfer of a registered office be compulsory along with the transfer of the headquarters (main office)? *

- yes
- no
- do not know



why? (maximum 500 characters)

2. Would the choice left to the Member State whether the transfer of the registered office has to be followed or not by the transfer of the headquarters (main office) be workable ? *

- yes
- no
- do not know



why? (maximum 500 characters)

3. How should the question of employee participation be optimally solved in the case of a transfer of a registered office?

By applying the same rules on the employee participation as in:

*

- Cross-Border Merger Directive
- SE Statute
- other



please specify (maximum 500 characters)

4. Are there any issues to consider with regard to the design of such an instrument?

(maximum 500 characters)

Additional comments

Do you have additional comments concerning any of the questions?

(maximum 500 characters)