Brussels, 8 November 2007
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Opinion

Title
Impact Assessment on: Cross-border transfer of registered offices
(draft version of 19 October 2007)

Lead DG
DG MARKT

1) Impact Assessment Board Opinion

(A) Context

Two public consultations launched by the Commission in 1997 and 2002 highlighted a need on the part of market operators for EU legislation allowing companies to transfer their registered office from one Member State to another without previous winding-up and subsequent re-incorporation. In 2002 a High Level Group of Company Law Experts recommended the Commission to consider adopting a proposal for a Directive on the transfer of company’s seat. The Commission stated in its 2003 Action Plan for Modernizing Company Law and Enhancing Corporate Governance in the European Union that one of the means to achieve the overall aim of company law and corporate governance, i.e. to foster efficiency and competitiveness of business, is to ensure corporate mobility. Therefore, the Commission identified a proposal for a Directive on the cross-border transfer of registered office as a possible means to achieve this objective.

(B) Positive aspects

This IA report provides a fair and balanced assessment of the main policy action and 'no action' scenarios, without prejudice to the political decision on whether or not to present an initiative.

(C) Main recommendations for improvements

The recommendations below are listed in order of descending importance. Some more technical comments have been transmitted directly to the author DG.

General recommendation: This fairly elaborate IA report can be further improved by adding an assessment of longer term impacts on the cross-border transfer of real seats in addition to the transfer of registered office, by clarifying the 'no action'
scenario and corresponding baseline used, and by explicitly addressing stakeholders' expectations and clarifying administrative burden reduction potential. During its meeting with the Board, DG MARKT agreed to make improvements to the IA report on all of the following points:

(1) The IA report should assess whether an increase in cross-border transfers of registered offices has an impact on cross-border transfers of real seats. The Board appreciates that DG MARKT has already tried to obtain data on this link from various sources, but with no success. If hard data are not readily available then it is sufficient if the IA report sets out the efforts that were made, and then limits itself to a qualitative assessment which examines whether making cross-border transfers of registered offices easier will reduce or increase the incentives and likelihood of cross-border transfers of real seats. This analysis could for instance draw on academic sources, experiences in the United States (which – as a general point – should be presented with due caution and caveats about comparability with the EU situation), and any other available (anecdotal) evidence. If the analysis finds that changes in the number of transfers of real seats are likely then the IA report should go on to assess economic, social, and environmental impacts, and relate the outcomes of this assessment to obtaining the Lisbon objectives.

(2) The IA report should clarify what is comprised in the 'no action' scenario. If this scenario also involves measures which are not in force yet (cross-border mergers directive) or have not yet been proposed by the Commission (Statute for a European Private Company), then this should be made very clear so as to avoid any confusion between 'no action' and the status quo. Also the various tables (especially in §6) should express the impacts in comparison to a clearly identified baseline against which policy options are assessed. Furthermore in its description of the currently available means to transfer a registered office, the IA report should comment on whether any changes to the legislation concerning the European Company or the European Co-operative Society could be considered which make these legal forms more attractive.

(3) The assessment of the 'no action' scenario should link back to stakeholders' views. The IA report makes it clear that in the 'no action' scenario several of the current problems would be (partially) solved. However this information is presented in various parts of the report, and could usefully be brought together in one place to make a stronger case and explicitly link back to the views and expectation expressed by stakeholders during the consultation rounds. This applies especially to the reduction in administrative burdens for companies which would result from the 'no action' scenario. The IA report should identify these burdens explicitly as part of the administrative cost data and present the corresponding gains as clearly as possible and contrast these with the gains that would occur in the policy scenario, although the Board acknowledges that a full quantification may require a disproportionate effort.

(D) Procedure and presentation

The IA report should more closely respect the recommended maximum length of 30 pages (excl. annexes).
2) IAB scrutiny process

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<td>MARKT-F-2</td>
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