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COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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to: Mr Pierre de BOISSIEU, Secretary-General of the Council of the European
Union

Subject: COMMISSION STAFF WORKING DOCUMENT
SUMMARY OF THE IMPACT ASSESSMENT accompanying document to
the proposal for a Directive of the European Parliament and of the Council
amending Directives 89/666/EEC, 2005/56/EC and 2009/101/EC as regards the
interconnection of central, commercial and companies registers

Delegations will find attached Commission document SEC(2011) 223 final.

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COMMISSION STAFF WORKING DOCUMENT

SUMMARY OF THE IMPACT ASSESSMENT

Accompanying document to the

**Proposal for a Directive of the European Parliament and of the Council
amending Directives 89/666/EEC, 2005/56/EC and 2009/101/EC as regards the
interconnection of central, commercial and companies registers**

SEC(2011) 222 final
COM(2011) 79 final

1. INTRODUCTION

The current financial crisis highlighted once again the importance of transparency across the financial markets, including on companies' governance and business activities. The Council's Conclusions of 25 May 2010 confirmed that improving access to up-to-date and trustworthy information on companies could encourage greater confidence in the market, help recovery and increase the competitiveness of European business¹.

Business registers play an essential role in this regard; they register, examine and store company information, such as information on a company's legal form, its seat, capital, legal representatives and annual accounts, and they make this information available to the public.

Businesses increasingly expand beyond national borders using the opportunities offered by the Single Market. Consequently, there is and an increasing need for cross-border cooperation between business registers and an increasing demand for access to information on companies in a cross-border context, either for commercial purposes or to facilitate access to justice.

On 5 November 2009, the European Commission adopted a Green Paper² accompanied by a progress report³ on the interconnection of business registers. The Green Paper formed the basis of a public consultation where nearly all respondents expressed their support for the improvement of the interconnection of business registers in the EU⁴.

On 25 May 2010, the Competitiveness Council adopted conclusions welcoming the Commission's initiative to improve the interconnection of business registers. The report of the European Parliament also urged the Commission and Member States to make progress in this area⁵. Finally, the opinions of the European Economic and Social Committee⁶ and the Committee of Regions⁷ expressed strong support for the Commission initiative.

The IA report was examined by the Impact Assessment Board in written procedure. The Board issued a favourable opinion on 15 September 2010. Following the Board's opinion, a number of changes were made to the report.

2. CONTEXT

Business registers exist in every Member State; they are organised either at a national, regional or local level. In 1968 common rules were adopted to establish minimum standards for disclosure (registration and publication) of business information⁸. Since 1 January 2007,

¹ 9678/10.

² COM(2009) 614 final.

³ SEC(2009) 1492.

⁴ Feedback statement: http://ec.europa.eu/internal_market/company/business_registers/index_en.htm

⁵ 2010/2055(INI).

⁶ INT/517.

⁷ CdR 20/2010.

⁸ 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).

Member States also have to maintain electronic business registers⁹ and allow third parties to access the content of the register online.

Reliable up-to-date information on companies is crucial for consumers, existing or potential business partners, public administration and justice also in the cross-border context. Moreover, cooperation of business registers from different Member States is explicitly required by European legal instruments that have been adopted in the last decade in order to facilitate the cross-border mergers of limited-liability companies¹⁰ and the cross-border seat transfer of the European Company (SE)¹¹ and a European Cooperative Society (SCE)¹².

Since 1992 a voluntary cooperation mechanism between the business registers in Europe has been in existence. By now the so-called European Business Register (EBR)¹³ combines official business registers from 19 Member States and six other European jurisdictions. Between 2006 and 2009, EBR took part in a research project called BRITE¹⁴ that had the objective to develop a technological platform for the interoperability of business registers throughout Europe. But EBR faces significant challenges as regards its expansion, financing and governance; the current cooperation mechanism is not satisfactory for the potential users.

Another relevant project is the Internal Market Information System (IMI) that is an electronic tool designed to support day-to-day administrative cooperation between public administrations in the context of the Services Directive (2006/123/EC) and the Professional Qualifications Directive (2005/36/EC). IMI services could also support the enforcement of other directives.

Finally, the European e-Justice portal will be the key point of access to legal information, legal and administrative institutions, registers, databases and other services with a view to speeding up the daily tasks of citizens, legal and other experts and the judiciary.

3. SUBSIDIARITY

Nearly two decades of experience with EBR show that self-regulation is not sufficient to achieve the objectives of this initiative. The objectives also cannot be achieved by the Member States as a common set of rules, and conditions for the cross-border cooperation between the national business registers need to be established. If such provisions were determined at national level, they could be incompatible with each other and not be suitable to reach the objectives. Action at EU level is therefore necessary and justified.

⁹ Directive 2003/58/EC of the European Parliament and of the Council of 15 July 2003 amending Council Directive 68/151/EEC, as regards disclosure requirements in respect of certain types of companies (OJ L 221, 4.9.2003, p. 13).

¹⁰ Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies (OJ L 310, 25.11.2005, p. 1).

¹¹ Regulation (EC) No 2001/2157 of 8 October 2001 on the Statute for a European company (OJ L 294, 10.11.2001, p. 1).

¹² Regulation (EC) No 2003/1435 of 18 August 2003 on the Statute for a European Cooperative Society (OJ L 207, 18.08.2003, p. 1).

¹³ <http://www.ebr.org/>

¹⁴ <http://www.briteproject.eu>

4. OBJECTIVES

The general objectives of this initiative are to increase confidence in the Single Market and the competitiveness of European businesses as well as to improve the performance of public administration by promoting cooperation between business registers in Europe. The specific objectives include ensuring a safer business environment for consumers, creditors and other business partners, increasing legal certainty, reducing administrative burden on companies and accelerating procedures.

In particular, this initiative aims at:

- Ensuring that the business register of the company provides up-to-date information on the status of the company to the business register(s) of the foreign branch all across Europe
- Developing a cooperation framework between business registers in cross-border merger and seat transfer procedures
- Facilitating cross-border access to official business information by determining a common minimum set of up-to-date company information to be made available through the network to third parties in every Member State

5. PROBLEM DEFINITION, OPTIONS AND IMPACTS

The issues around the interconnection of business registers can be grouped in three different sections: lack of up-to-date business information in the register of foreign branches, the difficulties of cooperation in cross-border merger and seat transfer procedures and difficult cross-border access to business information.

The impact of the possible policy options was measured against the following criteria: effectiveness, impact on stakeholders (consumers, creditors, etc.), administrative burden reduction, legal certainty, flexibility and costs.

5.1. Cost scenarios

The costs depend on the chosen technological solution. The choice of the ICT tools needs to be made in the implementation phase. The ICT implications of the present initiative are therefore only of indirect nature. The impact assessment carried out a high-level cost assessment on the basis of different technologies. The basic difference between them is that EBR allows for automated data exchange and is able to treat high volumes of data at the same time. IMI requires manual data exchange and is suitable for low volume electronic communication.

IMI is run by the Commission. The costs of the services are therefore borne by the Commission. The extension of EBR/BRITE should be financed by the Member States unless EU funds become available for this purpose.

Scenario 1 considered the costs of building on the EBR and the BRITE project and extending the scope of the current cooperation to the remaining eight Member States. The overall cost of the extension would reach EUR 164,472. The annual maintenance costs could reach EUR 495,000.

Scenario 2 examined the costs of developing a solution using IMI. Member States do not share any of the maintenance or hosting costs in IMI. In 2009, the costs borne by the Commission were around EUR 518,000. The introduction of a new area would require some investment within the Commission in terms of development and support.

Scenario 3 estimated the costs of building a new network of business registers based on the costs of building IMI and EBR. Up until 2009, the overall IMI development costs reached nearly EUR 2 million and the maintenance costs nearly EUR 770,000 (excluding the costs of human resources). The cost of building an EBR-like network from scratch would amount to EUR 11.06 million. The annual maintenance cost could reach EUR 405,000. Due to the high costs of this option and the wish of Member States to build on results already achieved in this area (EBR, BRITE and IMI), this scenario was discarded.

5.2. Lack of up-to-date business information in the business register of foreign branches

The 11th Company Law Directive requires companies to disclose a number of particulars and documents when they open a branch in another Member State. However, companies often fail to update this information. The omission may have critical consequences to the protection of consumers and business partners in particular when the register of the branch is not notified about the dissolution or the insolvency of the company (15% of the examined cases). Taking into account the overall number of foreign branches in Europe (over 112,000), 16,800 registered foreign branches could be in this situation.

The lack of updated information in the business register of a foreign branch makes the business environment riskier for consumers and creditors and reduces legal certainty. Moreover, the lack of cooperation between business registers puts administrative burden on companies that could potentially be reduced by EUR 69 million¹⁵.

Four options were examined:

- *Option A1*: No policy change
- *Option A2*: Recommend detailed rules for business registers on the method of cooperation in updating information on cross-border branches
- *Option A3*: Lay down a legal requirement for the business registers to cooperate by electronic means with regard to updating the registration of foreign branches and specify the technical details of the cooperation
- *Option A4*: Lay down a legal requirement for the business registers to cooperate by electronic means with regard to updating the registration of foreign branches and specify the technical details of the cooperation in a delegated act/governance agreement

The conclusion of the impact assessment is the option A4 should be preferred. While options A2-A4 could bring about positive changes as regards effectiveness, option A2 could not ensure legal certainty and the application of the rules in all Member

¹⁵ Cf. Cap Gemini, Deloitte, Ramboll Management: Final Report for Priority Area Annual Accounts / Company Law, EU Project on Baseline Measurement and Reduction of Administrative Costs.

States. Options A3 and A4 could reduce administrative burden and provide legal certainty. While option A3 would assure the highest level of uniformity, it would not be flexible at all. Option A4 would complement legislation by a delegated act and thus would allow the different registries to take into account their specificities. The costs of options A3 and A4 would be the same.

5.3. Difficulties of cooperation between business registers in cross-border merger and seat transfer procedures

The cross-border cooperation of business registers in cross-border merger and seat transfer procedures is required explicitly by European legal instruments. However they do not provide guidance on the method of sending the notification. In practice, the notifications between business registers are usually transmitted by regular mail in the language of the issuing authority. Due to the current low number of procedures, business registries are, at present, able to treat the notifications manually. However, they expect to face difficulties if the number increases in the future.

The difficulties of cooperation between business registers in cross-border merger and seat transfer have a negative impact on legal certainty. If a requirement for cooperation existed when an SE or an SCE is created by cross-border merger, the administrative burden on these companies could be reduced.

Four options were examined:

- *Option B1*: No policy change
- *Option B2*: Recommend detailed rules for business registers on the method of cooperation in cross-border merger and seat transfer procedures
- *Option B3*: Lay down legal requirements specifying the technical details of the cooperation between business registers in cross-border merger and seat transfer procedures
- *Option B4*: Lay down legal requirements for cooperation and specify the technical details in cross-border merger and seat transfer procedures in a delegated act/governance agreement

The conclusion of the impact assessment is that option B4 should be preferred. As, with the exception of the formation of an SE and an SCE through a cross-border merger, there are already legal obligations for business registers to cooperate on cross-border procedures, only a legal provision delegating powers to the Commission is necessary. Option B3 seems too rigid while options B2 and B4 both provide the necessary flexibility for Member States. However, option B4 (delegated act) is the more appropriate solution as it mandatorily involves all Member States while in option B2 keeps the participation voluntary. Options B3 and B4 could reduce administrative burden on companies in relation to the formation of SEs and SCEs by a cross-border merger. The costs could be limited, depending on the choice of the ICT tools.

5.4. Difficult cross-border access to business information

While business information on companies is easily available in the country of their registration, access to the same information from another Member State may be hindered by

technical or language barriers EBR does not cover all 27 Member States and the information that is accessible through the network varies from one country to another.

The lack of a unique company identifier makes the identification of companies difficult in cross-border situations (e.g. mergers or groups). The frequency of updating business information is currently not harmonised and there is no information for the users of the data as regards its reliability in the different Member States.

The limited cross-border access to business information results in a riskier business environment for consumers and for existing or potential business partners. The problem also results in less legal certainty.

Four options were examined:

- *Option C1*: No policy change
- *Option C2*: Recommend detailed rules for business registers to ensure better cross-border access to information
- *Option C3*: Lay down a requirement for Member States to participate in an electronic network of business registers, specify the list of information to be transmitted through the network, the frequency of updating the registered information and the technical details of the cooperation
- *Option C4*: Lay down a requirement for Member States to participate in an electronic network of business registers, determine the list of information to be transmitted through the network and the frequency of updating the registered information and specify the technical details of the cooperation in a delegated act/governance agreement

The conclusion of the impact assessment is the option C4 should be preferred. Option C2 has a potential while options C3 and C4 have a certain positive impact on stakeholders. Non-legislative measures (option C2) could not ensure legal certainty with respect to access to information. Options C3 and C4 would create a clear legal framework, but option C3 would require legislative amendments in case technical details change. Option C4 would ensure the necessary flexibility. The options have no impact on administrative burden. The costs, however, could be significant.

6. MONITORING AND EVALUATION

The Commission will follow the implementation phase of the provisions and provide for a framework for a structured discussion of national experts (e.g. workshops) on the details of the delegated act. Five years after the transposition of the provisions, the effect of the measures should be evaluated.