

Opinion of the Committee of the Regions on ‘The interconnection of business registers’

(2010/C 267/06)

THE COMMITTEE OF THE REGIONS

- draws attention to the decisive role of the Committee of the Regions, which as representative of the interests of the local and regional authorities has put forward options and alternative proposals in its previous opinions with a view to promoting the smooth operation of the internal market, increasing transparency, facilitating the exchange of information and lightening the burden of administration at both local and regional level;
- recognises the vital significance of business registers to ensure the efficient functioning of the single market by providing reliable and up-to-date information for commercial purposes or to facilitate access to justice for all parties in all Member States;
- notes that access to information on cross-border mergers, seat transfers or establishment of branches in other Member States is a day-to-day necessity for the smooth functioning of the single market;
- stresses that obstacles to cross-border company law processes can, rather, be attributed to the lack of a pan-European system of electronic identification, for example a European electronic identity card, which would make it possible to allow the use of a legally binding digital signature and for this to be mutually recognised. This would be one of the main areas which would need to be rapidly tackled as part of the process of interconnecting business registers.

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Reference document: Green Paper on the interconnection of business registers

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I. POLICY RECOMMENDATIONS

THE COMMITTEE OF THE REGIONS

Background

1. welcomes the European Commission's initiative on the Green Paper on The interconnection of business registers;
2. is pleased that the European Commission has called on all parties with an interest in the Green Paper to state their views on the subject;
3. draws attention to the decisive role of the Committee of the Regions, which as representative of the interests of the local and regional authorities has put forward options and alternative proposals in its previous opinions with a view to promoting the smooth operation of the internal market, increasing transparency, facilitating the exchange of information and lightening the burden of administration at both local and regional level;
4. shares the European Commission's view that business registers ⁽¹⁾ 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 and legal representatives, and they make this information available to the public;
5. agrees with the European Commission that cross-border cooperation of business registers is required explicitly by the Directive on cross-border mergers ⁽²⁾ and by the Statutes for a European Company (SE) ⁽³⁾ and a European Cooperative Society (SCE) ⁽⁴⁾;
6. considers that, although minimum standards for the main services are laid down by European legislation, business registers may offer additional services which differ from country to country. At the same time companies are increasingly active across national borders and thus have the opportunity to register in one Member State and pursue their business activities wholly or partly in another Member State. All of this has led to increased demand for public, cross-border access to company information;

⁽¹⁾ The term 'business register' used in the Green Paper comprises all the central, commercial and companies registers within the meaning of Article 3 of the First Company Law Directive (68/151/EEC).

⁽²⁾ 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).

⁽³⁾ Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) (OJ L 294, 10.11.2001, p. 1).

⁽⁴⁾ Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE) (OJ L 207, 18.8.2003, p. 1).

7. points out that information about a company is available in the country in which it is registered, but that access to this information in another Member State can often be difficult as a result of technical, legal, linguistic and other barriers;

8. believes that the existing voluntary cooperation between business registers is nonetheless not sufficient in itself and that more effective cross-border cooperation between these registers needs to be ensured. In the context of this cooperation it is particularly important to ensure transnational access to information stored in the business registers, as well as the transparency, legal certainty and reliability of this information;

9. points out that the current financial crisis has again made clear how important transparent financial markets are. In the context of the financial reconstruction measures, improved access to up-to-date, official and reliable information on companies can be seen as a way of restoring confidence in the markets throughout Europe;

Key messages

10. recognises the vital significance of business registers to ensure the efficient functioning of the single market by providing reliable and up-to-date information for commercial purposes or to facilitate access to justice for all parties in all Member States;
11. acknowledges that increased company mobility is vital for economic growth and therefore recommends the implementation of a fully integrated system, providing equal access to information throughout the European Union;
12. notes that access to information on cross-border mergers, seat transfers or establishment of branches in other Member States is a day-to-day necessity for the smooth functioning of the single market;
13. appreciates the efforts of the Member States involved in the voluntary scheme to create an efficient platform for exchange, but nevertheless calls on the European Commission to propose a legal framework for European cooperation between business registers in order to replace the existing voluntary system with a fully integrated ICT-based register;
14. recalls the important role played by SMEs in the European economy and urges the Member States to adopt the Statute for a European Private Company (SPE), which, combined with an efficient system for interconnecting business registers, would facilitate the expansion of small and medium-sized enterprises in the single market;

15. calls for the setting-up of a virtual network of European business registers based on ambitious IT solutions;

16. advocates a review of relevant company-related directives in order to adapt their provisions to currently available technology, in particular the use of IT systems;

17. shares the view that it would at all events be helpful, when interconnecting business registers, to make extensive use of the work already done in connection with the European Business Register (EBR) and the BRITE project. With regard to the part which regulates the procedural cooperation between the network's business registers (mergers, transfer of the registered office, branches etc), shares the European Commission's view that the system can most easily be established on the basis of the current BRITE project;

Proposals

18. points out that over the last 10 years ECJ case law (especially *Centros* (C-212/97), *Überseering* (C-208/00) and *Inspire Art* (C-167/01)) has made it possible for companies to operate across borders and to move their registered offices;

19. stresses that in practice this right often cannot be invoked. The reason for this lies less in the lack of interconnection between business registers, however, and more in the fact that company law and rules on business registers in the Member States do not promote the transfer of a company's registered office abroad or other cross-border activities, and that European legislation does not specifically call for such provisions;

20. considers that this problem will not be solved simply by interconnecting business registers. A solution would require provisions of substantive and procedural law on the transfer of the registered office of companies, which would need to regulate, among other things, cooperation between business registers;

21. is convinced that one of the major barriers to the development of true competition between states and regions is the fact that moving a company's registered office in the EU is effectively impossible. Competition would mean that entrepreneurs would be attracted by the best business environment - and yet the transfer of the registered office is at present extremely complicated;

22. acknowledges that interconnecting business registers would make it easier for companies to obtain information on their partners in connection with their business activities, and this is certainly welcome. A system of interconnected business registers

would give rise to a common database with standardised entries, which would make it possible to achieve this objective if the accuracy of the register information can be guaranteed. Furthermore, efforts should be made to standardise the content of the register;

23. considers that the regulatory agreement proposed in the Green Paper is not a suitable tool for networking. If it is to be possible to consult standardised data in a standardised form in each national business register, the future system will, for example, have to be regulated by revising the company law publicity directive or in some other way;

24. adds that efforts should, rather, be focused on making both the cross-border information which the new system would provide and information on domestic business registers available to everyone on the Internet, if possible free of charge or for a modest fee. The costs associated with this are already covered by fees levied by states for the collection of the relevant information - governments should not be in the business of trading in public information. Otherwise, under the cover of the future directive, competition would be initiated with existing companies offering consultancy services;

25. shares the view that it would make sense to interconnect the data obtained by implementation of the transparency directive with the new network of company registers. Thought should therefore be given to establishing an appropriate body of rules, either by means of a directive or possibly even a regulation;

26. points out that the lack of an interconnected business register has not hitherto constituted a major obstacle to cross-border company law processes. Intelligent electronic solutions (such as those used between Estonia, Portugal and Finland) even today permit very comprehensive cooperation, so that company registers abroad can be consulted electronically without the need to travel abroad;

27. stresses that obstacles to cross-border company law processes can, rather, be attributed to the lack of a pan-European system of electronic identification, for example a European electronic identity card, which would make it possible to allow the use of a legally binding digital signature and for this to be mutually recognised. This would be one of the main areas which would need to be rapidly tackled as part of the process of interconnecting business registers;

28. in conclusion, points out that all initiatives must comply with the subsidiarity principle and the principles of proportionality and better lawmaking.

Brussels, 9 June 2010

*The President
of the Committee of the Regions*
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