

Opinion of the European Economic and Social Committee on the 'Green Paper on the Interconnection of business registers'

COM(2009) 614 final

(2011/C 48/21)

Rapporteur: **Ms BONTEA**

On 4 November 2009, the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

'Green Paper on the Interconnection of business registers'

COM(2009) 614 final.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 8 July 2010.

At its 465th plenary session, held on 15 and 16 September 2010 (meeting of 16 September), the European Economic and Social Committee adopted the following opinion by 65 votes to 13, with 18 abstentions.

1. Conclusions and recommendations

1.1 The Committee is in favour of developing and strengthening cooperation between business registers across all EU Member States; this should be underpinned by the principles of transparency, rapidity, reduced costs, administrative simplification, adequate protection of personal data and interoperability. Cross-border cooperation between business registers should guarantee better and more reliable official information for creditors, business partners, shareholders and consumers. It will provide greater legal certainty and help the internal market to function more smoothly.

1.2 The interconnection of business registers should reflect the goals of two strategic documents: the Europe 2020 strategy ⁽¹⁾ and the Small Business Act (SBA) ⁽²⁾. Interconnecting business registers should increase transparency and facilitate cooperation between businesses, as well as lower the barriers to cross-border business activities and reduce administrative burdens, particularly for SMEs. All of this is crucial to consolidating the single market and promoting balanced and sustainable economic and social progress, as highlighted in the Commission communication *Think Small First: Priority to SMEs – A Small Business Act for Europe* (COM(2008) 394 final).

1.3 The EESC recommends adding new objectives to those set down in the Green Paper, with a view to:

- setting up a compulsory cooperation instrument to facilitate and strengthen the electronic interconnection of central Member State registers, and in particular with the e-Justice portal, making it the main access point for legal information

⁽¹⁾ Commission Communication: Europe 2020 – A strategy for smart, sustainable and inclusive growth, COM(2010) 2020 final.

⁽²⁾ Commission Communication: 'Think Small First' – A Small Business Act for Europe, COM(2008) 394 final.

in the EU, in order to apply the Company Law Directives effectively, and;

- boosting cross-border cooperation, especially regarding cross-border mergers and branches in other Member States, making use of the advantages offered by IMI.

1.4 The Committee broadly supports the Green Paper, subject to a comprehensive impact assessment and provided that no additional administrative burdens are imposed on companies.

1.5 The Committee believes that interconnecting business registers can only create real added value if the network comprises not only central registers, but all local and regional registers from across the 27 Member States and if the information transmitted within the network – regardless of country of origin – is up-to-date, secure, standardised, readily available via a simple procedure and in all official EU languages, and, preferably, free of charge (at least for basic information).

1.6 Should legislative action be taken at EU level, the Committee would highlight the need to take this opportunity to amend the rules on publication, in order to reduce the administrative burden on companies, and particularly SMEs, without reducing transparency, bearing in mind that disclosing information to national official journals entails considerable additional costs for businesses, without providing real added value, given the possibility of accessing this information in online registers.

1.7 A governance agreement could be the solution to establishing the technical details of business register cooperation.

1.8 To achieve the objectives set out in the Green Paper, the Committee proposes opting for a solution that integrates and builds on all of the existing cooperation mechanisms and initiatives, especially the EBR ⁽³⁾, BRITE ⁽⁴⁾, IMI and e-Justice, by extending the EBR and developing it as an advanced and innovative interoperable system – in the form of an ICT service platform and as an effective forecast management instrument that interconnects business registers across the EU and boosts cooperation between businesses and the assessment of their development – which is integrated into the European e-Justice portal.

1.9 As regards connecting the network of business registers with the electronic network set up under Directive 2004/109/EC, the Committee believes that an impact assessment should be carried out, subsequent to the interconnection of all business registers.

1.10 With regard to branches of companies in other countries, the Committee supports introducing IMI, as an information system providing a framework for administrative cooperation that can be used in support of the application of any piece of internal market legislation.

1.11 By designating the competent body to take over, expand and develop the EBR – which should be mandatory and not voluntary – and ensuring proper funding of the project from EU funds, the construction of a network of cross-border cooperation that includes business registers from all Member States and the achievement in the short- and medium term of these objectives will be accelerated.

1.12 Creating a network of business registers should fulfil a range of functions and provide more tools to facilitate communication.

1.13 Cooperation in this field between national and EU institutions and the social partners and civil society is particularly important.

2. Background

2.1 The EU has 27 business registers, operating on a national or regional basis. They register, examine and store information on companies established in the relevant country or region, in

accordance with the minimum standards applicable to the core services they provide under EU legislation.

2.2 However, while official information on companies is easily available in the country of their registration (business registers in almost all Member States went electronic and online from 1 January 2007), access to the same information from another Member State may be hindered by technical (different search conditions and structures) or language barriers.

2.3 There is increasing demand for access to information on companies in a cross-border context, either for commercial purposes or to facilitate access to justice, given that the opportunities offered by the single market have facilitated expansion beyond national borders. Moreover, a large number of mergers and divisions involve companies from different Member States of the EU, especially as a consequence of Directive 2005/56/EC, which requires cooperation between business registers, and it is possible to be registered in one Member State and conduct business activity partly or entirely in another.

2.4 Cross-border business activities have made the day-to-day cooperation of national, regional or local authorities and/or business registers a necessity; many tools and initiatives are in place to facilitate voluntary cooperation.

3. Summary of the Green Paper

3.1 The *Green Paper on the Interconnection of business registers* describes the existing framework and considers possible ways forward to improve access to information on businesses across the EU and to ensure more effective application of the company law directives.

3.2 According to the Green Paper, the interconnection of business registers serves two distinct but related purposes:

— facilitating access to official, reliable information on companies across borders to increase transparency in the single market and enhance the protection of shareholders and third parties;

— strengthening cooperation between business registers in the case of cross-border procedures, such as cross-border mergers, seat transfers or insolvency proceedings, as required explicitly by the Directive on cross-border mergers and by the Statutes for a European Company and a European Cooperative Society.

⁽³⁾ European Business Register.

⁽⁴⁾ Business Register Interoperability Throughout Europe.

3.3 The Green Paper outlines the existing cooperation mechanisms and initiatives:

- **EBR:** a voluntary initiative undertaken by business registers from 18 Member States and six non-EU States with the support of the European Commission. This is a network of business registers whose objective is to offer reliable information on companies. It has certain limitations, however, as regards the scope of the network and the issue of cooperation in cross-border procedures;
- **BRITE:** a research initiative completed in March 2009, led by some of the EBR partners and funded largely by the European Commission. Its objectives were to develop and implement an advanced and innovative interoperability model, an ICT service platform and a management instrument for business registers to interact across the EU, focusing in particular on cross-border seat transfers and mergers, and on enhancing control of branches of companies registered in other Member States;
- **The Internal Market Information System (IMI):** a secure web-based application set up in March 2006 and run by the Commission. It is a closed network that provides the competent authorities in the Member States with a simple tool for finding the relevant partner authority in other Member States and communicating with them in a fast and efficient way. It is being used to support the implementation of the Professional Qualifications Directive and the Services Directive;
- **e-Justice:** an initiative launched in June 2007 to assist the work of judicial authorities and practitioners and facilitate public access to judicial and legal information. One tangible result of the initiative is the European e-Justice portal, which will be the key point of access to legal information, legal and administrative institutions, registers, data bases and other services. The European e-Justice action plan for 2009-2013 deals with issues relating to the integration of the EBR into the portal, through a phased approach (as a link in the first phase, leading on to the possibility of its partial integration).

3.4 Essentially, the Green Paper proposes three possible ways forward for developing the existing mechanisms of cooperation between business registers:

- option one is to use the results of the BRITE project and designate or establish a body that is in charge of maintaining the necessary services, extended to all Member States;
- option two is to use the IMI system, which is already operational and could be extended in the coming years to new areas of EU legislation;
- and option three is to combine the two options.

4. General comments

4.1 The Committee is in favour of developing and strengthening cooperation between business registers across all EU Member States with a view to facilitating access to official, reliable information on businesses and companies and ensuring transparency in the single market, while enhancing the protection of shareholders and third parties (creditors, business partners, consumers, etc.), particularly in cross-border procedures (such as cross-border mergers, seat transfers or insolvency proceedings).

4.2 Considering possible ways forward to improve access to information on businesses across the EU and more effectively apply the company law directives is a worthy Commission initiative. Indeed, the Committee broadly supports the Green Paper, bearing in mind that a comprehensive impact assessment is necessary, and provided that no additional administrative burdens are imposed on companies.

4.3 The interconnection of business registers should reflect the goals of two strategic documents: the Europe 2020 strategy (which calls for stronger cross-border cooperation) and the Small Business Act (which aims to '[minimise] costs and burdens for business' in order to 'make a major contribution to the success and growth of SMEs by saving them time and money and hence freeing resources for innovation and job creation', with rigorous assessment of the impact of future legislative and administrative initiatives).

4.4 Interconnecting business registers should increase transparency, improve access to official information on companies and cooperation between them, and is crucial to consolidating the single market and promoting balanced and sustainable economic and social progress.

5. Responses to the questions raised in the Green Paper

5.1 Need for a better network of Member State business registers

5.1.1 In the light of the current situation, the Committee is in favour of developing and strengthening cooperation between business registers across all EU Member States; this should be underpinned by the principles of transparency, rapidity, reduced costs, administrative simplification, adequate protection of personal data and interoperability (automatic communication with local and regional registers).

5.1.2 The Committee believes that creating a network of business registers can only bring real added value if it comprises all local and regional registers from across the 27 Member States and if the information transmitted within the network – regardless of country of origin – is up-to-date, secure, standardised, readily available via a simple procedure and in all official EU languages, and, preferably, free of charge (at least for basic information).

5.2 Possibility of determining details of cooperation through a 'governance agreement' between the representatives of the Member States and the business registers

5.2.1 Subject to a cost-benefit analysis as part of a comprehensive impact assessment, the Committee stresses the need to expand and strengthen current cooperation between business registers, and points out that to this end all Member States must fulfil the obligation to develop their partnership in this field, by actively participating in its expansion and taking decisions on its terms and conditions.

5.2.2 Following the impact assessment, should EU-level legislative action be deemed necessary in order to create a legal requirement for cooperation between business registers, the Committee would highlight the need to take this opportunity to amend the rules on publication in the register, in order to reduce the administrative burden on companies, and particularly SMEs, without reducing transparency, bearing in mind that disclosing information to national register journals entails considerable additional costs for businesses, without providing real added value, given the possibility of accessing this information in online registers.

5.2.3 It may be useful to create a firmer legal basis for some features of the network, but the details of the cooperation should be determined through an agreement on the governance of the electronic network of business registers. At the very least, consideration should be given to factors such as the conditions for joining the network, the designation of a body to manage the network, aspects relating to liability, funding, settlement of disputes, maintenance of the central server and guaranteeing access in all official EU languages, along with minimum rules on data protection and security.

5.3 Whether there is any added value in connecting, in the long term, the network of business registers to the electronic network set up under the Transparency Directive (2004/109/EC)

5.3.1 As regards connecting the network of business registers with the electronic network of regulated information on listed companies set up under the Transparency Directive (2004/109/EC), the Committee believes that this objective should be subsequent to the full interconnection of all business registers, and that an impact assessment should be carried out on the technical difficulties involved, the effectiveness of such a measure, its real added value and the costs involved. It might be more appropriate to use Directive 2003/58/EC, which introduced electronic business registers.

5.3.2 Enhanced cooperation between business registers will also be beneficial as regards potential synergies with the disclosure of company information by other bodies (with respect to improving the transparency of financial markets, enhancing the availability of financial information on listed companies across Europe and ensuring the effective operation of cross-border insolvency proceedings).

5.4 Best solution for facilitating communication between business registers in the event of cross-border mergers and seat transfers

5.4.1 To achieve the objectives set out in the Green Paper, the Committee proposes opting for a solution that integrates and builds on all of the existing cooperation mechanisms and initiatives, especially the EBR, BRITE, IMI and e-Justice, by extending the EBR to all Member States, and developing it as an advanced and innovative interoperable system – in the form of an ICT service platform and as an effective forecast management instrument that interconnects business registers across the EU and boosts cooperation between businesses and the assessment of their development – which is integrated into the European e-Justice portal.

5.4.2 The solution proposed by the Committee (to expand the EBR to all Member States and enhance its functioning by building on the results of the BRITE project and potentially bringing the IMI system into play, while integrating the network into the e-Justice portal) would have the following effects: it would ensure the continuity of the experience already built up in managing and administering these IT platforms and maintain their level of recognition and avoid the confusion that might arise were a new instrument to be launched providing similar or even identical information to that contained in the EBR; and multiply the results of the investment already made, including via EU funding, and thus entail lower implementation costs, particularly in the event that the IMI is brought into play or the network integrated into the e-Justice portal.

5.5 *Solution proposed for branches of companies*

5.5.1 The disclosure requirements for foreign branches, established by Directive 89/666/EEC, render the cooperation of business registers indispensable in practice to ensure that information and documents are disclosed when a branch is opened. The Committee supports building on and developing the results of the BRITE project and the solution of automatic notification among registers in order to verify that the relevant data is accurate and up-to-date and thereby protect the interests of creditors and consumers coming into contact with the branch.

6. **Specific comments**

6.1 In order to achieve full interoperability of business registers, we need to work out the best solutions to the problem of removing the current technical (different search conditions and structures) and language barriers (with the EBR, the solution is that searches can be made in all languages and the requested information is provided in the language of the query).

6.2 By designating the competent body to take over, expand and develop the EBR and ensuring proper funding of the project from EU funds, the construction of a network that includes all Member States and the achievement in the short- and medium term of these objectives will be accelerated. In future, limitations consisting of high fees for joining and using EBR software or subscriptions should be overcome, and national-level obstacles to participation abolished.

6.3 The interconnection of business registers should not be limited to maintaining, developing, administering and updating the network and software; it should also successfully manage relations between participants, promote the system properly among citizens and businesses, participate in programmes funded by the EU, extend services for new countries and even perform commercial services to generate income, all of which would be ploughed back into developing the network.

6.4 The interconnection of business registers should include more tools to facilitate communication: search criteria, a set of transparent procedures, agreed upon by all Member States, for receiving queries and forwarding responses, the option of receiving electronic documents and certificates, instruments for managing queries/responses and monitoring progress, procedures for submitting and settling complaints, multilingual search facilities, set but open questions and answers, a director with contact details, etc.

6.5 The initiative to interconnect business registers should include all the information which it is mandatory to disclose, giving access to this information from the electronic files in national registers and reducing the administrative burden on companies, without imposing additional fees, particularly on SMEs. The IMI would appear to be a viable means of facilitating communication between the various Member States' business registers.

6.6 When carrying out the impact assessment, the application of the following aspects should be taken into consideration:

- a single access point to the network of registers;
- a single identifier for a company at European level;
- a uniform system of invoicing;
- a European certificate, in the form of an extract from the business register standardised across the EU;
- a minimum set of data which should be harmonised and applied at EU level, including information services of the same quality in every Member State.

6.7 Cooperation in this field between national and EU institutions and the social partners and civil society is particularly important.

Brussels, 16 September 2010.

The President
of the European Economic and Social Committee
Mario SEPI

APPENDIX

to the opinion of the European Economic and Social Committee

The following amendment, which received at least a quarter of the votes cast, was rejected in the course of the debate [Rule 54(3) of the Rules of Procedure]:

Point 2.1

Amend as follows:

~~The EU has 27 business registers, operating on a national or regional basis. They register the listing of company directorships and other legal entities and the auditing of company accounts, the appointment of independent experts and auditors and the filing and publication of accounts in line with under EU legislation examine and store information on companies established in the relevant country or region, in accordance with the minimum standards applicable to the core services they provide.~~

Reason

Will be given orally.

Voting

For: 22
Against: 24
Abstentions: 2

The following section opinion texts were rejected in favour of amendments adopted by the assembly but obtained at least a quarter of the votes cast:

Point 2.2

‘However, while official information on companies is easily available in the country of their registration (business registers in all Member States went electronic and online from 1 January 2007), access to the same information from another Member State may be hindered by technical (different search conditions and structures) or language barriers.’

Voting

For: 44
Against: 29
Abstentions: 2

Point 4.1

‘The Committee is in favour of developing and strengthening cooperation between business registers across all EU Member States with a view to facilitating access to official, reliable information on companies and ensuring transparency in the single market, while enhancing the protection of shareholders and third parties (creditors, business partners, consumers, etc.), particularly in cross-border procedures (such as cross-border mergers, seat transfers or insolvency proceedings).’

Voting

For: 49
Against: 29
Abstentions: 5

Point 4.4

'Interconnecting business registers should increase transparency and cooperation between businesses, remove the barriers to cross-border business activities and reduce administrative burdens. All of this is crucial to consolidating the single market and promoting balanced and sustainable economic and social progress.'

Voting

For: 50
Against: 40
Abstentions: 6

Point 4.5

'The EESC believes that the two objectives set down by the Green Paper are limited, and recommends that two further objectives be added. The main objective for the interconnection of business registers should be to set up a forecasting instrument as a management tool for assessing the development and performances of EU businesses. This would strengthen strategies and policies in the field, at all levels (European, regional and local). The interconnection of business registers should also aim to boost cooperation between businesses in the EU.'

Voting

For: 54
Against: 44
Abstentions: 7

Point 5.3.1

'As regards connecting the network of business registers with the electronic network of regulated information on listed companies set up under the Transparency Directive (2004/109/EC), the Committee believes that this objective should be subsequent to the full interconnection of all business registers, and that an impact assessment should be carried out on the technical difficulties involved, the effectiveness of such a measure, its real added value and the costs involved.'

Voting

For: 61
Against: 31
Abstentions: 8

Point 5.4.1

'To achieve the objectives set out in the Green Paper, the Committee proposes opting for a solution that integrates and builds on all of the existing cooperation mechanisms and initiatives, especially the EBR, BRITE and e-Justice, by extending the EBR to all Member States, and developing it as an advanced and innovative interoperable system – in the form of an ICT service platform and as an effective forecast management instrument that interconnects business registers across the EU and boosts cooperation between businesses and the assessment of their development – which is integrated into the European e-Justice portal.'

Voting

For: 51
Against: 37
Abstentions: 7

Point 5.4.2

'The solution proposed by the Committee (to expand the EBR to all Member States and enhance its functioning by building on the results of the BRITE project, while integrating the network into the e-Justice portal) would have the following effects: it would ensure the continuity of the experience already built up in managing and administering these IT platforms and maintain their level of recognition and avoid the confusion that might arise were a new instrument to be launched providing similar or even identical information to that contained in the EBR; and multiply the results of the investment already made, including via EU funding, and thus entail lower implementation costs.'

Voting

For: 55
Against: 33
Abstentions: 7

Point 6.5

'When settling on a final solution, due consideration must be given to the legal aspects regarding copyright, transmission of data and the protection of personal data, in line with national and European legislation.'

Voting

For: 53
Against: 42
Abstentions: 3

Point 6.6

'The initiative to interconnect business registers should envisage including all the information that is required to be disclosed, giving access to this information from the company's electronic file in national registers and reducing the administrative burden on companies, without imposing additional fees, particularly on SMEs.'

Voting

For: 56
Against: 33
Abstentions: 3

Point 6.7

'Cooperation and partnerships should be promoted with businesses that provide services similar to those carried out by the new network of business registers.'

Voting

For: 53
Against: 40
Abstentions: 1

Point 1.3

'The EESC recommends adding two objectives to those set down in the Green Paper, with a view to:

— *setting up a forecasting instrument as a management tool for assessing the development and performances of EU businesses. This would strengthen strategies and policies in the field, at all levels, and;*

— *boosting cross-border cooperation.'*

Voting

For: 54
Against: 38
Abstentions: 1

Point 1.8

To achieve the objectives set out in the Green Paper, the Committee proposes opting for a solution that integrates and builds on all of the existing cooperation mechanisms and initiatives, especially the EBR ⁽¹⁾, BRITE ⁽²⁾ and e-Justice, by extending the EBR and developing it as an advanced and innovative interoperable system – in the form of an ICT service platform and as an effective forecast management instrument that interconnects business registers across the EU and boosts cooperation between businesses and the assessment of their development – which is integrated into the European e-Justice portal.

⁽¹⁾ European Business Register.

⁽²⁾ Business Register Interoperability Throughout Europe.

Voting

For: 51
Against: 37
Abstentions: 7

Point 1.10

'With regard to branches of companies in other countries, the Committee supports building on and developing the results of the BRITE project and the solution of automatic notification among registers.'

Voting

For: 56
Against: 33
Abstentions: 3

Point 1.11

'By designating the competent body to take over, expand and develop the EBR and ensuring proper funding of the project from EU funds, the construction of a network that includes business registers from all Member States and the achievement in the short- and medium term of these objectives will be accelerated.'

Voting

For: 54
Against: 38
Abstentions: 1
