Interconnection of business registers

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PURPOSE: to evaluate the ways forward to improve access to information on businesses across the European Union through the interconnection of business registers (Commission Green Paper).

BACKGROUND: the current financial crisis highlighted once again the importance of transparency across the financial markets. In the context of the measures for financial recovery, **improving access to up-to-date and official information on companies** can be seen as a means to restore confidence in the markets all over Europe.

Business registersplay an essential role in this regard. The minimum standards of the core services are set by European legislation. In particular Member States have to maintain electronic business registerssince 1 January 2007. Nevertheless, in Europe, business registers operate on a national or regional basis: they only store information on companies registered in the territory (country or region) where they are competent.

Businesses increasingly expand beyond national borders using the opportunities offered by the Single Market. Cross-border groups as well as a high number of restructuring operations, such as mergers and divisions involve companies from different Member States of the EU. Furthermore, over the past decade the jurisprudence of the European Court of Justicehas opened up the possibility for businesses to incorporate in one Member State and conduct their business activity partly or entirely in another. There is an increasing demand for access to information on companies in a cross-border context, either for commercial purposes or to facilitate access to justice.

Efficient cross-border cooperation between the registers is not only essential for a smooth functioning of the Single Market. It also significantly reduces the costs for companies operating cross-border. Citing possible savings of EUR 161 million regarding certain information obligations stemming from the Eleventh Company law Directive (89/666/EEC), the experts were fully in support of achieving interoperability between trade registers throughout Europe.

The existing voluntary cooperation between business registries is, however, not enough. There is a **need for enhanced cooperation** between them. The principal existing cooperation mechanisms include the **European Business Register (EBR), the e-Justice project or the Internal Market Information System (IMI)**.

On the other hand, this led some of the EBR partners to launch a research initiative, funded largely by the European Commission, to promote interconnection between registers (**Business Register Interoperability Throughout Europe – BRITE**). The BRITE project that was completed in March 2009 had as its objectives 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 the cases of cross-border seat transfers, mergers and on the better control of branches of companies registered in other Member States.

However, the BRITE project was a research project and thus its results were only implemented in a few countries to test their functionality. Since the end of the project phase there has been a discussion between participating Member States about the future use of the project results. A forward-looking strategic outline will be presented in November 2009on how to best ensure the maintenance of and regulate the responsibility for running the services which were envisaged as a follow-up to the BRITE project.

The Commission considers that there are tools and initiatives – such as the **European Business Register (EBR), the e-Justice project or the Internal Market Information System (IMI)** – that can promote the enforcement of this legal framework further, facilitate communication between the competent registers and enhance transparency and confidence in the market.

CONTENT: this Green Paper describes the existing framework and considers possible ways forward to improve access to information on businesses across the EU and more effective application of the company law directives.

The options set out provide some suggestions on how to address the questions explained above. The options require different involvement and commitment from the Member States. The Commission invites all interested parties to express their views on the considerations below. Each of the possible ways forward may need to be accompanied by legislative proposals so as to establish a clear legal framework for the cooperation. However, the added value of such legislative proposals would need to be assessed through impact assessments in accordance with the impact assessment guidelines of the Commission.

Access to information – the network of business registers: to facilitate access to information on companies across borders, **a network of business registers is needed in which all Member States participate.**

A possible way to ensure extensive involvement in a network would be to lay down a requirement to connect all business registers in the EU, possibly in the First Company law Directive (68/151/EEC). However, Member States should be able to decide how this network is set up and what the terms and conditions of the cooperation are. 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 ("governance agreement"). The agreement could address issues such as: (i) the conditions of joining the network including the relation with non-EU members; (ii) the appointment of a body managing the network, questions of responsibility, funding, dispute resolution, etc; (iii) the maintenance of the central server and ensuring access to the public in all official languages of the EU. Member States would have the possibility to decide to build on the already existing results of EBR or to follow a different path.

Business registers participating in the network should remain free to establish their own pricing policy. However, they should not discriminate in their pricing between end users. It should be also ensured that the business registers participating in the network abide by minimum security and data protection standards, including Community data protection rules (95/46/EC) and relevant national provisions.

Finally, to facilitate access to information on companies even further, in the longer term, the connection of the network of business registers with the electronic network set up under the Transparency Directive (2004/109/EC) storing regulated information on listed companies could be envisaged.

Cooperation of business registries in cross-border mergers and seat transfers: there are essentially two options:

- **The first option is to use the results of the BRITE project** and designate or establish an entity that is in charge of maintaining the necessary services extended to all Member States. At present, 18 Member States are involved in a cooperation in the context of EBR and only six (five Member States and Norway) originally participated in the BRITE project and sub-projects, Latvia, Germany (North Rhine-Westphalia) and FYROM joining at a later stage. The creation of a network of business registers as mentioned above is likely to contribute to the implementation of the results of the

BRITE project that may otherwise require significant time. As regards the costs of this option, since the use of the relevant services remains voluntary, the costs of joining and taking part in the cooperation would depend on the agreement of the parties.

- **The second option is to use the Internal Market Information System (IMI)** that is already operational and has the capacity to be extended to new areas of Community legislation in the coming years. Currently, IMI is used by over 1 600 competent authorities in 27 Member States and three EEA countries to exchange information under the Professional Qualifications Directive (2005 /36/EC) and, as a pilot project, the Services Directive (2006/123/EC).

Interested parties are invited to give their views on which solution or a **combination of those solutions** they favour to facilitate communication between business registers in the cases of cross-border mergers and

seat transfers, and whether they support the proposed solution on the disclosure of branches.

The Commission considers that **IMI appears to provide a viable means** to temporarily or even permanently facilitate the communication of business registers in different Member States. However, it is not designed for automated data transmission that would be required for the enforcement of the Eleventh Company law Directive (89/666/EEC).

Member States, the European Parliament, the European Economic and Social Committee and interested parties are invited to submit their views on the suggestions set out in this Green Paper with a view of establishing a broad consensus on any measures that could be envisaged. Contributions are invited until 31 January 2010. In the follow-up to this Green Paper and on the basis of the responses received, the Commission will take a decision on the next steps.