

Company law and corporate governance: interconnection of central, commercial and company registers

2011/0038(COD) - 01/02/2012 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Legal Affairs adopted the report by Kurt LECHNER (EPP, DE) on 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.

It recommended the European Parliament's position adopted at first reading, under the ordinary legislative procedure, should be to amend the Commission proposal as follows:

Legal basis: the Directive should be based on Article 50 of the Treaty on the Functioning of the European Union (TFEU).

Electronic platform: Members stress that cross-border access to business information on companies and their branches opened in other Member States can only be improved if all Member States engage in enabling electronic communication between registers and transmitting information to individual users in a standardised way, by means of identical content and interoperable technologies, throughout the Union. **This interoperability of registers should be ensured by the registers of Member States ("domestic registers") providing services which should constitute interfaces to the European central platform ("the platform").**

- The platform should be a centralised set of information technology tools integrating services and should form a common interface. That interface should be used by all domestic registers. The platform should also provide services constituting an interface to the European e-Justice Portal, serving as the European electronic access point, and to the optional access points established by the Member States.
- On the basis of unique identifiers, the platform should have the functionality of distributing information from each of the Member States' registers to the competent registers of other Member States in a standard message format (an electronic form of messages exchanged between information technology systems as for example: xml) and the appropriate language version.
- Should the Commission **decide to develop and/or operate the platform through a third party**, an appropriate degree of Member States' involvement in this process should be ensured by establishing the technical specifications for the purpose of the public procurement by means of implementing acts.

Scope of accessible data: the report notes that this Directive is not aimed at establishing any centralised registers database storing substantive information about companies. At the stage of implementation of the system of interconnection of central, commercial and companies registers ("the system of interconnection of registers"), **only the set of data necessary for the correct functioning of the central platform should be defined.** The scope of these data should include, in particular, operational data, dictionaries and glossaries. It should be determined taking also into account the need to ensure the efficient operation of the system of interconnection of registers. These data should be used for the purpose of carrying out of the functions by the platform and in a direct form it should never be made publically available. Moreover, **the platform should modify neither the content of the data on companies stored in domestic registers** nor the information about companies transmitted through the system of central commercial and companies registers.

There should be no obligation on the Member States to change their internal system of registers, in particular as regards the management, storage of data, fees, use and disclosure of information for national purposes.

European e-Justice Portal: the European e-Justice Portal will deal, through the use of the platform, with queries put forward by individual users, concerning the information on companies and their branches opened in other Member States, which is stored in the domestic registers. That will enable the presentation of the search results on the Portal, including the explanatory labels in all the official languages of the Union listing the provided information.

Unique identifier: companies and their branches opened in other Member States should have a unique identifier that allows their unequivocal identification in the European Union. The identifier is intended to be used for communication between registers through the system of interconnection of central, commercial and companies registers. Therefore, companies and branches are not obliged to include the unique identifier in the company letters or order forms mentioned in Directives 2009/101/EC and 89/666/EEC. They should continue to use their domestic registration number for their own communication purposes.

Connection between the register of the company and the registers of its branches opened in other Member States: Members highlight that it should be made possible to establish a clear connection between the register of the company and the registers of its branches opened in other Member States, consisting in the exchange of information on the opening and termination of any winding-up or insolvency proceedings of the company and on the striking off of the company from the register, if this entails legal consequences in that Member State. While Member States should be able to decide on the procedures they follow with respect to the branches registered in their territory, they should **ensure, at least, that the branches of a dissolved company are removed from the register without undue delay** and, if applicable, after liquidation proceedings of the branch. This obligation should not apply to branches of companies that have been removed from the register, but which have a legal successor, such as in the case of any change in the legal form of the company, a merger or division, or a cross-border transfer of its registered office.

This Directive should not apply to the branch opened in a Member State by a company which is not governed by the law of a Member State.

Updating information: Member States should ensure that any changes of information, entered in the registers, concerning companies are updated without undue delay. The update should be disclosed, normally, within **21 days from the receipt of the complete documentation regarding those changes**, including the legality check in accordance with national law. This time limit shall not be applicable as regards the accounting documents which companies are obliged to submit for each financial year.

Charging fees: this Directive **should not limit the rights of Member States to charge fees** for obtaining information on companies through the system of interconnection of registers, if such fees are required under national law. Therefore technical measures and specifications for the system of interconnection of registers should allow for the establishment of modalities of payments. The Directive should not prejudice in this respect any specific technical solution, as the modalities of payments should be determined at the stage of adopting the implementing acts, taking into account widely available on-line payment facilities.

Funding of the system of interconnection of registers: according to Members, an equitable solution regarding the funding of the system of interconnection of registers entails that both the European Union and its Member States should take part in the financing of that system. The Member States should bear the

financial burden of adjusting their domestic registers to that system, **while the central elements - the platform and the European e-Justice Portal serving as the European single access point - should be funded from an appropriate budget line in the general budget of the Union.**

Report and regular dialogue: the Commission shall, not later than five years after the final date for application of the provisions referred to in Article 4(1a), publish a report concerning the functioning of the system of interconnection of registers, in particular examining its technical operation and its financial aspects. That report shall be accompanied, if appropriate, by proposals for amending this Directive.

Delegated acts: Members consider that in order to supplement non essential elements of the present directive, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of charging fees for accessing company information.