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**COMMISSION STAFF WORKING DOCUMENT**

**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**

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This report commits only the Commission departments involved in drafting it and does not prejudge the final form of any decision to be taken by the Commission.

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## 1. INTRODUCTION

The current financial crisis has 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 business<sup>1</sup>. Business registers<sup>2</sup> play an essential role in this regard; they register, examine and store information on, for example, a company's legal form, its registered office, capital, legal representatives and annual accounts, and they make this information available to the public.

Businesses are increasingly expanding beyond national borders to seize the opportunities offered by the single market. Progress in the field of information technology is making it easier for citizens and companies to purchase and sell goods and services abroad. Cross-border groups as well as many restructuring operations, such as mergers and divisions, involve companies from different Member States of the EU. Furthermore, over the past decade the case law of the Court of Justice of the European Union<sup>3</sup> (ECJ) has opened up the possibility for businesses to incorporate in one Member State and conduct their business activity partly or entirely in another. Accordingly, 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.

Cross-border access to business information requires cross-border cooperation between business registers. Some such cooperation already exists but it is limited to certain types of information and does not cover every Member State. It is therefore not sufficient to meet the needs for information induced by business activity in the single market.

But efficient cross-border cooperation between business registers is not only essential for the smooth functioning of the single market. It also reduces costs for companies operating across borders. In 2007, the Commission launched an Action Programme for reducing administrative burdens in order to improve the business environment for EU companies<sup>4</sup>. The Action Programme was endorsed by the European Council in March 2007<sup>5</sup>, which stressed that a strong joint effort by the EU and the Member States is necessary to reduce administrative burdens within the EU<sup>6</sup>. In 2008, a large-scale

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<sup>1</sup> Council Conclusions on the interconnection of business registers, 9678/10, point 5.

<sup>2</sup> In this impact assessment 'business register' means all the central, commercial and companies registers covered by Article 3 of 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 (first CLD), OJ L 258, 1.10.2009, pp. 11–19.

<sup>3</sup> The *Centros* (C-212/97), *Überseering* (C-208/00) and *Inspire Art* (C-167/01) cases.

<sup>4</sup> Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions 'Action Programme for Reducing Administrative Burdens in the European Union' (COM(2007) 23 final).

<sup>5</sup> Presidency Conclusions of the Brussels European Council — doc. 7224/07 Concl 1.

<sup>6</sup> For further information see:

[http://ec.europa.eu/enterprise/policies/better-regulation/administrative-burdens/index\\_en.htm](http://ec.europa.eu/enterprise/policies/better-regulation/administrative-burdens/index_en.htm).

administrative cost measurement exercise identified company law as a priority area<sup>7</sup>. In this context, the High-Level Group of Independent Stakeholders on Administrative Burdens was also consulted. They identified facilitating electronic cross-border access to business information as one means of facilitating cross-border economic activities. The group fully supported achieving interoperability between trade registers throughout Europe<sup>8</sup>.

## 2. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

On 5 November 2009, the European Commission adopted a Green Paper<sup>9</sup> accompanied by a progress report<sup>10</sup> on the interconnection of business registers. The progress report presented the state of play with the existing cooperation mechanisms between business registers and other authorities. The Green Paper supplemented the report by considering different policy options for the future<sup>11</sup>. The documents identified and examined two issues: cross-border access to information on companies and cross-border communication between business registers.

The Green Paper formed the basis for a public consultation that was conducted between 5 November 2009 and 31 January 2010. DG Internal Market and Services received 69 responses from 22 countries, including 21 Member States. The governments of 17 Member States commented on the Green Paper and about the same number of replies were received from business registers and business organisations or companies. Other respondents included professional advisers and trade unions. Almost all respondents to the consultation expressed their support for improving the interconnection of business registers in the EU. There was broad agreement that such a network would not bring real added value in terms of market transparency unless it linked the business registers of all 27 Member States. As regards improving communications between business registers in cross-border procedures (mergers, transfers of registered office, foreign branch registration, etc.), most respondents were in favour of a solution that would make automated data transmission between business registers possible. Details of the report on the replies can be found in Annex 1.

On 25 May 2010, the Competitiveness Council adopted conclusions welcoming the Commission's initiative to improve interconnection of business registers<sup>12</sup>. The Council highlighted the role which a European network of business registers could play in improving market transparency and invited the Commission to continue work on centralised access to business information and on an electronic network or platform of

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<sup>7</sup> 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, [http://ec.europa.eu/enterprise/policies/better-regulation/files/abst09\\_companylaw\\_en.pdf](http://ec.europa.eu/enterprise/policies/better-regulation/files/abst09_companylaw_en.pdf).

<sup>8</sup> Opinion of the High-Level Group of Independent Stakeholders on Administrative Burdens ('Stoiber Group') on the priority area company law/annual accounts, 10 July 2008, paragraph 22, [http://ec.europa.eu/enterprise/admin-burdens-eduction/docs/080710\\_hlg\\_op\\_comp\\_law\\_final.pdf](http://ec.europa.eu/enterprise/admin-burdens-eduction/docs/080710_hlg_op_comp_law_final.pdf).

<sup>9</sup> Green Paper on the interconnection of business registers (COM(2009) 614 final).

<sup>10</sup> Commission staff working document accompanying the Green Paper on the interconnection of business registers (SEC(2009) 1492).

<sup>11</sup> These policy options will be examined in chapter 8 of this impact assessment.

<sup>12</sup> See footnote 1.

electronic networks building on the progress already made in existing projects. The Council added that any future legal framework should ensure that all Member States take part in the network, that reliable, up-to-date and standardised data are transmitted through it and that there is a legal basis for cooperation between registers, particularly with regard to foreign branches. Moreover, clear channels of communication between business registers should ensure that they cooperate smoothly in cross-border procedures. In the long term, the possibility of connecting the enhanced network of business registers to the electronic network set up under the Transparency Directive<sup>13</sup> to store regulated information on listed companies could be examined.

On 7 September 2010, the European Parliament adopted a resolution which expressed general support for the project<sup>14</sup>. It underlined that the usefulness of the project for further integration of the European Economic Area can be exploited only if all Member States take part in the network of business registers. Parliament also pointed out that public access to reliable, up-to-date information should be provided via an official single access point in order to improve transparency, efficiency and legal certainty, to the benefit of companies, workers and consumers. Finally, the resolution highlighted the importance of automated data exchange for foreign branch disclosure and communication between registers in cross-border procedures, such as mergers and transfers of registered office.

The European Economic and Social Committee adopted an equally supportive opinion on 16 September 2010<sup>15</sup> based on the work done by its Section for the Single Market, Production and Consumption.

Finally, the Committee of the Regions<sup>16</sup> expressed support for the Commission's initiative, underlining the importance of company mobility across the EU.

In April 2010, a Steering Group was formed to assist DG Internal Market and Services with assessing the impact of the different policy options put forward to solve the problems identified. The Steering Group was made up of representatives of the Legal Service, the Secretariat-General, Eurostat, DG Enterprise and Industry, DG Information Society and Media, DG Home Affairs, DG Justice, DG Informatics, DG Competition and DG Enlargement. It has met three times to evaluate the progress on the impact assessment, to provide guidance on drafting and contributions and to approve the final document.

The IA report was examined by the Impact Assessment Quality Board by written procedure. The Board issued a favourable opinion on 15 September 2010. Following the Board's opinion, the following changes were made to this IA: The report goes into further detail on the problems, including the deficiencies of the existing cooperation

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<sup>13</sup> Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, pp. 38–57).

<sup>14</sup> European Parliament resolution of 7 September 2010 on the interconnection of business registers, 2010/2055(INI).

<sup>15</sup> INT/517.

<sup>16</sup> CdR 20/2010, adoption date: 9 June 2010.

mechanisms. It also explains the scale of the potential reduction of the administrative burden better. The cost assessment has been moved from the annex and integrated into the chapter on policy options. A number of explanations about the calculation have been added. The text also gives a better explanation of why the legislative proposals will not influence the choice of the ICT solution which must be made in the implementation phase of the project. The views of stakeholders have been incorporated into the text better. Finally, a glossary has been added.

### 3. CONTEXT

#### 3.1. Business registers and business registration

Business registers exist in every Member State; they are organised at national (e.g. Sweden, Ireland and Denmark), regional (e.g. Austria) or local level (e.g. Germany)<sup>17</sup>. Business registers and business registration were the first area of company law harmonised by the European Community. As early as 1968, common rules set minimum standards for disclosure (registration and publication) of business information in order to protect shareholders and third parties<sup>18</sup>. In every Member State limited liability companies<sup>19</sup> must be registered in a business register<sup>20</sup>. The country of registration determines the company law applicable<sup>21</sup>, regardless of the number of countries in which the company carries out business. The first Company Law Directive (CLD)<sup>22</sup> lays down a minimum list of documents and particulars (data) to be disclosed in the business register about each company.

Since 1 January 2007, following an amendment to the first CLD, Member States have to maintain electronic business registers. Companies may submit their requests, documents and particulars to the business register by electronic means<sup>23</sup>. The content of the electronic business register can also be obtained by electronic means (e-mail or web-based access). The first CLD not only lays down transparency requirements, but also contributes to legal certainty by creating conditions allowing third parties to rely on the

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<sup>17</sup> See Annex 2 for an overview of the authorities responsible for business registration in the Member States.

<sup>18</sup> The first CLD was originally numbered Directive 68/151/EEC. The latest, codified, version is Directive 2009/101/EC.

<sup>19</sup> In this impact assessment the term ‘company’ should always be understood as ‘limited liability company’ unless specified otherwise.

<sup>20</sup> In most countries (except for the Netherlands, for example) companies acquire their legal personality at the time they are registered. ‘Legal personality’ means that a company is legally distinct from its shareholders, who bear no personal liability for the obligations of the company. A legal person has the capacity to enter into contracts, own property or to sue or be sued.

<sup>21</sup> This law determines, among other things, the rules applicable to establishment of the company, its internal organisation, capital requirements, legal representation, duties and liabilities, accounting, auditing and usually insolvency as well, regardless of the number of countries where it carries out business.

<sup>22</sup> 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).

<sup>23</sup> Article 3 of the first CLD.

information disclosed via the business register. Moreover, the eleventh CLD<sup>24</sup> lays down requirements for registration of branches of companies registered in other Member States. It sets out the data and documents that need to be disclosed about the company if it opens a foreign branch. Member States may require companies to provide a translation of their annual accounts and their articles of association.

These directives have become integral parts of the relevant national company law. But despite these common threads, several differences remain between the Member States in terms of content, frequency of updates, legal checks, the legal force of the information, access to documents and the languages available. For example, in Germany and Austria only notaries may submit any document to the business register, whereas the United Kingdom and Ireland use a system of self-certification where the representative of the relevant company submits a statement on compliance with the applicable legislation. Moreover, in addition to the minimum list of documents and particulars laid down by the first CLD, Member States usually require companies to file additional items in the business register at the time of registration<sup>25</sup>. Accordingly, above the minimum requirements, the content of the business registers is not standardised<sup>26</sup>. Some of these differences create problems for users of business information. These will be examined in the chapter on problem definition (subsection 4.3.4).

In line with the scope of the first and eleventh CLDs, this impact assessment will be limited to private and public limited liability companies. Even with this restriction, the directives cover altogether more than 8.5 million companies in Europe<sup>27</sup> (see Annex 3). Furthermore, many Member States like Austria, Lithuania, Poland and the United Kingdom apply similar or identical rules to other legal forms as well, thus adding to the total number of companies affected.

A clear distinction must be drawn between business registers and commercial information providers who develop ‘usable’ data on companies and sell them to their customers. Some of these commercial information providers take a critical view of this proposal to improve public access to cross-border information, while others welcome it. It seems fair to assume that commercial information providers, who have developed the skills necessary for processing and adding value to the raw data contained in the domestic public business registers, will not be adversely affected by better interconnection of business registers.

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<sup>24</sup> Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State (OJ L 395, 30.12.1989, p. 36).

<sup>25</sup> The requirements vary from one Member State to another. Typical examples include an indication of whether the company belongs to or is a dominant member of a recognised group of companies, including the names, addresses and registration numbers of the companies belonging to the group, the national tax number or a list of the members of the company.

<sup>26</sup> The fees charged by the registers also show some divergence. However, the first CLD stipulates that the price for obtaining a copy of the registered documents and data must not exceed the corresponding administrative costs. Consequently, the different fees charged by the registers are not perceived as a problem.

<sup>27</sup> Figures were not available from Belgium and Greece.

### 3.2. Cross-border aspects of business registration and information

Reliable up-to-date information on companies is crucial for consumers, existing or potential business partners, the public and, in particular, the tax and justice administration. Cross-border access to business information is relevant in connection with companies that set up branches or subsidiaries, conduct cross-border trade or provide cross-border services in the EU.

The first important cross-border aspect of business registration is registration of foreign branches. Following the judgment by the ECJ in the *Centros* case<sup>28</sup>, entrepreneurs are more and more inclined to make use of their freedom to incorporate in the country which is best suited to their business needs<sup>29</sup>. These incorporations are often followed by establishment of a branch in their own Member State for the purpose of conducting their business. By way of illustration, Annex 4 shows the number of private limited companies incorporated in the United Kingdom but with the majority of their directors residing in another country (1997-2006).

Second, cooperation between business registers from different Member States is explicitly required by European legislation adopted over the last decade in order to facilitate cross-border mergers of limited liability companies<sup>30</sup> and cross-border transfers of the registered office of European companies (SE)<sup>31</sup> or European cooperative societies (SCE)<sup>32</sup>. In both cases, the register filing the new registration is under an obligation to notify the other relevant register (the former register) about the registration of the merger or the transfer of registered office. From a legal viewpoint, it is crucial that deletion of the old registration does not take effect until after receiving the notification<sup>33</sup>.

The ECJ also made it clear, in the *Sevic* case<sup>34</sup>, that all European companies can participate in cross-border mergers. In 2008, in the *Cartesio* case<sup>35</sup>, the Court made it possible for national companies to transfer their registered office to another Member State under specific circumstances. Such a transfer is generally allowed in a few countries, such as Luxembourg, Spain and Cyprus. In practice, these operations cannot be carried out without cooperation between the registers concerned.

The third aspect concerns cross-border access to information on companies, for which business registers are a valuable source. According to one reply to a questionnaire which the Commission sent to the Member States (see Annex 5), Companies House in the

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<sup>28</sup> C-212/97.

<sup>29</sup> Especially in the United Kingdom. See Becht, Marco, Mayer, Colin and Wagner, Hannes F., 'Where Do Firms Incorporate? Deregulation and the Cost of Entry' (August 2007). ECGI — Law Working Paper No 70/2006; Journal of Corporate Finance, Vol. 14, No 3, 2008. Available at: <http://ssrn.com/abstract=906066>.

<sup>30</sup> 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).

<sup>31</sup> 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).

<sup>32</sup> 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).

<sup>33</sup> See Article 13 of the Directive on cross-border mergers, Article 8(11) of the SE Regulation and Article 7(11) of the SCE Regulation.

<sup>34</sup> C-411/03.

<sup>35</sup> C-210/06.

United Kingdom received 185 million (domestic and cross-border) requests for free business information. That gives an average of 70 requests per year for every company registered. On an average day, users requested information on 15 % of all companies. In Austria, Finland or Sweden, business registers receive, on average, between 10 and 15 requests per company per year, and in Ireland around three<sup>36</sup>.

Information on cross-border access to business information is fragmented, since business registers do not systematically record the geographical origin of the requests received. A survey<sup>37</sup> carried out by Companies House in 2009 estimated that 90 % of requests for information were domestic, while around 5 % (more than 9 million a year) originated from other Member States, 3 % from the USA and the remainder from the rest of the world. In Finland, Germany and Austria requests from other Member States make up around 1 % of the total. In 2009, cross-border requests for information via the European Business Register (see section 3.3) totalled 330 000<sup>38</sup>, an increase of 65 % over 2008.

Cross-border access to business information is also relevant in connection with businesses that conduct cross-border trade or provide cross-border services in the EU. No data are available on the number of companies involved in cross-border trade or provision of services<sup>39</sup>, but other sources show the scale of cross-border business. For example, it has been estimated that 25 % of small and medium-sized enterprises (SMEs)<sup>40</sup> in Europe export and 29 % import within the single market<sup>41</sup>. Taking into account that more than 99 % of European companies are SMEs, which means 20 709 000 enterprises<sup>42</sup>, more than 5 000 000 European SMEs have transactions with consumers, creditors or business partners from other Member States. Eurostat's database of multinational enterprise groups (Eurogroups Register — EGR) also adds to this picture: so far, it has registered 299 570 legal units<sup>43</sup> located in the EU Member States (314 031 in EU and EFTA Member States<sup>44</sup>) that belong to the 6 350 largest multinational enterprise groups<sup>45</sup>. Moreover, according to a 2009 Eurobarometer survey<sup>46</sup>, 25 % of European

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<sup>36</sup> Data for Italy, Spain, France and Germany are missing or not comparable.

<sup>37</sup> See: <http://www.ecrforum.org/conference/conference2010/>, presentation by Companies House.

<sup>38</sup> Close to 70 % of the total volume is on company searches. The rest of the traffic is mainly on company appointments and financial information.

<sup>39</sup> Eurostat makes available only data on intra-EU transactions between businesses that concern trade flows in goods, services and flows of investment stocks.

<sup>40</sup> SMEs are not always limited liability companies. They are defined by Commission Recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises (OJ L 107, 30.4.1996, pp. 4–9).

<sup>41</sup> Around 7 % of SMEs in the EU are involved in technological cooperation with a foreign partner, another 7 % are subcontractors to a foreign partner and 7 % more have foreign subcontractors. Some 2 % of SMEs are active in foreign direct investment. Annexes 6 and 7 show that most exports and imports by SMEs remain within Europe. See also 'Internationalisation of European SMEs', 2010:

[http://ec.europa.eu/enterprise/policies/sme/market-access/internationalisation/index\\_en.htm](http://ec.europa.eu/enterprise/policies/sme/market-access/internationalisation/index_en.htm).

<sup>42</sup> 'European SMEs under Pressure, Annual Report on small and medium-sized enterprises 2009': [http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/performance-review/index\\_en.htm](http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/performance-review/index_en.htm).

<sup>43</sup> 'Legal units' include legal persons recognised by law, independently of the individuals or institutions which own them or are members of them and natural persons who are engaged in an economic activity in their own right (Council Regulation (EEC) No 696/93).

<sup>44</sup> The United Kingdom, Germany and France have the highest number of legal units in the EGR.

<sup>45</sup> Eurostat intends to expand the coverage to 10 000 groups next year and to have a complete picture of all multinational groups which are relevant in the European context by 2013.

retailers (as opposed to 21 % in 2008) conducted cross-border transactions in the form of e-commerce within the EU<sup>47</sup>.

Cross-border access to business information is also of relevance to citizens, in particular in their role as consumers: The Commission's 2009 report on e-commerce pointed out that, in 2008, 33 % of individuals in the EU ordered online, whereas cross-border shopping reached only 7 %<sup>48</sup>. Among other reasons, consumers underlined the difficulty of establishing whether a seller (usually a company) in another country is trustworthy or not, mainly due to insufficient information and language problems<sup>49</sup>.

### 3.3. The existing cooperation mechanism between business registers

Since 1992, a voluntary cooperation mechanism between the business registers in Europe has been in existence. Today the European Business Register (EBR)<sup>50</sup> combines official business registers from 19 Member States and six other European jurisdictions<sup>51</sup> (see Annex 9). The EBR is a network of business registers whose objective is 'to offer reliable information on companies all over Europe'. Citizens, businesses and public authorities may subscribe to the services of the EBR at the business register in their own country. Subscribers are able to search for a company name or, in some cases, for the name of an individual, across all the registers which are members of the EBR by submitting a single query in their own language. The result of the search is made available in the form of a specific set of company information in the same language as the query. Currently, the interface is translated into 14 languages (the official languages of the countries which are members of the EBR)<sup>52</sup>.

Whilst the informal nature of the cooperation in the context of the EBR has contributed to its flexibility, it has also posed significant challenges to its expansion, financing and governance. Progress on extending the EBR network is very slow. The cooperation started in 1992, but eight EU Member States have still not joined the network<sup>53</sup>. Nevertheless, interest in joining the EBR has grown significantly during the last few years. Some business registers face internal difficulties in relation to joining the EBR (resources, political decisions, legal constraints, etc.). Once the decision is taken, it takes, on average, five person-months to integrate a new member, although in the most recent cases 2.5 person-months were sufficient<sup>54</sup>.

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<sup>46</sup> 'Business attitudes towards cross-border sales and consumer protection', November 2009, Flash Eurobarometer, [http://ec.europa.eu/public\\_opinion/flash/fl\\_278\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_278_en.pdf).

<sup>47</sup> Around 5 % of retailers sold products and services in just one additional country, 6 % claimed two or three other countries, while 14 % were selling in at least four other EU countries.

<sup>48</sup> Commission staff working document SEC(2009) 283 final.

<sup>49</sup> The current scale of domestic and cross-border purchases via the internet is shown in Annex 8.

<sup>50</sup> <http://www.ebr.org/>.

<sup>51</sup> Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Slovenia, Spain, Sweden and the UK plus Guernsey, Jersey, the former Yugoslav Republic of Macedonia, Norway, Serbia and Ukraine. The history of the EBR is described in detail in the progress report on the interconnection of business registers, SEC(2009) 1492, page 8.

<sup>52</sup> See: <http://www.ebr.org/section/5/index.html>.

<sup>53</sup> Bulgaria, Cyprus, Hungary, Malta, Poland, Portugal, Romania and Slovakia.

<sup>54</sup> UK, Jersey and Guernsey. The time required depends on the flexibility and adaptability of the existing platform for data exchange in the relevant business register.

Participation in the EBR network is voluntary for the business registers and is carried out on a contractual basis ('information-sharing agreement' — ISA). The EBR has also adopted the form of a European economic interest grouping (EEIG)<sup>55</sup>, that is a not-for-profit legal body formed under private law. Only 13 of the 25 participants are members of the EBR EEIG, due to national legal constraints<sup>56</sup>. This dual legal structure<sup>57</sup> makes management of the EBR complex. It also raises concerns about governance, since the EBR EEIG is managed by a board on which the majority of members represent the members of the EEIG, while the others represent members who are parties to the ISA only. The EBR is not limited to EU Member States, but welcomes applications from other countries as well. In these countries, with the exception of Norway, the minimum standards set by European legislation do not apply.

The network is mainly financed by the fees paid by its members: the joining fee is currently set at EUR 15 000 (to cover the up-front costs) and the annual fee at EUR 12 000, EUR 15 000 or EUR 18 000 (depending on national GDP) for use of the EBR software and ongoing support services. On the one hand, the EBR claims that it does not have sufficient funding to employ the staff necessary for faster expansion of the network, while on the other business registers, in particular those financed from the public purse, report difficulties with finding the funds to join the network and to pay the annual fee. Users of the services pay a small sum to the registers concerned for the information requested. Basic searches are usually free of charge.

Within the EBR the members give each other access to the data stored in their business registers. They are under no obligation, however, to become distributors of company data from other countries. In some countries (e.g. in the United Kingdom and Ireland) the law prevents the registers from selling business information originating from other states. Currently, only 14 members of the EBR distribute data from other countries in their Member State. EBR users have access to a predefined set of information in a standardised form. Many countries provide additional access to some company documents. For example, business registers in 13 countries give access to annual accounts via the EBR. See Annex 10 for further details.

Between 2006 and 2009, the EBR took part in a research project called BRITE<sup>58</sup>, financed under the Sixth Framework Programme<sup>59</sup>. The objective was to develop a technological platform to ensure the interoperability of business registers throughout Europe. In particular, the project created specific technological solutions to enhance the quality of exchanges of information on cross-border transfers of registered office and

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<sup>55</sup> Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG) (OJ L 199, 31.7.1985, p. 1). The EEIG is a legal body set up to facilitate or develop the economic activities of its members and to improve or increase the results of those activities. Its purpose is not to make profits for itself. Its activity must be related to the economic activities of its members and may not be more than ancillary to those activities (Article 3).

<sup>56</sup> Business registers are often units of courts or ministries that are not authorised to become members of private-law bodies, such as an EEIG, where their liability is unlimited.

<sup>57</sup> A legal solution that combines a civil law contract with a European legal form.

<sup>58</sup> For further details, see: <http://www.briteproject.eu/project-overview/partners>.  
<sup>59</sup> [http://ec.europa.eu/research/fp6/index\\_en.cfm](http://ec.europa.eu/research/fp6/index_en.cfm).

mergers and on foreign branch disclosure. It also developed a single company identifier, known as the 'Registered Entity Identifier' (REID)<sup>60</sup>.

In the course of the research project, some solutions (the directory of registers, central name index and common procedures for transfers of registered office and cross-border mergers) were implemented in a few countries to test them in operation. The Branch Disclosure Service is currently in use only between the UK, Ireland, Sweden, Norway and Germany. However, following development of the services in the BRITE project, no decision was taken about their future use and whether the results of the research could be applied in practice by all business registers in the EU. The technological solutions are ready to be implemented, but as yet no solution has been found to regulate maintenance of and responsibility for running the services. The BRITE consortium considered that the EBR is an organisation that could potentially maintain the services developed in the course of the project.

To conclude, the EBR provides a good basis for cross-border cooperation between business registers. It offers significant coverage in the Member States and has technology developed for the purposes of business registers. But, despite its potential, in 2009 only 330 000 searches were carried out. On the one hand, the number of requests is increasing. On the other, the current cooperation mechanism is still not satisfactory for potential users. This is due to a combination of factors: the limited number of countries which are members of the EBR, the different levels of service and sets of information, the lack of a single access point, the lack of commitment, on the part of members, to the EBR and insufficient funding. Consequently, in its present form, the EBR cannot be considered a viable instrument to break down all barriers to cross-border cooperation between business registers.

### **3.4. The Internal Market Information System (IMI)**

IMI is an electronic tool designed to support day-to-day cooperation between public administrations by making electronic exchanges of information between competent authorities possible. It helps to identify partners in other Member States and supports all official EU languages<sup>61</sup>. IMI was developed to support application of the Services Directive<sup>62</sup> and is also used to facilitate cross-border cooperation between public authorities on application of the Professional Qualifications Directive<sup>63</sup>. However, it has the potential to be deployed for enforcement of other directives, including for cooperation between business registers (see chapter 8).

IMI is fully developed and in use in every Member State. Currently, more than 5 600 competent authorities are registered in IMI for the purpose of exchanging information relating to the Professional Qualifications or the Services Directive. Sixteen of the 30

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<sup>60</sup> The BRITE project is described in the progress report on the interconnection of business registers.

<sup>61</sup> IMI is described in detail in the progress report on the interconnection of business registers.

<sup>62</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36).

<sup>63</sup> Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).

members of the EEA have registered their authorities responsible for business registers in IMI<sup>64</sup>.

IMI works on the basis of predefined questions and answers that have been pre-translated into all official languages by the European Commission translation service, thus providing reliable and legally valid language support. In addition to the structured questions, it is possible to include free text and to attach images or documents. IMI, however, requires manual data exchange and is suitable for only low-volume electronic communication.

### **3.5. The e-Justice project**

The objective of e-Justice is to help to administer justice more effectively throughout Europe by using ICT solutions for the benefit of citizens<sup>65</sup>. It is an initial response to the need to improve access to justice, cooperation between legal authorities and the effectiveness of the justice system. Use of such technologies would help to streamline and simplify judicial procedures, shorten the time they take and cut costs. The European e-Justice portal is intended to become the main gateway for 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 experts, the judiciary, employees and other professionals and entities. The first version of the e-Justice portal came on-line on 16 July 2010. The European e-Justice Action Plan for 2009-2013<sup>66</sup> gives details of how the e-Justice portal would deal with integration of the EBR: In the first phase, the e-Justice portal would provide a link to the EBR and to all national business registers. In the second, consideration would be given to the possibility of partial integration of the EBR into the portal itself. Consequently, in order to avoid overlaps between the two projects, this impact assessment will not address the issue of a single access point to the network of business registers. The e-Justice portal will provide a solution to this point.

## **4. PROBLEM DEFINITION**

The problems related to the interconnection of business registers can be grouped under three different headings: lack of up-to-date information in the business register of foreign branches, difficulties with cooperation on procedures for cross-border mergers and transfers of registered office and difficulties with cross-border access to business information. These problems are discussed in detail below. Each problem has at least one major impact on the business environment in the single market. These are not all, or not all equally, relevant to each problem. In some cases there are, however, strong synergies

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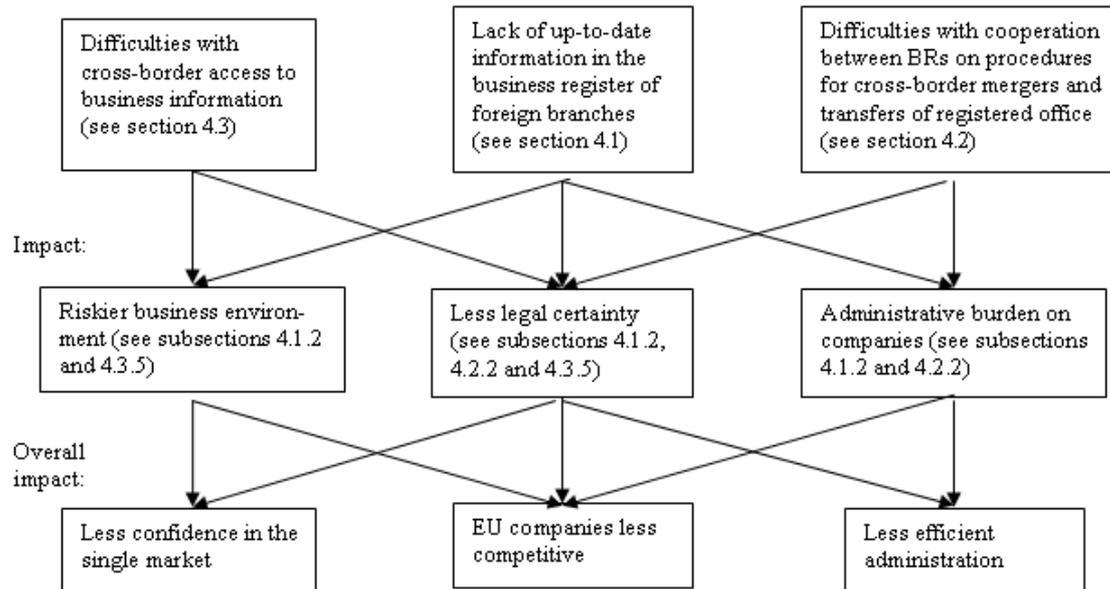
<sup>64</sup> Other register owners or managers could be considered partly registered, in that they are managed by or form part of an authority such as a ministry which is registered in IMI. In Germany, where the local courts maintain business registers, 70 out of 130 of them are registered in IMI. In order to facilitate application of Article 27 of the Services Directive, a directory of registers has already been made available via IMI. This directory includes all registers, including all business registers, accessible to public authorities, in which service providers may be entered. It provides information about the content and access conditions of each register, the register owner and contact details and the web-links, if accessible via the internet.

<sup>65</sup> See also Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee 'Towards a European e-Justice Strategy', (COM(2008) 329 final).

<sup>66</sup> Council Multi-Annual European e-Justice Action Plan 2009-1013 (2009/C 75/01).

between them. Therefore, at the end of each section, a concluding subsection will explain the main impact of the specific problem.

Problems:



#### 4.1. Problem 1: Lack of up-to-date information in the business register of foreign branches

The eleventh CLD requires companies to disclose particulars and documents when they open a branch in another Member State. Branches are not independent legal persons; the company they belong to is responsible for their debts and other obligations.

##### 4.1.1. *Insufficient up-to-date information in the register of the foreign branch*

Business information has to be disclosed in the language of the country where the branch is registered in order to improve transparency and to inform third parties. Provision of this information is a prerequisite for registration of the branch. The procedures for registration of the branches of foreign companies are governed by national law.

Member States impose an obligation on companies to keep the information in the register of the branch up to date. Companies, however, often fail to do so. Business registers have the power to impose and enforce financial or other sanctions if companies fail to comply with the obligation to update the information. They can launch procedures against companies *ex officio* or in response to complaints.

In practice, however, the business register of the branch is not in a position systematically to monitor regular updating of the information on individual businesses. The register has no information about any changes in the registered data on the foreign company (including its removal from the register) unless the company provides this information or a complaint is received from third parties. As there is no systematic or effective means of enforcement, a significant proportion of companies do not comply.

This omission has critical consequences for protection of consumers and business partners, in particular when the register of the branch is not notified about the dissolution or insolvency of the company. Consequently, the register provides misleading information to the market. The speed of updates is, therefore, a key quality problem.

Today, over 112000 branches registered in EEA countries belong to companies registered in other countries<sup>67</sup>. As regards frequency of registration, in 2009 a total of 169 branches of foreign companies were registered in Poland, 4119 in Norway, 130 in Hungary and 474 in the United Kingdom. Further figures can be found in Annex 11.

Some countries have started to explore the number of registered branches which do not belong to any existing foreign company<sup>68</sup>, e.g. due to the dissolution of the company. The table<sup>69</sup> below shows that approximately 15 % of the branches have no existing company behind them, which is a good indication of the extent of the discrepancies between the content of the relevant registers across the EU.

Country	Branches checked	Number (percentage) of deleted foreign companies
Norway	12 152	1 946 (16%)
Sweden	204	27 (13.2%)
Germany (North Rhine-Westphalia)	3 757	646 (17.3%)

Extrapolating the figures on the basis of the total number of foreign branches in Europe points to the conclusion that potentially 16800 registered foreign branches no longer belong to existing companies in the EEA.

In the course of the public consultation on the interconnection of business registers, nearly all the respondents recognised the need for an automated notification system between the register of the company and the register of its foreign branch. Many were in favour of establishing a firm legal basis for data exchanges. The Council and the European Parliament were also in favour of this proposal.

As explained in section 3.3, the BRITE project developed an automated solution to track major changes in the register of the company (dissolution, etc.) and to send a notification to the register of the foreign branch about the change. However, the Branch Disclosure Service has only been implemented between the UK, Ireland, Sweden and Norway and, separately, between the UK and Germany. On the other hand, as explained in section 3.4, IMI has not yet been extended to enforcement of the Company Law Directives, but does have the potential for transmitting the relevant information on a case-by-case basis.

#### 4.1.2. *Impact of the lack of up-to-date information*

Riskier business environment and less legal certainty: Lack of up-to-date information in the business register of a foreign branch makes the business environment riskier for consumers and creditors, because the information in the register of the branch is misleading. As explained in section 3.1, the law of most Member States stipulates that third parties must be able to rely on the content of the register. But in 15 % of the cases examined, the foreign company no longer existed. There are no figures on other possible types of discrepancies (e.g. changes in the company's representatives). Consequently, the lack of credibility of the registered data is adversely affecting the interests and the legal

<sup>67</sup> See Annex 10 for detailed figures.

<sup>68</sup> The companies were incorporated in the UK.

<sup>69</sup> Figures provided by the EBR.

security of creditors and consumers who are in contact with the branch. The lack of direct communication between business registers also slows down cross-border operations. Longer delays in communication result in less legal certainty for third parties using the information in the register of the branch and reduce the credibility of the content of the register.

Administrative burden on companies<sup>70</sup>: Member States place the burden of updating the content of the business register of the foreign branch on companies. Subsection 4.1.1 illustrates that this solution lacks efficiency and there seem to be deficiencies in enforcing it. According to a study on administrative burdens in the area of company law<sup>71</sup>, the total savings could add up to EUR 69 million, if such updating were carried out as part of the cross-border cooperation between business registers.

The study assumes that the main administrative burdens related to cross-border obligations stem from the need to deliver applications, accounts and reports in the required formats and to follow the procedures required in the country in which the branches and subsidiaries are established. In the calculations, the cost of disclosure of accounting documents of the company of the branch was estimated at EUR 304 million a year and disclosure of information on the address, activities, trade register, name and legal form of the branch was estimated at EUR 43 million in administrative costs alone. Hence, improving interoperability between countries within these areas will create the possibility of reducing not only these administrative costs but also waiting time and irritation<sup>72</sup>. The total administrative burden imposed by these two sets of information obligations adds up to EUR 347 million.

Adding the assumption that, based on the results of the BRITE project, the obstacles to complying with information obligations in cross-border activities will be removed, the authors of the study concluded that a reduction of EUR 69 million in the cost and burden related to these information obligations might be possible<sup>73</sup>. This is an annual reduction. The contractors pointed out that the figure was ‘based on a high-level expert assumption, which was made during the project’<sup>74</sup>.

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<sup>70</sup> Note that the ‘Final Report for Priority Area Annual Accounts/Company Law, EU Project on Baseline Measurement and Reduction of Administrative Costs’ envisages significant potential savings in relation to the translation obligations for foreign branch disclosure. This issue is, however, already covered by the Commission’s proposal for a Directive of the European Parliament and of the Council amending Council Directives 68/151/EEC and 89/666/EEC as regards publication and translation obligations of certain types of companies (COM(2008) 194 final) and therefore falls outside the scope of this proposal.

<sup>71</sup> 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, p. 165,  
[http://ec.europa.eu/enterprise/policies/better-regulation/files/abst09\\_companylaw\\_en.pdf](http://ec.europa.eu/enterprise/policies/better-regulation/files/abst09_companylaw_en.pdf).

<sup>72</sup> See report mentioned in footnote 71, p. 157.

<sup>73</sup> See report mentioned in footnote 71, p. 165.

<sup>74</sup> Based on the foregoing, it is not feasible to provide a detailed description of the individual components of the reduction in the administrative burden, following the template recommended in the Annex to the IA Guidelines (p. 57).

## 4.2. Problem 2: Difficulties with cooperation between business registers on procedures for cross-border mergers and transfers of registered office

As explained in section 3.2, cross-border cooperation between business registers is required explicitly by a number of European legal instruments. In particular, after registration of a cross-border merger or of a transfer of registered office, the new register is required to send a notification to the old register so that it can delete the earlier registration. Communication between business registers on procedures for both cross-border mergers and transfers of registered office can be discussed in the same section as they raise identical problems.

### 4.2.1. Cooperation on cross-border procedures

Cross-border mergers<sup>75</sup> are currently not numerous. In relation to application of the Cross-Border Mergers Directive, for example, the United Kingdom reported four inbound and four outbound mergers in 2008. In 2009, one inbound and eight outbound mergers took place and so far in 2010 there have been six and seven respectively. In Estonia the figures are three inbound and one outbound in 2008, four and five in 2009 and one and none so far in 2010. Currently, the highest figures have been reported by Luxembourg with nine inbound and five outbound mergers in 2008, 22 and 24 in 2009 and 14 and five so far in 2010<sup>76</sup>.

Two reasons can be identified for the current low number of operations: First, application of the Cross-Border Mergers Directive is not mandatory for companies, but optional. Second, the deadline for implementation of the Directive expired on 15 December 2007, but a number of Member States implemented it almost two years late. The overall figures show some increase in the number of operations but, after only two and a half years of application, no meaningful conclusions can be drawn yet<sup>77</sup>.

Moreover, up until 1 April 2009, 46 SEs were set up by cross-border mergers. As for transfers of registered office, there have 50 altogether by SEs (for further details, see Annex 13). Note that the total number of SEs in Europe was 595 on 25 June 2010<sup>78</sup>. No figures are available on the number of national companies that have transferred their registered office in accordance with ECJ case law or national legislation.

Finally, although only a few cross-border transfers of registered office by SEs have been registered so far (approximately 50), the length of time taken to remove the SE from its old register seems to vary widely. For example, in 2008 it took only seven days to remove a new Cypriot SE from its former register (Denmark), whereas in 2009 removal of a Luxembourgish SE from its former register (Denmark) took nearly two months.

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<sup>75</sup> ‘Merger’ means an operation where one or more companies, on being dissolved without liquidation, transfer all their assets and liabilities to another existing company or to a company that they form in exchange for issuing shares in the other company to their members (plus, possibly, a cash payment).

<sup>76</sup> Most Member States were unable to provide data on the annual number of cross-border mergers. Consequently, no relevant EU-wide data are available on this matter.

<sup>77</sup> A review of application of the Directive is scheduled in 2012.

<sup>78</sup> There are about 17 SCEs in Europe and no transfer of registered office has taken place yet. There are no known cases of setting up SCEs by cross-border mergers.

The Cross-Border Mergers Directive requires the register registering the merger to notify the former register so that it can consequently strike off the relevant company from its own database. The SE and SCE Regulations contain similar provisions on transfers of registered office, but there is no notification requirement when an SE or an SCE is created by a cross-border merger. In this case, the merging companies are required to notify the former register of the event. The objective of the provisions on direct notification between business registers is to speed up registration procedures and increase legal certainty. But they are not being applied efficiently, as they give no guidance on the technical details, such as translation requirements or the method and form of notification.

In practice, such notifications are usually transmitted by normal mail in the official language of the country of the issuing authority or by e-mail if there are informal contacts between business registers (e.g. Finland). The format varies and the language is not necessarily understood by the other competent register, which could have an impact on legal certainty and, if an official translation is requested, on the length of the procedure. Due to the low number of procedures, business registers are still able to process the notifications manually. But they expect more difficulties if the number of cross-border operations increases. This is only to be expected as the number of SEs grows. The number of SEs increased exponentially from 2004 to 2008. In 2009, fewer new SEs were created than in 2008, but in 2010 an increase in the number of new SEs can be observed once again. Nine new SEs were set up in 2004, 16 in 2005, 35 in 2006, 88 in 2007, 179 in 2008, 156 in 2009 and 112 up to 25 June 2010. Around 13% of all SEs have been set up by a cross-border merger. The number of cross-border transfers of registered office by SEs increased from one in 2005 and 2006 to nine in 2007, fifteen in 2008 and twenty in 2009. Accordingly, there is a positive correlation between the number of SEs and the number of cross-border transfers of registered office.

In the course of the public consultation on the Commission's Green Paper, considerable support was voiced for improving the situation. The Council and the European Parliament also suggested making progress in this area. As mentioned in section 3.3, the BRITE project developed automated solutions to send notifications in procedures for cross-border mergers and transfers of registered office. The procedures have been tested in practice, but are not currently applied in any Member State. As explained in section 3.4, IMI has not yet been extended to enforcement of the Company Law Directives, but the system could transmit the relevant information on a case-by-case basis.

#### 4.2.2. *Impact of difficulties with cooperation*

Less legal certainty: After a cross-border merger or transfer of registered office is registered by the business register of the country of destination, the company appears to exist in both Member States until it is removed from its former register. Consequently, creditors and other third parties may be misled by the content of the register. Such a transition period is unavoidable, but the lack of direct communication in some cases or correspondence by normal mail and the possible need for an official translation in others prolong this period of legal uncertainty beyond the absolutely necessary.

Administrative burden on companies: Cross-border procedures are carried out more slowly than they would be if there were direct and efficient communication between the

business registers, to the detriment of the companies concerned. In cases where business registers do not currently communicate directly, the companies will still need to notify the former register themselves. Estimates suggest that this costs between EUR 8 and EUR 1200 each time, out of which around 75% are considered to be due to administrative burdens<sup>79</sup>. In cases where the former register is notified by the new register, the lack of agreement on and standardisation of the technical details of the notification result in more time being spent on the registration on the part of the registers. The exact figure will depend on the extent of uncertainties in each individual case and the need for clarifications and translations.

### **4.3. Problem 3: Difficulties with cross-border access to business information**

Companies that carry out cross-border business either set up branches, subsidiaries or offices in other Member States<sup>80</sup> or they sell goods or provide services across borders without any establishment in the receiving Member State. In either case, they establish business ties with other companies, such as suppliers, banks and other creditors, and with consumers. Section 3.2 gives an idea of the scale of cross-border business in Europe. While business information on companies is easily available in the country where they are registered, access to the same information from another Member State could be hindered by technical or language barriers. The subsections below analyse the specific problems that arise in this context.

#### *4.3.1. Diversity of languages, search conditions and structures*

Since 1 January 2007, the electronic business registers introduced by the amendment to the first CLD have significantly facilitated online access to information. But, without a subscription to the EBR services, citizens and businesses still have to search in at least 27 registers<sup>81</sup> in order to piece together the relevant business information on companies. They have to deal with different languages, search conditions and structures. As regards languages, electronic access to a number of business registers is only available in the official language(s) of the relevant Member State. Two thirds of the Member States provide access in English only or in addition to their official language (e.g. Sweden, Estonia, Slovakia, Romania and Portugal). The best example of multilingual access is Germany where support is available in German, English, French, Italian and Spanish. Most business registers are unable to determine where requests for business information originate from (see section 3.2).

The differences in online access to business information are very clear. For example, the Czech Republic and Belgium allow free online access to all company information,

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<sup>79</sup> According to the Centre for European Policy Studies (CEPS), the costs per occurrence of publishing details of the completion of a merger setting up an SE are only around EUR 8 (see: [http://ec.europa.eu/enterprise/policies/better-regulation/files/abst09\\_ceps\\_extension\\_en.pdf](http://ec.europa.eu/enterprise/policies/better-regulation/files/abst09_ceps_extension_en.pdf) (p. 38)). However, according to a consortium of Deloitte, Cap Gemini and Ramboll, the average cost in the EU per occurrence of disclosing completion of a national merger and of a division are EUR 1239 and EUR 1008 respectively (see: [http://ec.europa.eu/enterprise/policies/better-regulation/files/abst09\\_cl\\_data\\_annex\\_en.pdf](http://ec.europa.eu/enterprise/policies/better-regulation/files/abst09_cl_data_annex_en.pdf) (pp. 71 and 86).

<sup>80</sup> ‘Subsidiaries’ are autonomous companies that have legal personality. Branches and offices are not independent legal persons: their existence depends on the status of the company they belong to.

<sup>81</sup> In countries without a centralised business register (e.g. Germany), a single access point is established to provide on-line access.

whereas the United Kingdom and Estonia allow free online access only to basic company data; some of the documents have to be paid for. In Austria and Ireland a fee is charged for responding to any request for information. Accordingly, there are different kinds of registration and subscription requirements and related payments of fees for the different business registers. The EBR can currently facilitate searches through 25 business registers, including the databases of 19 Member States. The advantages and drawbacks of this service are described in section 3.3. The relatively low use made of the services suggests that, even after 18 years of development, they are not yet satisfactory for users of business information. The technology used by IMI would not allow such a high-volume information exchange, since it was developed for communications between one public authority and another.

To summarise, despite the existence of the EBR network, searching for business information in all 27 Member States implies significant time and costs and could even be ruled out by language barriers. Consequently, in the cross-border context, business registers can only partially fulfil their role of providing official business information to consumers, creditors and other business partners throughout the EU. As a result, transparency and legal security cannot fulfil their full potential. Citizens and businesses have to overcome significant obstacles in order to obtain sufficient information on businesses for commercial purposes or to gain access to justice.

#### *4.3.2. Lack of a single access point*

User-friendly access to information is one essential aspect of transparency. As regards the business registers of the Member States, a single electronic access point has been established in every country. European business information can, therefore, be accessed via 27 access points. EBR users may subscribe to its services with the business register in their own country. Access to the services depends on the national requirements. There is no single access point to the services (e.g. a common portal). The EBR is not sufficiently user-friendly and does not provide easy access to the network. As explained in section 3.5, this question is being dealt with in the e-Justice portal project and is therefore excluded from this impact assessment.

#### *4.3.3. Lack of a single company identifier*

Member States use different numbering systems. This situation sometimes creates problems when it comes to identifying companies even within the same country. For example, Germany, where companies are numbered differently in the individual Länder, had to introduce a second numbering system in order to enable centralised searches by electronic means. Identification of companies at European level is even more difficult, as in this case more than 27 company identification systems have to interact. Companies involved in cross-border mergers or transfers of registered office are given new numbers with their new registration. Information in the register of a branch about its foreign company can easily become out of date if the identifier of the foreign company changes.

The absence of a single identification number also has a negative impact on collection of statistics. For example, the sources for the EuroGroups Register Project (EGR)<sup>82</sup>

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<sup>82</sup>[http://epp.eurostat.ec.europa.eu/portal/page/portal/european\\_business/special\\_topics/eurogroups\\_register](http://epp.eurostat.ec.europa.eu/portal/page/portal/european_business/special_topics/eurogroups_register): Eurostat and the European statistical registers have created a network with the objective of

provided changes in identifying variables after just one year in 10 to 15 % of all cases. As information on such changes is not available from every source at the same time, it is complex to identify legal entities uniquely over time. A single company identifier (REID) was developed in the BRITE project (see section 3.3) but it is not used within the EBR for lack of any legal requirement and/or decision by the members.

#### 4.3.4. *Differences in the quality of the data disclosed in the business register*

The uneven quality of data in the business registers of the 27 Member States creates problems for users of business information (in particular, companies and professional advisers). A large proportion of the respondents to the public consultation expressed concern about the uneven quality of the data in the business registers of the Member States. They stressed that interconnection of business registers would only have real added value if all the information transmitted through the network, regardless of its country of origin, were updated, reliable, standardised and available in the relevant language across the Member States.

There are three key components of high-quality business information: standardised content, accuracy (including regular updates) and reliability. These requirements have to be ensured at the time of registration and of cross-border transmission of business information through the network of registers.

As regards business registration, the first CLD harmonises most of these requirements: Article 2 ensures standardised content by laying down a minimum set of data and documents that every limited liability company has to submit to the relevant business register. As regards accuracy, Article 11 stipulates that in Member States whose laws do not provide for preventive legal control of the documents and data submitted by companies to the register, the relevant documents have to be drawn up and certified ‘in due legal form’.

One aspect of high-quality (accurate) business information is missing from the first CLD: the requirement for regular updates, i.e. to update the business information in a relatively short time (e.g. 15 days) after any change or event. There are significant differences between the Member States in this respect. In Poland, for example, changes to the registered items (e.g. appointment of a director) have to be notified within seven days after the event. In Finland or the Czech Republic, most changes have to be notified to the register ‘without undue delay’, while in Estonia there is no specific deadline for submission (although there are *ex-post* sanctions). In Austria, changes have to be submitted immediately. In the United Kingdom and Malta, 14 days are the most common deadline and in Belgium one month. Although efforts have been made to speed up

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providing a complete, accurate, consistent and up-to-date set of linked and coordinated statistical registers of multinational enterprise groups operating in EU and EFTA countries, together with details of their constituent legal units and enterprises, ownership and control relationships between legal units. The lack of a unique company identifier creates a number of problems. In particular, linking and matching legal units of cross-border groups has to be based on names and addresses, which is not only costly but also error-prone. Moreover, different national rules for obtaining, keeping and losing identifiers make it difficult to follow legal entities over time.

business registration<sup>83</sup>, they have not extended to shortening deadlines for updating business information.

As regards the reliability and legal force of the information disclosed, the first CLD contains harmonised rules. Article 3 sets out the conditions under which third parties can rely on the business information disclosed. These conditions apply in every Member State and thus protect the interests of third parties. Due to different legal traditions, there are big differences between the Member States when it comes to implementing these provisions. In some, the register simply states the content of the registered data, whereas in others the information provided by a register may be relied on by third parties and rebuttable or even non-rebuttable presumptions are attached to it ('public trust'). By way of example, 'public trust' is attached to the registered data in Denmark, Germany and Austria. There is a mixed system in Estonia, whereas in the United Kingdom and Ireland the registered data have no such public character, although there are circumstances where conclusive certificates of registration are provided (e.g. incorporation and re-registration). Such differences could have a fundamental impact on the liability of third parties who rely on the disclosed information in their commercial transactions. But there is no credible information for users of the data on their legal force in the different Member States.

To conclude, most issues related to data quality are already addressed by EU legislation. However, the frequency with which business information is updated is not harmonised and there are no provisions in EU law that could ensure that the same high-quality business information is transmitted across borders through the network of registers.

#### 4.3.5. *Impact of difficulties with cross-border access*

Riskier business environment: Access to reliable information on companies is crucial both for consumers and for existing or potential business partners. Registered business data provide information to the market on the name of the authorised representatives of a company, its capital, financial status and history, whether it is involved in bankruptcy proceedings or whether it belongs to a group of companies. Business information provides valuable data, for example on legal procedures and ownership structures. It makes it easier to assess the financial exposure or other risks related to a business. Access to such information in the local business register is easy, but cross-border access is more burdensome. Consequently, consumers, creditors and other business partners either decide to invest more time and money in searching for information on a foreign company or are exposed to a higher business risk than when doing business with a locally registered company. The problem of this uneven level of transparency is particularly acute in business-to-business (B2B) and business-to-consumer (B2C) online transactions.

Less legal certainty: Access to business information is also highly relevant for public authorities in other Member States in administrative, civil and criminal procedures. Business registers provide a secure means to gather information on companies and thus identify the parties involved in a procedure. Furthermore, easy access to credible business information also has a social impact: it is essential to facilitate access to justice,

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<sup>83</sup> [http://ec.europa.eu/enterprise/policies/sme/business-environment/start-up-procedures/index\\_en.htm](http://ec.europa.eu/enterprise/policies/sme/business-environment/start-up-procedures/index_en.htm).

in particular when consumers and business partners are looking to enforce their rights through the court system. Business registers are a way to identify companies and their representatives clearly, which is essential in order to obtain access to justice. For all the reasons presented above, access to information differs depending on the country of registration of the company, resulting in less legal certainty in cross-border situations (e.g. in e-commerce).

#### **4.4. The combined impact of problems 1 to 3**

The problems described in the previous sections result in three high-level impacts.

First, because of the lack of transparency and limited cross-border access to business information, confidence in the single market cannot be fully ensured. As long as citizens and businesses have to overcome barriers before they can gain access to information about their business partners, no significant increase in confidence can be expected. The uncertainty about how far they can trust the information from foreign business registers adds to this impact.

Second, unnecessary burdens on companies, lengthy administrative and court procedures and a non-transparent business environment reduce the competitiveness of companies in the markets. The exercise on reduction of administrative burdens clearly showed that long, burdensome procedures and unnecessary filing obligations, such as those related to foreign branches, have a negative impact on the competitiveness of companies.

Third, legal uncertainty and slower cross-border procedures also have an impact on other administrative bodies, in particular on those fighting fiscal fraud or money-laundering, such as tax or police authorities. Lack of updated and trustworthy business information reduces the public administration's chances of success.

## **5. BASELINE SCENARIO**

With respect to cooperation in relation to foreign branch registration, without any action at EU level, the existing discrepancies between the registers of the company and of the foreign branch would remain. In the BRITE project, a technological solution was developed to reduce the differences between the content of registers. The 'Branch Disclosure Service' (BDS)<sup>84</sup> was implemented by the United Kingdom, Ireland, Sweden, Norway and Germany on a voluntary basis. It is possible that other countries might decide to make use of this solution of their own accord.

With respect to the difficulties with cooperation between business registers in procedures for cross-border mergers and transfers of registered office, the administrative burdens on companies and the extra time spent on registration by the registers will remain.

With respect to cross-border access to business information, if no action is taken at European level the voluntary network of business registers will continue to exist and develop slowly. The experience built up over the last two decades shows that the voluntary nature of the cooperation and the consequent low level of commitment and

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<sup>84</sup> See subsection 3.2.3 of the progress report on the interconnection of business registers.

resources make integration of new members a lengthy process. Some countries, for one reason or another, may even decide against taking part in such cooperation at all. Consequently, the added value of the network and use of the information retrieved through the network would remain limited. The e-Justice portal is expected to provide a single access point to each business register and/or the EBR. The portal will make access to business registers more user-friendly, but will not replace the network of registers.

## **6. SUBSIDIARITY**

Nearly two decades of experience with voluntary cooperation between European business registers shows that self-regulation is not sufficient to achieve the objectives of this proposal. Nor can those objectives be achieved by the Member States, as a common set of rules and conditions for cross-border cooperation between the national business registers needs to be established. If such provisions were determined at national level, they could be incompatible with each other and not be suitable to achieve the objectives set out in chapter 7. Action at EU level is therefore necessary and justified.

## **7. OBJECTIVES**

The general objectives of this proposal are to increase confidence in the European single market and boost the competitiveness of European business and 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 burdens on companies and speeding up procedures for cross-border mergers, transfers of registered office and updating the registration of foreign branches. In particular, this proposal aims to:

- Ensure that the business register of the company provides up-to-date information on the status of the company to the business registers of its foreign branches all across Europe;
- Develop a framework for cooperation between business registers in procedures for cross-border mergers and transfers of registered office;
- Facilitate cross-border access to official business information by defining a common minimum set of up-to-date company information to be provided through the network to third parties in every Member State<sup>85</sup>.

## **8. POLICY OPTIONS AND ANALYSIS**

This chapter examines different policy options to solve the problems presented in chapter 4. The technological solutions to implement them entail different costs. However, the options proposed in the impact assessment report do not impose the choice of any specific ICT solution. That choice belongs to the implementation phase of the project.

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<sup>85</sup> One of the commonly used tools are the Structured Electronic Documents (SEDs) (the old E forms) applied in electronic exchanges of social security information (EESSI) (see: <http://ec.europa.eu/social/main.jsp?langId=en&catId=869>).

An ICT feasibility study is therefore being carried out in cooperation with DG Informatics as part of the ISA programme<sup>86</sup>. Its objective is to assess the ICT implications of EU legislation. A pilot project is being conducted on this proposal to fine-tune the method for assessing the ICT implications. The results of this pilot project will also be used to help present clearly the implications, including the costs, of the different ICT options which can be envisaged.

The ICT implications of this proposal are, hence, only of an indirect nature, as they entirely depend on the support of Member States in the second phase. But in order to have a complete picture, a high-level analysis is necessary to identify the basic differences between the possible ICT solutions, in particular with regard to their costs. It is therefore not the objective of this chapter to make any choice of technological solutions at this stage.

The policy options are discussed and measured against the following pre-defined criteria:

Effectiveness: The extent to which the measure fulfils the objectives of the proposal.

Impact on stakeholders (consumers, creditors, etc.)<sup>87</sup>: Access to business information and the credibility of the information disclosed have a big impact on market players. The quality and accessibility of business information are equally important for creditors and consumers and to facilitate access to justice.

Reduction of administrative burdens: Information obligations give rise to internal and external costs for companies. If the company would not incur the same cost without the information obligation, these costs are administrative burdens. They prevent companies from using their capital for purposes directly related to their business and, therefore, reduce their competitiveness.

Legal certainty: Certainty about the legal status of a company is important both for the company itself and for consumers and other partners having business relations with it. Other than certainty about the quality of information, reducing the length of time taken to put cross-border procedures into effect can also contribute to this objective.

Flexibility: Business registers in the individual Member States have a variety of database structures and different procedures. They are maintained and supervised by courts, ministries or private bodies. Any legal or technical requirement for cooperation needs to be tailored to the specific conditions of the relevant register.

Cost: The costs of the options considered in sections 8.1 to 8.3 will depend on the ICT solution chosen in the implementation phase. To give a better picture at this stage already, section 8.1 presents a high-level cost analysis of the different scenarios that can be envisaged.

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<sup>86</sup> <http://ec.europa.eu/isa/>.

<sup>87</sup> This criterion is not relevant to procedures for cross-border mergers and transfers of registered office.

## 8.1. Cost scenarios

All three scenarios provide a technological solution to all three problems presented in chapter 4: lack of up-to-date information in the business register of foreign branches, difficulties with cooperation on procedures for cross-border mergers and transfers of registered office and difficulties with cross-border access to business information.

The costs of each scenario would be the same in options 3 (legislation) and 4 (legislation plus delegated act). In option 2 (recommendations) the costs would depend on the decision taken by the individual Member States, but if they all decided to join the network, the costs would be the same as for options 3 and 4.

One important point to highlight is that IMI is run by the Commission which also, therefore, bears the costs of the services provided by this system. Any extension of the EBR/BRITE should be financed by the Member States (mainly those which are currently not part of the network) unless EU funds become available for this purpose (as in the past)<sup>88</sup>.

### 8.1.1. Scenario 1: Building on the EBR and the BRITE project

The EBR is described in detail in section 3.3. Its services and its availability in several languages create a good basis for cross-border access to information and could be extended to other Member States. However, if participation in the network becomes mandatory for every Member State, they should be given a say in organisation of the network and provision of the services.

The EBR uses the same technology as the services developed in the BRITE project. Therefore, once the EBR is implemented, all BRITE services can be used. These can ensure communication between business registers in procedures for foreign branch disclosure (BDS) and for cross-border transfers of registered office and mergers. They also developed the REID (see section 3.3). Both the services that facilitate access to information and those that ensure cooperation between business registers in cross-border procedures are automated. Therefore they are able to process a large amount of information at the same time, without the intervention of an administrator.

As regards the cost of extending the existing network to other Member States, the following costs have to be calculated: An entry fee of EUR 15 000 is charged for new members to join the network. The estimated average time to link a new business register to the network is 700 person-hours (5 person-months)<sup>89</sup>. This includes planning and analysis, implementation, training, delivery, documentation, management and communication. If these hours are converted into labour costs on the basis of the tariffs

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<sup>88</sup> Despite a number of inquiries, no figures were available from Member States on the costs arising in policy departments and business registers in connection with this proposal, partly because public administrations do not calculate in-house costs and partly because integration into the EBR was/is usually carried out as part of a larger ICT project within which costs cannot be separated.

<sup>89</sup> The estimated cost of extending the EBR is calculated on the basis of the estimates received from some business registers on the number of person-hours the registers spent on developing a 'bridge' between their ICT system and the EBR.

charged by the technicians employed to measure the administrative burden in 2006<sup>90</sup>, the labour costs of extending the network to the remaining eight Member States would add up to a total of EUR 44 472. Together with the entry fee for the eight Member States, the overall cost of extending the network to the remaining Member States would total EUR 164 472.

As regards maintenance costs, the current average annual fee in the EBR (EUR 15 000) can be considered as the annual cost for maintenance and support. If all the Member States took part in the network and, in addition, the six non-EU jurisdictions remained members, the yearly maintenance costs could total EUR 495 000 for 33 countries.

#### *8.1.2. Scenario 2: Developing a solution combining the EBR with IMI*

IMI offers a solution for cooperation between registers but would not provide public access to their content. Consequently, IMI can only be considered as an add-on to a system offering public access to business registers across Europe, as provided by the EBR.

IMI has been designed to support multiple areas of legislation. Consequently, a new area of legislation could be added and appropriate messages drafted without any need for further development. For example, it could be configured to support business registers in procedures for foreign branch disclosure or cross-border mergers and transfers of registered office. IMI is fully developed and in use in every Member State. Currently, more than 5 600 competent authorities are registered in IMI for exchanging information relating to the Professional Qualifications or the Services Directives. Sixteen of the 30 EEA members have registered in IMI their authorities responsible for business registers<sup>91</sup>.

IMI could be considered as an interim solution for all cooperation between registers for Member States not yet in a position to participate in a fully interoperable network of registers or for exchanges of particular information not yet developed within an alternative solution. It can also be considered as a long-term solution for Member States with low-volume activities. As access to IMI is web-based and the information is exchanged manually, IMI cannot be used to deal with high volumes of information.

As regards the costs of using IMI, the existing information exchange mechanism could be re-used for registers with no development costs. The infrastructure in place leaves room for considerable growth in authorities and system use. Therefore, addition of registers should have no impact on annual maintenance and hosting costs in IMI. Member States share none of the maintenance or hosting costs in IMI, as these functions are carried out in the Commission's data centre. In 2009 these costs were around EUR 518 000 for the entire IMI (see table under scenario 3). The organisational costs of introducing IMI for business registers will be limited, due to the fact that more than half of the authorities concerned are already registered and their staff are familiar with this tool. Introduction of information-sharing for a new area would require some investment

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<sup>90</sup> See footnote 7. The relatively low average pay per hour is due to the fact that Poland, Hungary, Bulgaria, Romania and Slovakia, which all have relatively low tariffs for technicians, are currently not part of the network.

<sup>91</sup> See footnote 64.

in defining, preparing and translating new structured messages and providing content-related end-user support from the Commission.

### 8.1.3. Scenario 3: Building a new network of registers

The last option is to develop a new network of business registers to respond to the problems identified in chapter 4. The costs of this option can be estimated on the basis of the overall costs of developing IMI and the estimated cost of building an automated network like the EBR.

IMI was developed by the Commission. By 2009, the overall development costs had reached nearly EUR 2 million and the maintenance costs nearly EUR 770 000. These figures do not include the costs of human resources provided by the Commission.

Year	Source	Amount	Objective
2005	IDA	70 000	Feasibility study
2006	IDABC	250 000	Development
2007	IDABC	550 000	Development
2008-2009	IDABC	890 000	Development
		150 000	End-user workshops
<b>Total</b>		<b>1 910 000</b>	

Year	Source	Amount	Objective
2008	MARKT	250 000	Maintenance
2009	MARKT	400 000	Maintenance
	MARKT	118 468	Hosting
<b>Total</b>		<b>768 468</b>	

In the case of the EBR, it is not possible to calculate the overall investment since 1992. The EBR was financed by several Commission programmes<sup>92</sup>. The BRITE project received a grant of EUR 6.3 million as part of the Sixth Framework Programme<sup>93</sup>. The overall cost of the research project was EUR 10.31 million.

Following the same method of calculation as in scenario 1, the cost of building an EBR-like network from scratch would be the sum of the labour costs and the entry fee for 27 Member States. The costs for software development can be based on the costs of the BRITE project. Altogether, this adds up to EUR 11.06 million. This can be regarded as a conservative 'worst-case' figure.

Type	Amount
Labour costs	349 039
Entry fee	405 000
Software	10 310 000
<b>Total</b>	<b>11 064 039</b>

The annual maintenance costs could be around EUR 405 000 (27 x EUR 15 000).

In addition to the high costs, another major difficulty with this option is that, in the Council Conclusions of 25 May 2010 on the interconnection of business registers<sup>94</sup>,

<sup>92</sup> See pages 8 and 11 of the progress report on the interconnection of business registers.

<sup>93</sup> [http://cordis.europa.eu/fetch?CALLER=FP6\\_PROJ&ACTION=D&DOC=1&CAT=PROJ&QUERY=0129939ef1d8:c152:4fadf441&RCN=78387](http://cordis.europa.eu/fetch?CALLER=FP6_PROJ&ACTION=D&DOC=1&CAT=PROJ&QUERY=0129939ef1d8:c152:4fadf441&RCN=78387).

<sup>94</sup> Council Conclusions 9678/10.

Member States made it clear that they wish to build on results already achieved in this area, such as the EBR, the BRITE project and IMI.

#### *8.1.4. Conclusions on the costs and technological options*

The scenario of building a new network of business registers is not feasible for both political and financial reasons. It should therefore be discarded.

Both the EBR and IMI have developed technologies for their own purposes. The basic difference is that the EBR allows automated data exchanges and is able to process high volumes of data at the same time. IMI is a useful electronic tool for cooperation between public authorities which requires no investment in software development by the users. It requires manual data exchange and is suitable for low-volume electronic communication.

As a consequence of the different technologies and purposes, the EBR with BRITE technology can be used to provide public access to information and for foreign branch disclosure and cooperation in cross-border procedures. IMI could be used to facilitate cross-border procedures and, to a certain extent, foreign branch disclosure (as long as it is done manually) but it could not be used to provide public access to business information.

On the other hand, IMI is a significantly cheaper solution than using the EBR and BRITE and could therefore also be faster to implement in every Member State. Improving the EBR needs to be financed by the Member States unless EU funds become available. IMI is financed by the Commission. Consequently, IMI could be considered as a temporary or permanent solution in cross-border procedures and, possibly, for updating foreign branch registration. However, it does not and will not have the functions necessary to replace the automated services developed in the BRITE project.

One final point to note is that, while the technology developed by the EBR seems adequate, significant changes have to be made to its organisation and management in order to give Member States sufficient control over the network of business registers and data transmission through it.

## **8.2. Cross-border cooperation on updating registrations on foreign branches**

### *8.2.1. Option A1: No policy change — the baseline scenario*

Description: In this scenario no cooperation between business registers on updating branch registrations would exist or, in certain cases, cooperation would continue to be informal. Today such informal cooperation exists between the business registers of some Member States and Norway (e.g. the BDS, see chapter 5). Such cooperation could continue to develop, depending on the willingness of the registers.

Assessment: In this case, cooperation would remain informal and the sole legal obligation imposed on companies would continue to be to update the information in the register of their branches. Therefore, the administrative burden would not be reduced. The current proportion of serious discrepancies between the content of the two relevant registers (15%) would remain unchanged (see also subsection 4.1.1). This would continue to have a negative impact on the information provided to consumers and creditors in the country where the branch of the company operates and would not increase legal certainty. In essence, this option would not help to achieve the objectives

and would therefore be ineffective. As this option does not impose any requirements, it is neutral as regards the flexibility criterion and costs.

8.2.2. *Option A2: Recommend detailed rules for business registers on the method of cooperation on updating information on cross-border branches*

Description: Under this option the Commission would recommend rules for business registers to cooperate on updating information in the register of foreign branches, in particular on identifying the relation between a branch and the foreign company and on transmitting the information electronically from the company's register to the register of the branch.

Assessment: As a result, the flow of information between the registers could be gradually improved and the scale of discrepancies between the content of the relevant registers reduced over time. This is likely to contribute to effectiveness and to have a positive impact on stakeholders. But cooperation based on recommendations would remain voluntary and informal and there is no guarantee that every Member State would participate. Moreover, the notifications would not provide the basis necessary for legal action by the relevant registers or competent authorities. They could not replace the obligation on companies to file documents with the register, not even as a long-term objective. This option therefore offers a high degree of flexibility, but would not reduce the administrative burden nor bring about legal certainty. As explained in section 8.1, both IMI and the EBR/BRITE could provide a response to the problem. The EBR/BRITE could offer a more complete solution, but it would also imply higher costs. The actual costs would also depend on the decision by the individual Member States on joining the cooperation.

8.2.3. *Option A3: Lay down a legal requirement for business registers to cooperate by electronic means with a view to updating the registration of foreign branches and specify the technical details of the cooperation*

Description: There is currently no requirement in the eleventh CLD for business registers to cooperate with each other in cross-border branch registration procedures. Under this option such cooperation would be required by law for all business registers in the EU by a deadline set in the Directive. The first CLD would also specify the legal and technical details of the cooperation between business registers in this respect. It would cover management and operation of the network, use of a single company identifier, the details of decision-making among the members of the network, the consequences of non-compliance with the requirements, maintenance of the central server, use of languages, pricing, data protection, identification of the link between a branch and the foreign company and details of transmission of information from the company's register to the register of the branch.

Assessment: A legal obligation for business registers to cooperate by electronic means would make it possible for national legislation to attach legal consequences to the notifications and, thereby, facilitate administrative procedures. This option would be effective and would have a considerable positive impact on businesses. Such a legal obligation would also allow Member States to exempt companies from the obligation to update the information in the register of the foreign branch and thus reduce the administrative burden. Adopting legislation governing the legal and technical details of

the cooperation could result in a high level of uniformity. This legislative solution would clearly establish obligations and standards and create a high degree of legal certainty. But laying down the details of cooperation in a legislative instrument would be very inflexible and it would take a very long time to adjust to changes. As regards the costs, both IMI and the EBR/BRITE could provide a response to the problem. The EBR/BRITE could offer a more complete solution, but it would also imply higher costs.

8.2.4. *Option A4: Lay down a legal requirement for business registers to cooperate by electronic means with a view to updating the registration of foreign branches and specify the technical details of the cooperation in a delegated act or governance agreement*

Description: This option would add a requirement to the eleventh CLD for business registers to cooperate with each other in cross-border branch registration procedures by a deadline set in the Directive. The eleventh CLD would also require use of a single company identifier (REID) and swift updates of the information related to branches between business registers. It would also recall the need for Member States to abide by the applicable national and European data protection rules.

- Sub-option A4a: Specify the technical details of the cooperation in a delegated act

In this sub-option, the technical details would not be part of the amendment to the Directive, which would instead delegate to the Commission the power to adopt a generally applicable non-legislative act to supplement it, in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU). The delegated act would be adopted after consultation of the experts from the Member States. Before it could enter into force, it would have to be submitted to the European Parliament and the Council which could object within the period set by the Directive.

The delegated act would deal with:

- the details for identifying the link between a company and a branch,
- the details for transmission of information from the company's register to the register of the branch,
- the technical standards for data transmission,
- the rules concerning management and operation of the network,
- the method of decision-making among the members of the network,
- the funding of the network,
- minimum security standards,
- the languages used by the network (including the technology employed for automatic translation of messages and information),
- the conditions for countries outside the EEA to participate in the network,
- the consequences of non-compliance with the requirements,
- the maintenance of the central server,
- the choice of the necessary ICT solutions<sup>95</sup>.

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<sup>95</sup> Many of these items are related not only to updating the information on foreign branches but also to solving the other problems identified in chapter 4.

- Sub-option A4b: Specify the technical details of the cooperation in a governance agreement

Alternatively, the details listed in sub-option 4a could be specified in an agreement between the representatives of the Member States. The overall structure and parameters for the governance agreement would be laid down in the amendments to the first and eleventh CLDs. This would include a clear framework for the content of the agreement, together with the procedure and timetable for adopting it. Issues relating, for example, to technical specifications for the day-to-day operation of the network, which could well need regular and rapid updating, would only be dealt with in the agreement itself.

Assessment: Like option A3, option A4 would create a clear situation with respect to the legal consequences of the electronic communications between the competent business registers in cross-border branch registration procedures. There would be a high degree of legal certainty. It would also have the same impact on stakeholders, as the cooperation requirements would be imposed on the business registers. It would also have a positive effect on reduction of the administrative burden. The cost implications would be the same as in option A3.

Dealing with the details of cooperation as described above would also bring about a considerable degree of flexibility. In terms of effectiveness, however, the governance agreement (sub-option A4b) has a considerable disadvantage compared with a delegated act (sub-option A4a). Adoption of a governance agreement would require unanimity between the Member States. In the light of the discussions on cooperation between business registers over the last few years, it is unlikely that unanimity would be reached in a reasonable time-span. There is therefore a significant risk that this alternative would be ineffective. Consequently, a governance agreement has to be discarded.

On the other hand, a delegated act, while based on thorough consultation with national experts, could lay down a single solution without any unanimity requirement. The Council could object by a qualified majority and the European Parliament by a majority of its members. To conclude, legislative provisions combined with specifying the details of cooperation in a delegated act would offer a very effective solution and would ensure that, once the interconnection framework is established, business registers could regularly monitor the business information in other registers, detect discrepancies and make sure that only correct and up-to-date information is disclosed in the country of the branch.

#### 8.2.5. *Comparing the options*

Options A3 and A4 would be the most effective for achieving the objectives set. Option A2 would also yield some effectiveness, but it would largely depend on the extent to which Member States decide to act on the recommendations. Option A1 would not achieve progress within a reasonable time-span. The impact on stakeholders such as consumers and creditors would be most positive in options A3 and A4, because they could benefit from a smoother cross-border flow of information and structured updating of information on foreign branches. Option A2 would have a positive impact, too, if registers heed the recommendations. But as adherence would be voluntary, the impact might not be as great. Option A1 would have no impact on stakeholders. Placing an

obligation on business registers to exchange data would also reduce the administrative burden on companies (options A3 and A4). Options A1 and A2, however, would not reduce the burden. The same result applies, logically, to the legal certainty criterion. Only a legal requirement to update and exchange the data related to foreign branches would eventually enable the public to rely on and have confidence in the information, thus creating a high degree of legal certainty. Options A1 and A2 would have no such effect. Finally, as regards flexibility, option A1 would have no effect, as there would be no new requirement to be measured. A recommendation would offer the greatest flexibility, as national authorities would be free to choose the way forward (option A2). The least flexible option would be to lay down all the rules and details in the CLD (option A3). Changes would require new legislation and, therefore, rather lengthy procedures. Only dealing with the key legal requirements in the CLD, but leaving the details for a delegated act would offer considerably more flexibility (option A4), as technical and other changes could be taken into consideration much faster than in legislation. The costs would depend on the ICT solution chosen. The EBR/BRITE could provide a more efficient solution. However, the cost implications would be higher (see subsection 8.1.1). In any case, the costs would be the same in options A3 and A4. The same would apply to the costs of option A2 if every Member State were to implement it.

As a result, the best performing option is option A4. It would offer the highest degree of effectiveness and legal certainty and have the most positive impact on stakeholders and on reduction of the administrative burden, whilst still offering some flexibility. However, the related costs could be significant (see sub-section 8.1.1).

### *Comparison of the options*

	Effectiveness	Impact on stakeholders	Reduction of administrative burden	Legal certainty	Flexibility	Cost
<b>Option A1: No policy change</b>	0	0	0	0	0	0
<b>Option A2: Recommend detailed rules</b>	+	+(if implemented correctly)	0	0	++	- <i>(if every MS joins)</i>
<b>Option A3: Electronic cooperation with details in legislation</b>	++	++	++ <i>(EUR 69m)</i>	++	--	-
<b>Option A4: Electronic cooperation with details in a delegated act</b>	++	++	++ <i>(EUR 69m)</i>	++	+	-

‘0’: no change    ‘+’ positive impact    ‘-’ negative impact

### **8.3. Cross-border cooperation in procedures for cross-border mergers and transfers of registered office**

#### *8.3.1. Option B1: No policy change — the baseline scenario*

Description: The Directive on cross-border mergers and the SE and SCE Regulations require cross-border cooperation between business registers. There are, however, no guidelines on the actual way to carry this out. In other words, there is a general obligation for registers to cooperate, without any actual requirements for specific formats for electronic communication. As explained in section 4.2, in practice this cooperation is currently carried out by normal mail in the language of the issuing register. Where informal contacts exist between the competent business registers, exchanges can take place by e-mail. In cases where an SE or SCE is formed by a cross-border merger, the regulations leave it to the companies to notify the former register.

Assessment: In this scenario, the existing method of cooperation, where applicable, would continue. There would be no changes to the *status quo* and no impact on effectiveness or flexibility. Registers could also decide to establish cooperation on a bilateral basis. The problem of legal uncertainty would remain. If the number of cross-border mergers and transfers of head office were to increase in the future, this method of cooperation could be expected to become very burdensome for registers because of the time spent on such registrations. In situations where companies are still responsible for notifying the former register, companies would continue to bear the administrative burdens related to such notification. In terms of costs, this option would be neutral.

#### *8.3.2. Option B2: Recommend detailed rules for business registers on the method of cooperation in procedures for cross-border mergers and transfers of registered office*

Description: In addition to the existing legal requirements, the Commission could recommend rules for business registers on the technical details of the cooperation. Any such recommendation should at least cover a standard notification form in all official languages and a deadline for sending the notification form to the former register.

Assessment: Recommendation of detailed rules could improve the (electronic) flow of information between registers from different Member States and thus be an effective way of achieving the policy objectives. As for most cases there is already a legal basis for cross-border cooperation between business registers, a recommendation with a high degree of flexibility seems to be a more viable instrument in the case of foreign branches. Without a legal requirement, however, this will have no impact on legal certainty. Recommendations on cooperation between registers on formation of SEs and SCEs by cross-border mergers would create no clear legal obligation and therefore could not reduce the burden on companies. As regards the costs, both IMI and the EBR/BRITE could provide a suitable technological solution to this problem. Using IMI would imply significantly lower costs than extending the EBR/BRITE to every Member State. Use of the ICT tool would depend on the decision taken by the individual Member States.

8.3.3. *Option B3: Lay down legal requirements specifying the technical details of the cooperation between business registers in procedures for cross-border mergers and transfers of registered office*

Description: This option would imply adding to the rules of the Directive on cross-border mergers and of the SE and SCE Regulations on cross-border cooperation between business registers further rules on the technical details of the cooperation, such as a standard notification form in multiple languages and the method and time of transmission. In cases where an SE or an SCE is formed by a cross-border merger, the regulations would place an obligation on the business registers concerned to notify each other about the relevant changes.

Assessment: As in subsection 8.2.3, if European legislation were to lay down the technical details of the cooperation it could result in a high level of uniformity and legal certainty, particularly for formation of an SE or an SCE by a cross-border merger. Provisions on direct notification between business registers would aim to accelerate registration procedures and could diminish the administrative burden on the companies concerned, because so far the merging companies are required to notify the former registry of the event. As in subsection 8.2.3, setting out the details in a legal text would also be quite inflexible as the legislation would quickly be outdated. Moreover, the Regulations on SEs and SCEs are based on Article 352 of the TFEU and would therefore require unanimity in the Council and the consent of the European Parliament for any amendment, which would have some impact on their effectiveness. As both IMI and the EBR/BRITE could provide suitable technological solutions to this problem, the costs could remain limited.

8.3.4. *Option B4: Lay down legal requirements for cooperation and specify the technical details for procedures for cross-border mergers and transfers of registered office in a delegated act or governance agreement*

Description: Apart from the extra requirement in the SE and SCE Regulations mentioned in subsection 8.3.3 and the necessary delegation of powers under Directive 2005/56/EC, the technical details of the cooperation in the relevant procedures would be dealt with in a delegated act or a governance agreement (see the distinction drawn in sub-options A4a and A4b) for the reasons described in subsection 8.2.4. In addition to the items mentioned in subsection 8.2.4, this would also include:

- a standard form for notification in multiple languages (for procedures for cross-border mergers and transfers of registered office),
- the details for transmission of information between the relevant registers (for procedures for cross-border mergers and transfers of registered office).

Assessment: In terms of effectiveness, this option would achieve the policy objectives with the advantage that the legislative procedure described in subsection 8.3.3 would apply only to the obligation for Member States to cooperate by electronic means, but not to the details of the cooperation, which would be dealt with in a delegated act. This is why this option would also provide much more flexibility. For the reasons explained in subsection 8.2.4, the sub-option of laying down the details in a governance agreement should be discarded, as the unanimity requirement would make this solution less efficient. Delegated acts would provide more effective solutions. This option would reduce the administrative burden on companies forming an SE or an SCE by a cross-

border merger in the same way as in option B3 and would create the same level of legal certainty and imply the same costs.

### 8.3.5. *Comparing the options*

As regards effectiveness, options B2 to B4 would all reduce both the time-lag between the two registrations and the time spent on registration of the deletion of the company from the former register. With the exception of formation of an SE or SCE by a cross-border merger, there are already legal obligations for business registers to cooperate on cross-border procedures. Consequently, non-legislative instruments seem more appropriate to improve the quality of the cooperation mechanism. Options B2 and B4 would both provide the flexibility necessary to tailor the requirements to the national facilities. However, option B4, using the delegated act, would be the more effective solution as it would impose requirements and technical standards on every Member State. The solution provided by option B3 would be equally effective, but — because it would require unanimity between the Member States — not flexible enough to adapt to rapidly evolving communication standards. While the no policy change scenario (option B1) seems viable at present, the expected increase in use of the relevant European legal instruments could soon bring about significant difficulties for business registers to deal with the requests. As regards formation of an SE or SCE by a cross-border merger, the most effective solution would be to establish a requirement for cooperation between business registers by legislation (options B3 and B4). As the review of the SE Regulation is underway, such amendments should be considered in that context. Amendments to the SE and the SCE Regulations would reduce the administrative burden on companies involved in formation of SEs or SCEs (options B3 and B4). The administrative burdens on companies would remain the same if there is no change in policy (option B1). In the case of a recommendation (option B2), the impact would depend on how it is implemented. Options B1 and B2 would entail no changes in legal certainty. By laying down a legal requirement to cooperate in cases of formation of an SE or SCE by a cross-border merger, both options B3 and B4 would considerably increase legal certainty. The same can be said for the cooperation on details in general under options B3 and B4. The costs would depend on the ICT solution chosen. In this case, IMI and the EBR/BRITE could equally provide a solution and the cost implications could therefore be moderate. In any case, the costs would be the same in options B3 and B4. The same would be true for the costs of option B2 if every Member State were to implement the recommendation.

The preferred solution is therefore option B4, as this combination would offer the highest level of effectiveness, reduce the administrative burden, offer the highest degree of legal certainty (along with option B3) and be more flexible than option B3.

## Comparison of the options

	Effectiveness	Reduction of administrative burden (SE/SCE)	Legal certainty	Flexibility	Cost
<b>Option B1: No policy change</b>	0	0	0	0	0
<b>Option B2: Recommend detailed rules</b>	+	0	0	++	+ <i>(if every MS joins)</i>
<b>Option B3: Legal requirements on the technical details of cooperation</b>	++	+	++	--	+
<b>Option B4: Lay down legal requirements for cooperation and specify the technical details in a delegated act</b>	++	+	++	+	+

‘0’: no change    ‘+’: positive impact    ‘-’ negative impact

## 8.4. Cross-border access to business information

### 8.4.1. Option C1: No policy change — the baseline scenario

Description: There is no requirement in the CLDs for business registers to create a network in order to facilitate access to information. In this scenario, the voluntary network of business registers would probably continue to develop. But until it extends to every Member State, citizens, creditors and other business partners would need to search for business information item-by-item, in the business registers.

Assessment: Given the voluntary nature of the EBR, it is unclear whether it will ever achieve full coverage of all the Member States. Even if it did, considering that it took 18 years to link up the business registers of 19 Member States, completion of the network could be expected to take another decade. The members of the network would continue to be free to choose which pieces of information they transmit through the network and there would therefore be no standardised service. Outside the EBR, users of the business information would have to continue to deal with a variety of structures, search conditions and languages. No single company identifier would be generally used and there would be no change in the quality of the data disclosed (frequency of updates, information on legal force, etc.). The impact on stakeholders, effectiveness, administrative burden, legal certainty and flexibility would be non-existent. This option would be cost-neutral.

### 8.4.2. Option C2: Recommend detailed rules for business registers to ensure better cross-border access to information

Description: Recommendations could cover the legal and technical details of the cooperation, as described in subsection 8.2.3. Moreover, they would recommend registers to provide the public with a language-neutral solution which would enable citizens and small businesses to gather the information in their own language. They would also recommend use of standard datasets and regular updates of the register (e.g. 15 days after each event).

Assessment: Recommendation of common rules would be suitable to provide business registers with guidance and could lead to some convergence of the information accessible and of the quality of the services provided. This would therefore have some effectiveness and some positive impact on market players, subject to Member States' adherence. But there is no guarantee that every Member State would take part in the network. Users, in particular consumers using cross-border e-commerce, could face the same obstacles as today to gain access to cross-border business information. Based solely on the willingness of the registers, this option also could neither engender any greater legal certainty (no mandatory improvement in data quality and no single company identifier) nor reduce the administrative burden. A recommendation would remain, however, a very flexible instrument. Based on the assessment in section 8.1, the EBR/BRITE could provide an ICT solution to this matter and thus, depending on the decision taken by the Member States on whether to join the network, the costs could be significant.

8.4.3. *Option C3: Lay down a requirement for Member States to participate in an electronic network of business registers, along with the list of information to be transmitted through the network, the frequency of updating the registered information and the technical details of the cooperation*

Description: This option would set a basic requirement for Member States to take part in a network of business registers. As business registers are already regulated in the first CLD, an amendment to this Directive would be the obvious solution. The list of registered information in Article 2 of the first CLD would then become the minimum list of documents and particulars that should be made available in every Member State through the network<sup>96</sup>. Moreover, the first CLD would place an obligation on registers to transmit, at the same time, information on the legal force of the business information disclosed in their country. The quality of the data would be improved by setting a deadline of 15 days after the event for updating the relevant content of the register. In this option, European legislation could also specify the legal and technical details of the cooperation, as set out under option A3.

Assessment: A significant improvement in cross-border access to business information can only be achieved if information is accessible from all over Europe. Experience shows that this could hardly be achieved by self-regulation. A legal requirement would very effectively allow consumers and businesses taking part in cross-border trade or provision of services to have sufficient information about the foreign company they are dealing with. A common set of information accessible via the network and a common deadline for updating the content of the register would even the quality of the data accessible all over Europe and thus increase legal certainty. However, it would have no impact on the administrative burden, as requirements on updating of the information already exist in the Member States. The impact on market players such as consumers or creditors would be very positive. But this legislative option would be just as inflexible as option A3. The costs would be relatively high, as the EBR/BRITE could provide an ICT solution.

8.4.4. *Option C4: Lay down a requirement for Member States to participate in an electronic network of business registers, along with the list of information to be*

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<sup>96</sup> At present, the EBR also builds on this list of information but not all the members provide all the information.

*transmitted through the network and the frequency of updating the registered information but specify the technical details of the cooperation in a delegated act or governance agreement*

**Description:** This option would also place a legal obligation on Member States to take part in a network of business registers. The first CLD would address all the issues listed in option A3 with the exception of the technical details of the cooperation, which would be left to a delegated act or governance agreement. In addition, the technical details for cooperation between the registers on access to information should be specified.

**Assessment:** As in option C3, an obligation for Member States to take part in a network of business registers could lead to rapid extension of the network and, consequently, to better cross-border access to business information. It would have the same positive impact on stakeholders as option C3 and lead to the same increase in legal certainty. It would have no impact on the administrative burden either. For the reasons explained in connection with sub-options A4a and A4b, a governance agreement would provide a solution of little effectiveness. Therefore this sub-option should be discarded. Dealing with the details of the network in a delegated act would, however, be more effective and more flexible than an all-legislative option. The costs would be the same as in option C3.

#### 8.4.5. Comparing the options

Option 1 would be neutral as regards the assessment of the criteria. Options C3 and C4 would ensure access to information by establishing legal requirements and would thus have the most positive impact on stakeholders and on legal certainty. Option C2 would show some effectiveness, but options C3 and C4 would be the most effective. Option C2 would be very flexible, but would not improve legal certainty at all. None of the options would have an impact on the administrative burden, as options C1 and C2 would make no changes to the existing legislation and options C3 and C4 would just set a common deadline for an existing obligation. The costs of options C3 and C4 would be the same, whereas the costs of option C2 would depend on the number of Member States implementing the solution. The main advantage of option C4 over option C3 would be its degree of flexibility, as it could take into account the specifics of the different registers. Overall, option C4 would provide the best solution to the problem.

#### Comparison of the options

	Effectiveness	Impact on stakeholders	Reduction of administrative burden	Legal certainty	Flexibility	Cost
<b>Option C1: No policy change</b>	0	0	0	0	0	0
<b>Option C2: Recommend detailed rules</b>	+	+ <i>(if correctly implemented)</i>	0	0	++	- <i>(if every MS joins)</i>
<b>Option C3: Electronic network with details in legislation</b>	++	++	0	++	--	-
<b>Option C4: Electronic network with details in a</b>	++	++	0	++	+	-

delegated act						
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‘0’: no change    ‘+’: positive impact    ‘-’: negative impact

## 8.5. Summary of the recommended options

On the basis of the predefined criteria and the considerations set out in the previous sections, the recommended options can be summarised as follows:

	Effectiveness	Impact on stakeholders	Reduction of administrative burden	Legal certainty	Flexibility	Cost
<b><u>Problem: Foreign branch disclosure:</u></b> Recommended option: Lay down a legal requirement for business registers to cooperate by electronic means with a view to updating the registration of foreign branches and specify the technical details of the cooperation in a delegated act	++	++	++	++	+	-
<b><u>Problem: Cross-border mergers and transfers of registered office:</u></b> Recommended option: Lay down legal requirements for cooperation but specify the technical details of procedures for cross-border mergers and transfers of registered office in a delegated act	++	N/A	+	++	+	+
<b><u>Problem: Access to information:</u></b> Recommended option: Lay down a requirement for Member States to participate in an electronic network of business registers, along with the list of information to be transmitted through the network and the frequency of updating the registered information but specify the technical details of the cooperation in a delegated act	++	++	0	++	+	-

‘0’: no change    ‘+’: positive impact    ‘-’: negative impact

After analysing the possible solutions to the problems one-by-one in this chapter, the recommended options lead to the same coherent solution. In the cases of cross-border access to business information and foreign branch disclosure, amendments to the first and eleventh CLDs are necessary. These rules need to cover the requirement for cooperation between Member States on updating information on foreign branches and cross-border access to company information. In the latter case, legislation would need to specify the list of documents and particulars to be transmitted (including information on the legal force of the data), along with the frequency of updates of the company information, and to delegate to the Commission powers to adopt non-legislative acts of general application to supplement these rules (Article 290 of the TFEU). An ICT feasibility study would help to decide the optimum technological solution. In the case of procedures for cross-border mergers and transfers of registered office, no specific legislative provisions are required, except for the one empowering the Commission to adopt a delegated act in Directive 2005/56/EC and with respect to creation of an SE or an SCE by a cross-border merger. However, as the review of the SE Regulation is underway and the review of the SCE

Regulation is to take place soon, the relevant amendments could be proposed in that context.

The costs will depend on the technological solution chosen for the network of business registers and the actual cooperation mechanism. The technological solution should be chosen in the implementation phase of the project and need not be a prerequisite for the decision on the content. The ‘no policy change’ option is cost-neutral. The costs of implementing the other options are explained in detail in section 8.1, where three scenarios are examined. However, the costs of implementing Commission recommendations (options A to C2) would depend on whether the individual Member States actually decide to act on the recommendations.

Also, leaving the details of the electronic network to delegated acts will allow the Commission and the Member States to decide the most appropriate arrangements which, if chosen, would permit use of the EBR ICT solutions but reorganise the management and control of the organisation in a way that allows enforcement of the public interest.

The recommended options may have a positive **environmental impact**, as they have the potential to replace paper-based communication by electronic communication. One possible **social impact** would be to facilitate access to justice by providing citizens with easier access to reliable business information. Moreover, better access to business information will also help citizens, in particular consumers, to take informed decisions. The proposal would have no impact on the number of employees and their skills.

## 9. MONITORING AND EVALUATION

The Commission will monitor the implementation phase and provide a framework for adopting the necessary delegated acts. Regular meetings should be organised with experts to decide the content of the delegated acts and the most appropriate ICT solution.

Five years after transposition, the effect of the measures should be evaluated. To this end, business registers could be asked to provide the Commission, at regular intervals, with a series of indicators, such as the number of requests, their origin (domestic or foreign), whether the request concerns national data or data to be collected from another business register and the kind of information requested. The average frequency of information updates, particularly on foreign branches, could also be a useful indicator alongside the quality of the information and customer-service to the end-users of the registers.

In general, this evaluation should look at the following questions:

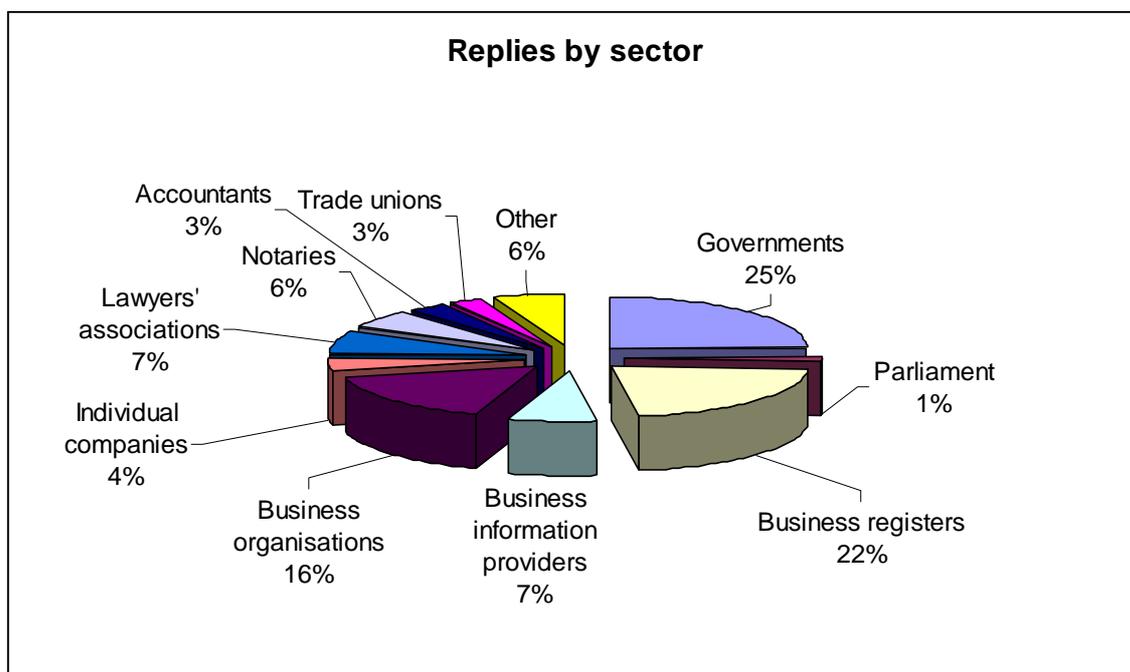
- Whether a Europe-wide network of business registers has been established and is operational;
- Whether the business registers of branches contain credible and up-to-date information on their foreign companies;
- Whether standardised channels of communication between business registers have been established;
- Whether cross-border access to business information has been facilitated.

## Annex 1

### **Synthesis of the comments on the Green Paper of the European Commission on the interconnection of business registers, April 2010**

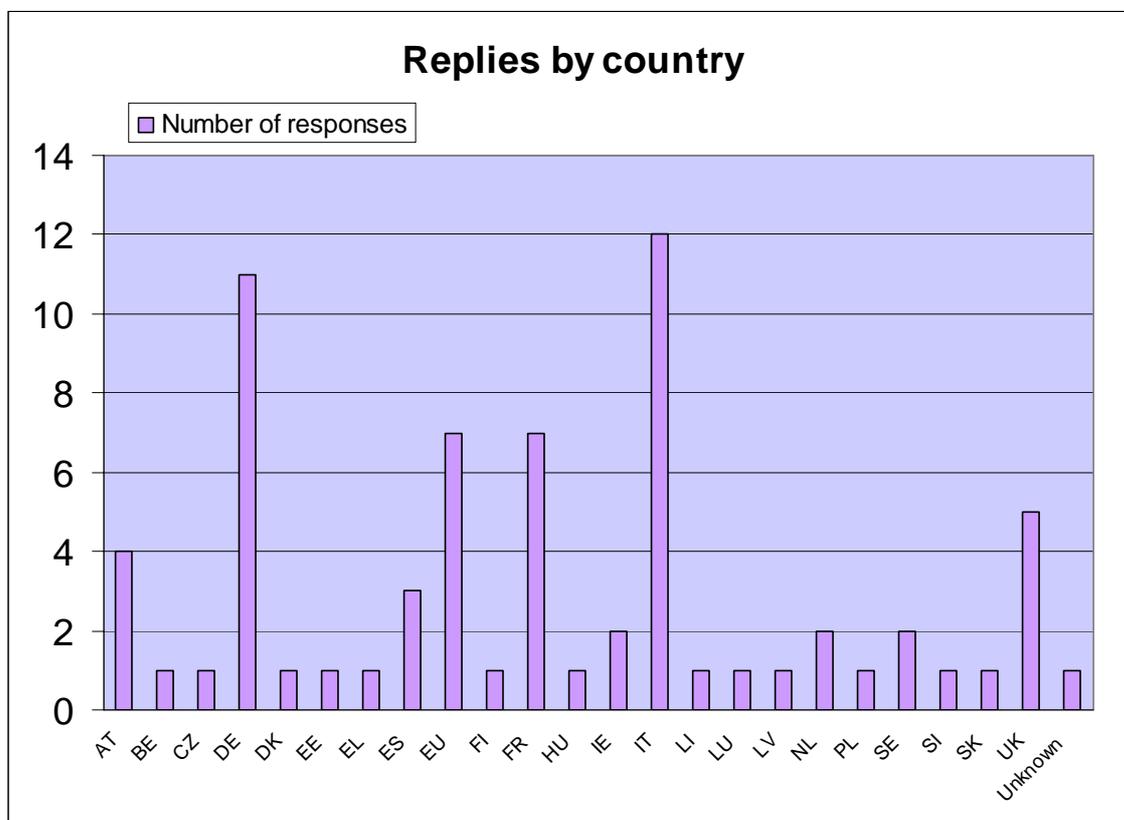
On 4 November 2009 the European Commission adopted a Green Paper<sup>97</sup> and launched a public consultation in order to assess the need for an improved cooperation between the business registers of the Member States of the EU. Business registers register, examine and store company information, such as information on a company's legal form, its seat, capital and legal representatives, and they make this information available to the public. Accordingly, they have a key role in ensuring transparency across the markets and thus restoring trust following the financial crisis.

Despite the technical nature of the Green Paper, DG Internal Market and Services received 69 responses to the consultation that ended on 31 January 2010. Seventeen Member State governments commented on the considerations set out in the Green Paper and approximately the same number of replies arrived from business registers and business organisations or companies. Other respondents to the consultation include professional advisors (e.g. lawyers, notaries and accountants) and trade unions. It should be noted that a significant number of the contributions from business registries were standard answers and thus identical or quasi identical.



<sup>97</sup> COM(2009)614final, [http://ec.europa.eu/internal\\_market/company/business\\_registers/index\\_en.htm](http://ec.europa.eu/internal_market/company/business_registers/index_en.htm)

The contributions originated from 22 countries, including 21 Member States. A number of contributions were submitted by European bodies and associations.



DG Internal Market and Services would like to thank the respondents for their contributions.

This report summarises the results of the consultation. The report does not provide detailed statistical data but rather seeks to give a qualitative presentation of the contributions received. It does not give any indication of potential initiatives, if any, which the Commission may undertake in the future in this area.

## Executive summary

### **Access to information – network of business registers**

Nearly all respondents to the consultation expressed their support for the improvement of the interconnection of business registers in the EU. There was a broad agreement that such a network only has real added value with respect to market transparency if it links the business registers of all 27 Member States. Many respondents pointed out that subject to a cost-benefit analysis in an impact assessment, a legal requirement for the participation of all Member States could also be envisaged.

There was less interest in taking a position on the technical details of the cooperation. The vast majority of those who expressed a view considered, however, that a governance agreement was a good solution to determine the terms and conditions of the cooperation.

There was also some support for the connection of the network of business registers to the electronic network set up under the Transparency Directive storing regulated information on listed companies. This could, however, only be envisaged in the longer term.

### **Cooperation of business registries in cross-border procedures**

As regards improving the communication between business registers in cross-border procedures, two thirds of those who took a stand considered that it is more reasonable to build on the results of the BRITE project as it was developed specifically for the needs of business registers and makes automated data transmission possible. Most of the remaining replies supported the combined use of the BRITE project and the Internal Market Information System (IMI) in cross-border merger and seat transfer procedures.

As regards the disclosure of foreign branches, nearly all of those who replied recognised the need for an automated notification system between the register of the company and the register of its foreign branch. Many respondents argued in favour of the creation of a firm legal basis for the data exchange.

### **Comments on data quality**

An important proportion of the respondents expressed their concerns over the uneven quality of data in the business registers of the Member States. They insisted that the interconnection of business registers would only have real added value if all the information, regardless of its country of origin, transmitted through the network were updated, reliable, standardised and available in the relevant language across the Member States. A significant number of stakeholders asked for standards to be set at European level.

## General remarks

With a few exceptions, **respondents welcomed the Commission's initiative** and the approach taken in the Green Paper. Most contributions recognised that the issue at stake, due to its cross-border nature, requires a pan-European solution. Nonetheless, a number of respondents stressed that thorough impact assessments should be established in order to support any legislative proposal and that the initiative should not put additional burden on businesses. A few respondents considered the provision of business information as a commercial activity and protested against the intervention of the EU or the Member States in this area. Two respondents considered informal cooperation sufficient.<sup>98</sup>

The **uneven quality of data** in the business registers of the 27 Member States seems to create serious problems for the users of business information (in particular, businesses and professional advisors) and business registers. These respondents insisted that the interconnection of business registers would only have real added value if all the information, regardless of its country of origin, transmitted through the network were updated, reliable, standardised and available in the relevant language across the Member States. A significant number of stakeholders asked for standards to be set at European level. Moreover, a few respondents considered that information on the legal value of the registered data in the Member State of registration should be made available.<sup>99</sup>

### Access to information – the network of business registers

**Interested parties are invited to give their views on**

- **whether an improved network of the business registers of the Member States is necessary,**
- **whether the details of such a cooperation could be determined by a "governance agreement" between the representatives of the Member States and the business registries,**
- **whether they see any added value in connecting, in the long term, the network of business registers to the electronic network set up under the Transparency Directive storing regulated information on listed companies.**

**2.1** The fact that the existing **network of business registers** covers only 18 Member States and six other European jurisdictions was identified by the Green Paper as the most important factor reducing the value of the accessible business information. The vast majority of Member States and stakeholders shared this assessment and argued in favour of requiring all Member States to participate in the cooperation of business registers. A number of answers pointed out that the participation of the 27 Member States could be

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<sup>98</sup> Those respondents who disagreed with the improvement of the network of business registers were also against the specific proposals of the Green Paper. Their remarks will not be repeated at each point.

<sup>99</sup> See also section 4.1.

best achieved by an amendment to the 1st CLD,<sup>100</sup> subject to a cost-benefit analysis in a prior impact assessment. Such an initiative could increase transparency in the markets and reduce administrative burden on companies. On the other hand, a few replies were in favour of continuing the current voluntary cooperation either because they found it satisfactory or because they were concerned about the costs of the extension of the network or they considered the provision of cross-border business information a purely commercial activity.

Many respondents underlined the importance of a single access point to the network of registers. According to some, the future e-Justice portal could become the gate to the relevant services. More generally, a number of replies pointed out that any future solution should be linked to or be compatible with the e-Justice initiative. A few respondents emphasised the need for a single user identification and a uniform billing system.

Approximately a quarter of the respondents pointed out that the information transmitted through the network of business registers can only be trusted if all European companies have a unique company identifier. Most of these respondents argued in favour of using the REID (Registered Entity Identifier) developed by the European Business Register (EBR).<sup>101</sup>

A dozen replies or so stressed the potential added value of a centralised register of business registers that would help the identification of the competent register and indicate the location of the relevant business information.

Many answers underlined the importance of offering a user-friendly solution. Accordingly, these voices stressed that business information should be made available in as many languages as possible. A couple of respondents argued in favour of limiting the number of languages, e.g. to English, French and German.

Finally, some respondents highlighted the need to keep the network open to third countries and reminded of the importance of the protection of personal data.

**2.2** While all respondents took a stand on the need for an improved network of business registers, 70 percent replied to the question on the possible practical arrangements of the interconnection. While the Green Paper considered that building on the results already achieved by EBR was reasonable, improving its efficiency by regulatory means was difficult because of the dominantly private nature of the cooperation. Consequently, the details of the cooperation could be determined in a **governance agreement** between the Member States and/or their registries.

The vast majority of those who responded to this question consider the governance agreement to be a good solution to lay down the technical details of the cooperation between registers. However some respondents emphasised that the governance

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<sup>100</sup> 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. 11–19*)

<sup>101</sup> <http://www.ebr.org>

agreement cannot replace essential legislation and there were two Member States who judged the contractual solution too soft and suggested considering a legislative solution.

Only a very few responses questioned the idea of building on the results of EBR, however the existing network was criticised for the lack of uniform datasets and the non-satisfactory level of services. A number of replies from governments and business registries stressed the need for a solution that does not require membership in the EBR EEIG.

**2.3** Only about half of the respondents took a position on the **connection of the network of business registers to the electronic network set up under the Transparency Directive** storing regulated information on listed companies. 80 percent of those who replied were in favour of the connection of the two networks pointing out that linking legal and financial information would increase transparency in the markets. However a third of the replies underlined that the interconnection of business registers should enjoy priority. A number of respondents reminded of the technical difficulties of the interconnection of the two types of databases and some expressed a view that only integration of the networks would have real added value. Those who considered this option unnecessary pointed out that while financial information is addressed to investors, legal information is mainly addressed to other stakeholders. Connecting or integrating the networks would therefore not bring any added value. One critic even explained that this combination of networks could lead to an information overload for the user and as a consequence to less transparency.

#### **Cooperation of business registers in cross-border mergers, seat transfers and foreign branch registration**

**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,**
- whether they support the proposed solution on the disclosure of branches.**

**3.1** The second major objective of the Green Paper was to explore ways to establish standard channels of **communication between business registries** in different Member States in order to facilitate cross-border procedures such as mergers or seat transfers. The Green Paper outlined three options: The first one would build on the results of the BRITE project (Business Operability Throughout Europe)<sup>102</sup>; the second one would use the Internal Market Information System (IMI)<sup>103</sup> and the third one would combine the two solutions.

Four fifths of the respondents took a stand on this question and two thirds of those who replied were in favour of building on the results of the BRITE project. They argued that

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<sup>102</sup> <http://www.briteproject.eu>

<sup>103</sup> [http://ec.europa.eu/internal\\_market/imi-net/index\\_en.html](http://ec.europa.eu/internal_market/imi-net/index_en.html)

IMI is a passive query system while BRITE makes automated data exchange possible. BRITE has also been developed specifically for the purposes of business registers. Some respondents also stressed the investments already poured into the development of BRITE. An additional 20 percent of the replies argued in favour of the combined use of BRITE and IMI, at least as a temporary solution. Those few who favoured the use of IMI alone stressed the lower implementation cost and underlined that the system was already used which was an asset in terms of acceptance. A couple of respondents did not find any of the options acceptable or necessary. In their view, establishing a centralised register of business registers is sufficient.

**3.2** As regards the **disclosure of branches** of foreign companies, three quarters of the respondents gave an answer. Nearly all of them recognised the need for an automated notification system between the register of the company and the register of its foreign branch and more than a third of the replies pointed out the need for the creation of a firm legal basis for the data exchange in the 11th CLD.<sup>104</sup> A couple of replies supported the initiative but were not in favour of amending the relevant Directive. A few respondents explicitly promoted the so-called Branch Disclosure Service that has been developed in the context of the BRITE project and is already in use in some Member States.

### **Additional suggestions**

**4.1** As it was underlined in section 1, a recurring comment was related to the uneven quality of data in the business registers of the 27 Member States. A few respondents suggested that a **minimum set of data** should be harmonised at European level that must be made available across the EU through the network of registers. A number of respondents emphasised that the use of XBRL would facilitate standardisation and increase the comparability of data.

The not sufficiently frequent **updates** of the content of the business registers have also been identified as a problem by several replies.

One key component of the quality of the transmitted data is the information on its **legal value**. As one respondent pointed out, in some countries, the register simply states the content of the registered data, whereas in other Member States the information provided by a register has a "public" character and rebuttable or even non-rebuttable presumptions are attached to it ("public trust"). Information on this matter should be made available to the users of registered business information. At the same time, there should be legal certainty as regards the law applicable to the transmitted information. It was also proposed to adopt European rules on the legal value of registered business information.

**4.2** A couple of respondents argued in favour of a **central European business register**, either for all companies or only for European legal forms<sup>105</sup>, as it would be the best solution to provide standardised, reliable, easily accessible business information. A

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<sup>104</sup> 11th Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State (*OJ L 395, 30.12.1989, p. 36–39*)

<sup>105</sup> European Company (SE), European Cooperative Society (SCE), European Economic Interest Grouping (EEIG)

similarly low number of responses took a clear stand against a centralised European register.

Some suggested developing a **central database for disqualified directors**.

**4.3** Approximately a quarter of the respondents put forward proposals to introduce a "**European business certificate**", i.e. an extract from the business registers standardised at European level. They argue that such a measure would increase transparency and constitute important simplification for businesses.

**4.4** A few respondents asked for an even more ambitious approach with respect to the review of the 11th CLD on the registration of foreign branches. They argued in favour of new rules allowing for the **registration of a foreign branch in the register of its "parent company"**. Consequently, no further registration would be necessary in the jurisdiction where the branch is located.

**4.5** Some comments asked for **free access to registered business information** all over the EU while others argued in favour of ensuring free access for public authorities to the registered data.

**4.6** There were some suggestions that were not strictly related to the interconnection of business registers but belonged to the broader area of simplification and administrative burden reduction. In particular they asked for the **reduction of filing requirements** for businesses.

**4.7** Finally, some suggested developing a **Europe-wide policy on company names**.

### **Next Steps**

The European Commission will prepare evidence on the advantages and disadvantages of the possible policy options by assessing their potential impacts. The results of this process will be summarised and presented in an impact assessment report, which will be made public.

## Annex 2

### Overview of the authorities responsible for business registration in the Member States

Type	Member State
Regional or local court	Austria, Belgium, Bulgaria, Czech Republic, France, Germany, Hungary, Poland, Romania, Slovakia
Ministry or other central authority	Cyprus, Denmark, Estonia, Finland, Ireland, Latvia, Lithuania, Luxembourg, Malta, Portugal, Slovenia, Sweden, UK
Chamber of commerce	Greece, Italy, Netherlands
Other	Spain ( <i>'registrador'</i> )

### Annex 3

#### First Company Law Directive (Directive 2009/101/EC) — number of companies (active enterprises) concerned

EU/EEA country	Limited liability companies	Number of enterprises: all legal forms****
Belgium*		
Bulgaria	101 841	
Czech Republic	150 151	
Denmark	85 206	
Germany**	1 045 919	
Estonia	46 869	
Greece*		
Spain	1 226 027	
France	1 010 237	
Ireland**	158 623	
Italy	685 630	
Cyprus	226 118	
Liechtenstein**	7 304	
Latvia	51 232	
Lithuania	37 843	
Luxembourg	19 338	
Hungary	166 252	
Malta**	35 000	
Netherlands***	659 400	
Norway	122 414	
Austria	68 424	
Poland	162 244	
Portugal	314 629	
Romania	473 983	
Slovenia	36 190	
Slovakia	75 280	
Finland	118 746	
Sweden	252 498	
United Kingdom	1 225 660	
<b>Total</b>	<b>8 563 058</b>	<b>18 960 000</b>

Source: Eurostat

\* Figures for Belgium and Greece were neither available from Eurostat nor provided by the governments.

\*\* Figures for Germany, Ireland, Liechtenstein and Malta were not available from Eurostat. The figures used were sent directly by the relevant governments.

\*\*\* Figures for the Netherlands provided by Kamer van Koophandel (chamber of commerce), October 2009.

\*\*\*\* Eurostat, 'Business economy overview', 2009 edition, number of enterprises excluding Belgium, Greece, Norway and Liechtenstein. For Malta, only the component for limited liability companies was used.

## Annex 4

<b>Panel A: Number of U.K.-incorporated firms where the MAJORITY of directors reside in country x</b>										
Country	Year of incorporation									
	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Austria	70	63	107	104	150	163	212	456	754	719
Belgium	236	300	378	305	293	335	323	395	531	592
Cyprus	151	198	675	936	881	1,070	937	819	976	852
Czech Republic	22	17	32	39	33	38	56	67	89	170
Denmark	133	135	178	163	299	1,131	1,484	239	288	280
Estonia	2	8	7	5	7	8	9	18	30	14
Finland	22	37	37	43	33	12	24	16	24	35
France	1,112	1,396	1,491	1,408	1,214	1,298	1,411	1,477	1,759	1,670
Germany	600	633	776	807	717	1,164	2,752	10,263	13,728	16,438
Greece	77	121	133	87	73	105	123	100	121	159
Hungary	15	17	21	9	23	9	38	37	73	91
Ireland	350	471	600	427	391	427	1,914	507	473	521
Italy	440	442	538	422	329	370	428	431	553	748
Latvia	4	0	11	9	17	18	15	17	35	33
Lithuania	7	0	2	2	13	18	25	25	13	23
Luxembourg	59	60	103	58	54	48	37	84	110	66
Malta	11	27	21	22	15	11	21	25	23	23
Netherlands	501	506	583	467	521	637	732	1,571	2,193	2,156
Norway	103	85	112	109	91	105	317	1,222	2,332	2,335
Poland	31	29	41	20	24	34	301	116	140	154
Portugal	55	67	54	46	46	28	57	54	66	77
Slovakia	15	6	4	7	8	11	12	13	16	21
Slovenia	2	4	6	2	11	7	10	18	33	48
Spain	243	242	307	269	269	373	279	386	555	564
Sweden	173	263	249	237	133	206	242	245	410	533

Source: Becht, Marco, Mayer, Colin and Wagner, Hannes F., 'Where Do Firms Incorporate? Deregulation and the Cost of Entry' (August 2007). ECGI — Law Working Paper No 70/2006; Journal of Corporate Finance, Vol. 14, No 3, 2008. Available at: <http://ssrn.com/abstract=906066>, p. 28.

## Annex 5

### **Questionnaire**

#### **Content of the business register**

1. In addition to the list of items in Article 2 of the First Company law Directive (2009/101/EC) what other information does your national legislation require from limited-liability companies to submit to the business register? Please add reference to the relevant legislation.
2. Are there any data in the business register that is not accessible to the public? If so, what are they?
3. How often are companies required to update the information listed in Article 2 of the First Company law Directive, in the business register? In particular, how long after an event (e.g. change of the directors, change of registered office, liquidation/dissolution of a company) is the change entered in the register and disclosed? Please add reference to the relevant legislation.
4. In the case where a company does not comply with the requirement referred to in Q3, what are the sanctions, if any? Please add reference to the relevant legislation.
5. Do you consider that there is any additional piece of business information that should be made accessible through the business register in every Member State, i.e. by which the list in Article 2 of the First Company law Directive should be completed? If so, what is it and why?
6. Do you consider that a possible future exchange of information should exclude any of the items mentioned in Article 2 of the First Company law Directive? If so, which items would be expendable and why?

#### **Legal value of the registered and disclosed business information**

7. What is the "legal value" of the information stored and disclosed in the register? In particular, is "public trust" attached to it, i.e. to what extent can third parties rely on it? Is it a statement of facts, or is a rebuttable or non-rebuttable presumption attached to such information? Please add reference to the relevant legislation.

#### **Business registration**

8. Does your national law require the application of the rules of the First Company law Directive on business registration (Articles 2-4 and 6-7) to companies or other legal entities other than the ones listed in Article 1 of the Directive? If so, to which legal forms? (see also Q16)
9. If your national legislation does not provide for preventive, administrative or judicial control at the time of formation of a company, in what legal form are the instrument of constitution (articles of association, statute, memorandum and any amendments thereto) drawn up and certified (Article 11 of the First Company law Directive)? Please add reference to the relevant legislation.

### **Access to information by electronic means**

10. Can you access the information disclosed in the business register through a web-based application and/or by e-mail? (see also Q19)

### **Foreign branches**

11. What are the applicable rules for the registration of branches of foreign companies? In particular, are companies asked to update the data required by the Eleventh Company law Directive (89/666/EEC)? What are the sanctions if a company does not comply with the obligation? Please add reference to the relevant legislation.

### **Cross-border mergers**

12. As regards cross-border mergers, how is the second subparagraph of Article 13 of Directive 2005/56/EC applied in your country, i.e. how does the registry of the resulting company notify the former registry, of the registration of the merger? Please add reference to the relevant legislation.

### **Cross-border seat transfers**

13. As regards the cross-border seat transfer of European Companies (SEs) and European Cooperative Societies (SCEs), how are Article 8(11) of the SE Regulation EC No.2157/2001 and Article 7(11) of the SCE Regulation EC No.1435/2003 applied in your country, i.e. how does the SE's or SCE's new registry notify the former registry, of the registration of the seat transfer? Please add reference to the relevant legislation.
14. In the Member States where other limited-liability companies may transfer their seat across borders, how do the competent registers communicate with each other in the cross-border procedure?

### **Practical experience**

15. Are you aware of any practical difficulties in relation to the application of the above rules? If so, what are they?

### **Request for data**

#### **Figures on companies that are subject to the First Company law Directive**

16. Do you know how many companies in your country are currently (in 2010) covered by the rules of the First Company law Directive on business registration (Articles 2-4 and 6-7)? Could you provide us with a breakdown (according to legal forms) of the different categories? (see also Q8)

#### **Figures on cross-border operations**

17. Please complete the table with the figures on the number of the registered cross-border operations in your country:

<b>Operation</b>		<b>2010</b>	<b>2009</b>	<b>2008</b>
------------------	--	-------------	-------------	-------------

<b>Cross-border mergers</b>	<i>inbound</i>			
	<i>outbound</i>			
<b>Cross-border seat transfers of European Companies (SE)</b>	<i>inbound</i>			
	<i>outbound</i>			
<b>Cross-border seat transfers of European Cooperative Societies (SCE)</b>	<i>inbound</i>			
	<i>outbound</i>			
<b>Cross-border seat transfers of other limited liability companies (if applicable)</b>	<i>inbound</i>			
	<i>outbound</i>			
<b>Registration of branches of foreign companies</b>				
<b>Deletion of branches of foreign companies</b>				

#### Figures on information requests by electronic means

18. Please complete the table on the number of domestic and cross-border information requests by electronic means:

<b>Origin of information requests to business registers<sup>106</sup></b>	<b>2010</b>	<b>2009</b>	<b>2008</b>	<b>2007</b>
<b>Domestic (from the same MS)</b>				
<b>Cross-border (from another MS)</b>				
<b>Cross-border (from a third country)</b>				

#### Figures on costs of electronic access to business information

19. How much does it cost to access the information disclosed in the business register by electronic means (through a web-based application and/or by e-mail)? Please provide figures at least for the following documents and particulars:

<b>Type of information (Article 2 of the First CLD)</b>	<b>Cost</b>
the instrument of constitution and the statutes	

<sup>106</sup> Please indicate if there was a significant change in the system of electronic access to information between 2007 and 2010.

Any amendments to the instruments of constitution and the statutes	
the complete text of the instrument or statutes as amended to date	
the appointment, termination of office and particulars of the persons who are authorised to represent the company in dealings with third parties and in legal proceedings (individually or jointly) or take part in the administration, supervision or control of the company	
the amount of the capital subscribed	
the accounting documents for each financial year	
Any change of the registered office of the company	
the winding-up of the company	
Any declaration of nullity of the company by the courts	
the appointment of liquidators, particulars concerning them, and their respective powers	
the termination of the liquidation and the fact of striking off	

Please specify if access is free to a limited or unlimited set of data and whether you have packages or subscriptions available to access business information by electronic means? In the latter case, please specify the applicable fees. (see also Q10)

### **Other information**

Please do not hesitate to add any other kind of related information or data you consider useful for this exercise.

## Annex 6

### Exports by SMEs by destination

Table 3 Major world regions for exporting for EU15, EU12 and non-EU countries (percentage of exporters, as more answers could be given, columns do not total)

<i>Export regions</i>	<i>EU15</i>	<i>EU12</i>	<i>non-EU</i>	<i>Total</i>
Cross border regions	49%	46%	35%	47%
Other European Union	76%	83%	57%	76%
Russia	12%	7%	2%	10%
Other European countries	30%	20%	24%	27%
Middle East	17%	3%	16%	14%
North Africa	19%	1%	3%	14%
Other Africa	14%	1%	7%	11%
Japan	8%	1%	10%	7%
China	11%	3%	8%	9%
India	9%	0%	4%	7%
Other Asia	9%	2%	12%	8%
North America	21%	3%	12%	17%
Brazil	9%	1%	1%	7%
Other South and Central America	12%	3%	5%	10%
Australia/New Zealand	10%	0%	3%	8%
Total	100%	100%	100%	100%
Total N, unweighted	1957	1129	447	3533

*Source: Survey 2009, Internationalisation of European SMEs EIM/GDCC (N=9480).*

## Annex 7

### Imports by SMEs by origin

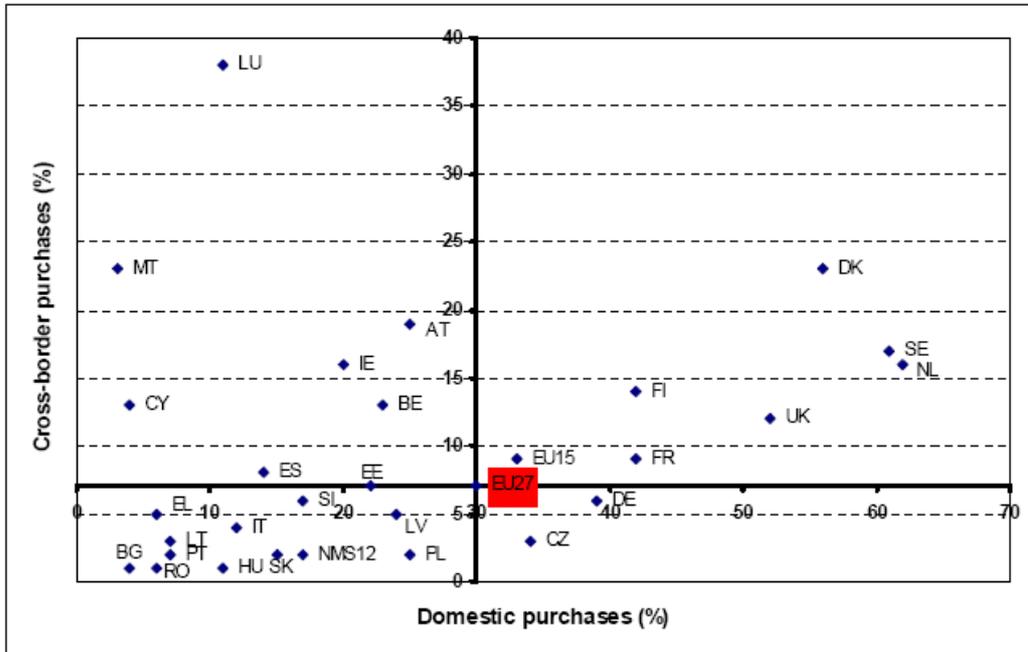
Table 6 Fifteen regions in the world from which imports are sourced; percentage of importing SMEs from EU15, EU12 and non-EU countries (as more answers could be given, columns do not total)

<i>Region from which imports originate</i>	<i>Countries in 3 groups</i>			<i>Total</i>
	<i>EU15</i>	<i>EU12</i>	<i>Non-EU</i>	
Cross border regions	44%	25%	23%	38%
Other European Union	84%	93%	86%	86%
Russia	2%	4%	1%	2%
Other European countries	14%	13%	18%	14%
Middle East	5%	2%	3%	5%
North Africa	4%	1%	0%	3%
Other Africa	5%	1%	1%	4%
Japan	7%	2%	14%	7%
China	31%	15%	25%	27%
India	11%	2%	8%	9%
Other Asia	9%	8%	8%	9%
North America	21%	12%	27%	19%
Brazil	7%	2%	5%	6%
Other South and Central America	5%	2%	1%	4%
Australia/New Zealand	2%	1%	3%	2%
Total	100%	100%	100%	100%
Total N, unweighted	2128	1524	573	4225

*Source: Survey 2009, Internationalisation of European SMEs EIM/GDCC (N=9480).*

## Annex 8

**Figure 5 - Percentages of consumers having bought goods or services on the Internet from sellers in another EU country (cross-border purchases) vs. in their own country (domestic purchases)**



Source: Special Eurobarometer 298 (2008). See source data in table below. The axes of the figure are centred on the EU average.

## **Annex 9**

### **Members of the EBR network**

**Austria:** Telekom Austria AG (<http://dataweb.telekom.at>)

**Belgium:** Coface Services (<http://www.coface.be>)

**Czech Republic:** Ministry of Justice (<http://www.justice.cz/or>)

**Denmark:** Erhvervs- og Selskabsstyrelsen (<http://www.cvr.dk>)

**Estonia:** Registrite ja Infosüsteemide Keskus (<http://www.rik.ee>)

**Finland:** Patentti- ja rekisterihallitus (<http://www.prh.fi>)

**Former Yugoslav Republic of Macedonia:** Central Register of the Republic of Macedonia (<http://www.crm.org.mk>)

**France:** Institut National de la Propriété Industrielle (<http://www.inpi.fr>)

**Germany:** Bundesanzeiger ([www.bundesanzeiger.de](http://www.bundesanzeiger.de))

**Greece/Athens:** Athens Chamber of Commerce and Industry (<http://www.acci.gr>)

**Guernsey:** Guernsey Registry (<https://www.greg.gg>)

**Ireland:** Companies Registration Office (<http://www.cro.ie>)

**Italy:** InfoCamere S.c.p.A. (<http://www.infocamere.it>)

**Jersey:** Jersey Financial Services Commission (<http://www.jerseyfsc.org>)

**Latvia:** Lursoft IT (<http://www.lursoft.lv>)

**Lithuania:** State Enterprise Centre of Registers (<http://www.registrucentras.lt>)

**Luxembourg:** Registre de Commerce et des Sociétés du Grand-Duché de Luxembourg (<https://www.rcsl.lu>)

**Netherlands:** Kamer Van Koophandel Nederland (<http://www.kvk.nl>)

**Norway:** Brønnøysundregistrene (<http://www.brreg.no>)

**Serbia:** Serbian Business Registers Agency ([www.apr.sr.gov.yu](http://www.apr.sr.gov.yu))

**Slovenia:** Agency of the Republic of Slovenia for Public Legal Records and Related Services (<http://www.ajpes.si>)

**Spain:** Servicio de Certificación de los Registradores (<http://www.registradores.org>)

**Sweden:** Bolagsverket (<http://www.bolagsverket.se>)

**Ukraine:** Information Resource Centre State Enterprise (<http://www.irc.gov.ua>)

**United Kingdom:** Companies House (<http://www.companieshouse.gov.uk>)

## Annex 10

### Products provided by members of the EBR

	Standard EBR reports					Other products
	Company search	Company profile	Person search	Personal appointments	Company appointments	
<b>Austria</b>	x	x				
<b>Belgium</b>	x	x	x	x	x	
<b>Czech Republic</b>						
<b>Denmark</b>	x	x	x	x	x	
<b>Estonia</b>	x	x	x	x	x	Annual accounts, Articles of association
<b>Finland</b>	x	x	x	x	x	Extract from Trade Register, Annual accounts
<b>France</b>	x	x	x		x	Annual accounts
<b>Former Yugoslav Republic of Macedonia</b>	x	x				
<b>Germany</b>	x	x				Annual accounts
<b>Greece</b>	x	x	x	x	x	
<b>Guernsey</b>						
<b>Ireland</b>	x	x				Annual accounts, Annual return
<b>Italy</b>	x	x	x	x	x	Annual accounts
<b>Jersey</b>	x	x				
<b>Latvia</b>	x	x	x	x	x	Balance sheet, Profit and loss accounts, Annual accounts, Statutes, Certificate of registration
<b>Luxembourg</b>	x	x			x	Annual accounts, Articles of association, Incorporation deeds
<b>Netherlands</b>	x	x				
<b>Norway</b>	x	x		x	x	Annual accounts
<b>Serbia</b>	x	x			x	
<b>Slovenia</b>	x	x			x	Annual accounts, Extract from Trade Register, Credit-rating report
<b>Spain</b>	x	x			x	Annual accounts
<b>Sweden</b>	x	x	x	x	x	Annual accounts, Articles of association
<b>Ukraine</b>	x	x	x	x	x	
<b>United Kingdom</b>	x	x	x	x	x	Annual accounts, Annual return, Articles of association, Incorporation documents

## Key

EU Member State offering all products
EU Member State offering some products <sup>107</sup>
Non-EU country offering all products
Non-EU country offering some products

*Company search* means a search by company name (or part thereof) or company ID. It returns a list of companies meeting the search criteria. It is also possible to make a cross-country search by company name in several countries at the same time.

*Company profile* means the usual company report containing basic information about status, company type, address, paid-up capital and activities.

*Person search* means a search by person name (or part thereof) or ID. It returns a list of legal or physical persons declared in the business register.

*Personal appointments* means a list of the companies in which the person concerned holds a position.

*Company appointments* means a list of company directors and administrators. Information about shareholders is not available.

The table shows that more than half of the current EBR members do not provide the search options called for by the EBR. Among the EU Member States, Austria, France, Germany, Ireland, Luxembourg, the Netherlands, Slovenia and Spain apply restrictions on searches. The Czech Republic is not yet connected to the network. Norway also applies restrictions on person searches.

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<sup>107</sup> The Czech Republic did not join the EBR until 20 May 2010 and offers no products yet.

## Annex 11

### Number of branches of foreign companies in the EEA countries<sup>108</sup>

Member State	No of branches
Belgium	N/A
Bulgaria	391
Czech Republic	3 084
Denmark	782
Germany	30 882
Estonia	484
Greece	1 381
Spain	1 140
France	6 827
Ireland	1 795
Italy	6 552
Cyprus	1 171
Latvia	347
Liechtenstein	90
Lithuania	346
Luxembourg	1 266
Hungary	584
Malta	280
Netherlands	19 331
Norway	15 837
Austria	2 463
Poland	N/A
Portugal	2 053
Romania	779
Slovenia	341
Slovakia	1 831
Finland	989
Sweden	2 190
UK	9 062
<b>Total</b>	<b>112 278</b>

<sup>108</sup>

The statistics of some of the EEA countries cannot differentiate between branches of foreign companies from inside or outside the EU/EEA.

## Annex 12

### Number of newly registered branches of foreign companies in selected countries

EU/EEA country	Branches of foreign companies registered		
	2010 (partial)	2009	2008
Bulgaria	27	122	239
Czech Republic	102	237	297
Denmark	17	151	171
Estonia	2	27	33
Ireland	54	144	196
Cyprus	24	73	95
Liechtenstein	N/A	92	91
Lithuania	5	32	42
Luxembourg	34	96	103
Hungary	56	130	147
Malta	23	39	36
Norway	1 741	4 119	3 598
Austria	115	372	371
Poland	56	169	232
Romania	40	154	164
Slovenia	8	18	18
Slovakia	75	180	194
Finland	24	101	121
Sweden	195	473	534
United Kingdom	N/A	474	874

*(April 2008-March 2009)*

*(April 2007-March 2008)*

This table illustrates the total number of foreign branches. The figures are very recent, covering the period from 2008 to mid-2010, and cannot yet establish a trend. The decrease in the number of newly established branches from 2008 to 2009 seen in 14 out of the 20 countries might be a consequence of the adverse business climate over this period.

### Annex 13

#### Data on transfers of registered office of SEs

Name of SE	Original registration	New registration	Year of transfer
Graphisoft SE	NL	HU	2005
DIAG Human SE	CZ	LI	2006
Afschrift SE	BE	LU	2007
BIBO ZWEITE [...] SE	DE	UK	2007
BOLBU Beteiligungsgesellschaft SE	DE	UK	2007
Joh. A. Benckiser SE (JAB)	DE	AT	2007
Jura Management SE (now transformed into GmbH))	NL	DE	2007
MDM Holding SE	AT	CY	2007
Narada Europe SE (liquidated)	NO	UK	2007
Prosafe SE	NO	CY	2007
Swiss Re International SE	UK	LU	2007
AmRest Holdings SE	NL	PL	2008
Arcelor Steel Trading SE	NL	ES	2008
Atrium Dritte Europäische VV	DE	IE	2008
bluO SE	DE	AT	2008
Elcoteq SE	FI	LU	2008
Imperio Regere SE	CZ	CY	2008
MAI Luxembourg SE	LU	UK	2008
Milium SE	LU	BE	2008
RSL COM Germany SE	DE	UK	2008
SEKISUI NordiTube Technologies	SE	DE	2008
Spirall Solution SE	CZ	CY	2008
UBM International Holdings SE	LU	UK	2008
United Consumer Media SE	LU	UK	2008
UPRN 1 SE	LU	NL	2008
World Nordic SE	DK	CY	2008
Allpar SE	LU	AT	2009
Ardanos Holdings SE	NL	FR	2009
Bercy Charenton SE	NL	FR	2009
Carthago Value Invest SE	DE	IE	2009
Crius Capital SE	CZ	SK	2009
Equinox II SE	NL	FR	2009
Europasta SE	NL	CZ	2009
Fotex Holding SE Nyrt	HU	LU	2009
Guardian Middle East & Africa	DK	LU	2009
GUS International Holdings SE	NL	UK	2009
GUS Ireland Holdings SE	NL	UK	2009
GUS Overseas Holdings SE	NL	UK	2009
GUS Overseas Investments SE	NL	UK	2009
GUS US Holdings SE	NL	UK	2009
International Engineering SE	LU	AT	2009
Marcel Pourtout SE	NL	FR	2009
Nyckel 0328 SE	UK	SE	2009
Philippe Auguste SE	NL	FR	2009
Powergen LS SE	LU	UK	2009
Songa Offshore SE	NO	CY	2009
Elster Group SE	LU	DE	2010
James Hardie Industries SE	NL	IE	2010
James Hardie Int. Holdings	NL	IE	2010
Patroklos I SE	SE	NL	2010
Total	50	50	

The information in this Annex is extracted from ‘The European Company (SE) Factsheets’ database available at: <http://ecdb.worker-participation.eu/>. This database is managed and updated by the research department of the European Trade Union Institute (ETUI) (see: <http://ecdb.worker-participation.eu/>). ETUI is financially supported by the European Union.

The table above lists the transfers of the registered office of SEs. It shows that there had been 50 cases up to 1 July 2010. This is equivalent to around 8% of all SEs that existed at the time. However, there is an upward trend in the number of transfers per year. After just one known transfer in both 2005 and 2006, there were nine in 2007, 15 in 2008 and 20 in 2009. However, as the information on transfers is not recorded until some time after the event, there might have been more transfers than indicated above in 2009 and, especially, in 2010.

The most frequent destinations were the United Kingdom (13) and Cyprus (6), whereas SEs seem to be moving away from, rather than entering, the Netherlands (17), Luxembourg (9), Germany (7) and the Nordic countries (7).

## Annex 14

### Glossary

**1. Company:** In this impact assessment the term ‘company’ should always be understood as ‘limited liability company’ unless specified otherwise.

**2. Business register:** This term comprises all the central, commercial and companies registers covered by Article 3 of the first CLD.

**3. First CLD:** 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, pp. 11–19).

**4. Eleventh CLD:** Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State (OJ L 395, 30.12.1989, p. 36).

**5. Cross-Border Mergers Directive:** 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).

**6. SE Regulation:** 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).

**7. SCE Regulation:** 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).

**8. Branch:** There is no definition in EU law. In general, branches are not independent legal persons; the company they belong to is responsible for their debts and other obligations.

**9. Merger:** (definition given in Directive 2005/56/EC) an operation whereby:

(a) one or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to another existing company, the acquiring company, in exchange for the issue to their members of securities or shares representing the capital of that other company and, if applicable, a cash payment not exceeding 10% of the nominal value, or, in the absence of a nominal value, of the accounting par value of those securities or shares; or

(b) two or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to a company that they form, the new company, in exchange for the issue to their members of securities or shares representing the capital of that new company and, if applicable, a cash payment not exceeding 10% of the nominal value, or, in the absence of a nominal value, of the accounting par value of those securities or shares; or

(c) a company, on being dissolved without going into liquidation, transfers all its assets and liabilities to the company holding all the securities or shares representing its capital.

**10. European Business Register (EBR):** A voluntary network that combines official business registers from 19 Member States and six other European jurisdictions (<http://www.ebr.org>).

**11. BRITE (Business Register Interoperability Throughout Europe):** A research project conducted between 2006 and 2009 and financed under the Sixth Framework Programme that developed specific technological solutions to enhance the quality of exchanges of information on cross-border transfers of registered office and mergers and foreign branch disclosure (<http://www.briteproject.eu>).

**12. Internal Market Information System (IMI):** An electronic tool designed to support day-to-day cooperation between public administrations by making electronic exchanges of information between competent authorities possible.