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**Council of the Notariats of the European Union's contribution to the GREEN PAPER ON
THE INTERCONNECTION AND THE INTEROPERATIVITY OF BUSINESS
REGISTERS**

Please find below the answers of the C.N.U.E. to the questions of the Green Paper on “the interconnection of business registers”

1. Is an improved network of the business registers of the Member States necessary?

CNUE strongly believes in the added value of transparency in company law; therefore, an enhancement of available official information about companies looks, according to CNUE, like a priority for the action that European Institutions should take in the short run.

CNUE fully agrees also with the specific approach chosen by the Green Paper, hinged on sustaining and improving the interconnection and the interoperability of existing Member States' business registers, instead of creating new supranational ones.

The Green Paper, anyway, focuses on the interconnection issues without dealing first, as it should be necessary according to CNUE, with the issue of the homogeneity of present available official information about EU companies in different Member States' business registers.

CNUE's opinion is that, at the present day, single national business registers are not homogenous enough to allow EU institutions to start up with an interconnection process. The quantity of legal information is still too unequal in different Member States, with all consequences in competition distortions, which would be enhanced by the interconnection. It would also be misleading, because the quality of legal information is not yet sufficiently guaranteed in each Member State. The information available nowadays has indeed not the same legal value and reliability (depending on whether the information is checked upon before the entry into the register). Moreover it must be taken into account that the national business registers may pursue different goals and differ in their functioning.

Therefore it would first be necessary to verify whether each Member state has fully implemented the provisions of the first company law directive (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), in particular art. 2 and 11. The latter imposes a preventive legal control.

It should also be compulsory that all information mentioned in Annex IV of the Green Paper should also be, even if this entails a significant improvement of the present standards of transparency, stored and provided by each national business register. Each search result available through the interconnected registers should also mention the legal effects and value linked to this



information according to the applicable national law, because such effects and value might differ from Member State to Member State. A set of minimal mandatory information that must be available in the register should be imposed at European level. Member States should also be allowed to improve the transparency by disclosing more information according to their legal tradition. For example, in some Member States, business registers already publish the list of shareholders in public and private companies and they should be allowed to continue to do so. The full availability and reliability of this information is really a central issue, connected to public policy principles, such as shareholders' creditors protection, fiscal transparency, money laundering prevention and repression.

The above-mentioned conditions should be fulfilled in order to be able to proceed to a successful interconnection of the business registers. The way for making the interconnection among national business registers' work suggests a *bottom-up* approach. Any interconnection effort cannot set apart the existing organizations of people and means operating in this domain at each national level.

Therefore, the EBR approach has to be followed and implemented. One should therefore give an EU legal basis to what until now has been a simple voluntary agreement among public, and mostly private subjects.

The tradition of each Member State has to be preserved.

There is no alternative, moreover, according to the present EU *acquis*, to the linguistic plurality guaranteed by EBR, even if this complicates the management of the interconnection and leaves unresolved the problems of the translation of those aspects, like the object clause in the articles of association, which the EBR system cannot translate.

EBR approach looks more suited to the aim of the interconnection among business registers, than IMI and e-Justice, because it is specific *ratione objecti*, coming directly from the experience of business registers. Additionally a reference to E.B.R. could be included on the E-Justice portal (as it is already foreseen).

A further advantage in choosing the EBR approach could be the possibility to have in the next future an interconnection guaranteed by EU legislation even with extra EU business registers, as some European States other than EU Member States are already part of the EBR project.

2. How to enhance the present legal basis of business transparency.

The creation of a new level playing field suggested here entails a new legal basis for transparency in EU company law.

Transparency looks necessary not only for listed companies or public companies, but for other companies as well.

Otherwise it would mean the pure and simple negation of the recent Small Business Act, once again giving a competitive advantage to third parties dealing with medium-big businesses instead to third parties dealing with small-medium ones.

Indeed, transparency plays a role in favor of all the stakeholders dealing with a company, other than shareholders themselves (who could be interested in the opposite, in some cases, in keeping the secrecy about specific information), such as creditors of the company and of the shareholders, workers' organizations, public authorities, share buyers, etc.

For this reason, the Green Paper should be implemented with a governmental agreement about



transparency in company law, referring to both public and private companies, absorbing and improving the more recent Transparency Directive (Directive 2004/109/EC) concerning listed companies.

3. Could the details of such a cooperation be determined by a “governance agreement” between the representatives of the Member States and the business registries ?

Yes, the cooperation between registers should be determined by national governments and other stakeholders at national level.

4. Do you 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 ?

Yes. At first glance, an interconnection of the business registers and the electronic network of the Transparency Directive could only increase the available information and ensure a better information of creditors, business partners and consumers.

5. Which solution or a combination of those solutions do you favor to facilitate communication between business registers in the cases of cross-border mergers and seat transfers?

For the above mentioned reasons (see answer to question 1.) in order to guarantee the cooperation of business registers in cross-border mergers and divisions and in seat transfers proceedings, the BRITE approach looks more suited than the alternatives proposed in the Green Paper.

6. Do you support the proposed solution on the disclosure of branches?

The CNUE stresses that Member States' national systems are mutually consistent systems which vary greatly in parts from one Member State to another, both as regards the requirements for transparency relating to registered data and in relation to judicial effects linked to registers. Given the above, the *automatic* transmission of information from one register to another should be carried out in the form of a communication register in which was registered the branch under the direction of the register of the company's registered office. Article 13 of the Directive 2005/56/CE of 26 October 2005 on cross-border mergers of incorporated enterprises of various Member States would be a model to follow as regards the regulation of said communications system. Thus, the transparency requirements imposed on the establishment of branches.

In contrast, it would not be unwise to have this information automatically disclosed as an inscription, in the sense of a transcription of the register of the company's registered office. Indeed, such a measure would seem unjustified for reasons related to the principle of the subsidiarity of article 5 EC and could excessively damage the national commerce register systems



and their judicial effects, which could seriously affect their performance.

In order to prevent any misleading effect, the direct and automatic effect should at least be conditioned to the respect of a procedure filling full guarantee to the Host Member State Business Register, such as a certificate issued by the authority of the same Host State such as is stated in the cross-border directive.

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