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DG MARKT Unit F2
European Commission
B-1049 Brussels

By Email: MARKT.COMPLAW@ec.europa.eu

Dear Sir or Madam

Consultation on the interconnection of business registers

The Institute of Chartered Accountants in England and Wales (ICAEW) is pleased to respond to your request for comments on the *Interconnection of business registers*. The ICAEW has registered with the Commission's Interest Representative Register and our ID number is 7719382720-34.

Please contact me should you wish to discuss any of the points raised in the attached response.

Yours faithfully

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ICAEW REPRESENTATION

ICAEW REP12/10

EC GREEN PAPER ON THE INTERCONNECTION OF BUSINESS REGISTERS

Memorandum of comment submitted in January 2010 by the ICAEW, in response to the European Commission's Green Paper on *Interconnection of Business Registers* published in November 2009. The ICAEW has registered with the Commission's Interest Representative Register and our ID number is 7719382720-34.

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INTRODUCTION

1. The ICAEW welcomes the opportunity to comment on the Green paper regarding *Interconnectedness of Business Registers* published by the European Commission.

WHO WE ARE

2. The ICAEW operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, the Institute provides leadership and practical support to over 132,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The Institute is a founding member of the Global Accounting Alliance with over 775,000 members worldwide.
3. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. The Institute ensures these skills are constantly developed, recognised and valued.

OVERVIEW

4. The ICAEW welcomes the opportunity to comment on this green paper, which examines options for overcoming technical and language barriers in order facilitate cooperation between business registers across the EU.
5. The paper identifies two main aspects to be addressed,
 - (i) access to information, and
 - (ii) interoperability of registers (ie a much more integrated system for cross-border procedures).
6. Some background information on each of these aspects, and our responses to the related consultation questions, are set out below.

PART A - ACCESS TO INFORMATION

BACKGROUND

7. We acknowledge that enhanced access to information is desirable in an increasingly cross-border environment, to enhance transparency and confidence within the single market.
8. We note that the European Business Register (EBR) programme is already up and running in 18 Member States (and a further 6 jurisdictions). This enables a query to be made of one participating registry, which is then processed for all participating registries, with the answers provided back in the same language as the enquiry. Data protection is governed by each participating registry's national law.
9. This EBR system is very flexible (compared to IMI below, which has only a limited selection of set questions). However, the cooperation is currently a contractual arrangement between participating registries, and it is a lengthy process for further registries to join. Some registries are precluded from full participation by their national law. For example, Companies House is a participant but not an Information Distributor.
10. Options identified in the Green Paper as regards the EBR:
 - a) retain existing flexible/voluntary/contractual EBR arrangement, in the hope it will continue to grow organically

This would be cheaper and retain the flexibility of the current arrangements, but for further registries to join requires a drawn out negotiation, and some registries are unable to fully participate until barriers to entry are lifted.

- b) put it on more formal legal footing by imposing an EU requirement to connect the business registers in all Member States, possibly to be supported by Governance Code to be agreed among all MS

This could assist in removing national barriers to joining the system (or parts of the system), but would also remove the 'light touch' approach. Also, it would mandate the cost of development of the system.

RESPONSES TO SPECIFIC QUESTIONS ON ACCESS TO INFORMATION

Q1. Whether an improved network of the business registers of the Member States is necessary.

- 11. In our experience, for practical purposes, the information most useful to access is the identity of the directors, up to date financial information to form some sort of view as to solvency, and proof that the company does in fact exist. This information can usually be accessed using the current system of separate registers, albeit with the enquirer incurring translation costs, provided the searcher is able to identify which registry will hold this information (hence our suggestion for a central register of registries – see paragraph 14 below).
- 12. We also note that there is currently an uneven pattern of disclosure across the EU, with registries in some Member States not enforcing as stringently as others, and this should be addressed. However well interconnected the business registries are, the system is only as good as the underlying national data.

Q2. 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,

- 13. Mandating a fully integrated pan-European register (for example, an extended EBR system and associated governance agreement) would be costly, and we are not convinced the case for introducing this has been made.
- 14. As explained at Q1 above, we believe the current system of separate registries is workable. However, it would be improved if a central European register of national registries was introduced, providing links to the registries in all the member states, to assist enquirers in finding information (albeit potentially in a different language). We believe inventing a new integrated cross border system throughout the EU, or introducing a legal requirement for implementing the EBR across the EU (and associated governance agreement), would be a very substantial, lengthy undertaking that would give rise to significant cost. Whilst we don't need the new system in the very short term, such a long lead time project would divert all focus away from other improvements now, whereas there are some easy improvements that could (and we believe should) be implemented at this stage (ie improving enforcement for all national registries and introducing a central register of registries).
- 15. A legislative requirement would also take all focus off further improvement in the EBR. It would appear that some future derivative of EBR is likely to be the eventual solution (for instance, the EBR with 27 providers and 27 distributors), so the EBR needs to continue to make progress. Successful progress seems most likely to occur in an evolutionary way. However, certain measures could be taken to further the development of the EBR system. For example, Member States should be encouraged to remove or amend any national restrictions that preclude their national registers from joining the EBR network (or from participating fully), and the EBR network itself should be encouraged to remove any barriers to entry from its structure and/or contract-based constitution. Therefore we suggest that the EBR is permitted to

continue to develop in its current form, but that measures are taken to encourage the removal of barriers to participation.

Q3. 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.

16. We do not see a lot of value in connection of the network of business registers with the electronic network storing regulated information on listed companies (set up under the Transparency Directive). We see a distinction between information for potential investors (the market) and information for interested stakeholders (such as incorporation information). Sometimes the information needs will be common, but not in all cases. Given that the two sets are completely and exactly overlapping, we do not see a lot of benefit in making all of the other registry information fall within the market regulatory regime. Nor do we see any benefit in having a single access point for all financial and legal information on issuers admitted to trading on a regulated market but a different access point for all other companies.

PART B - INTEROPERABILITY

BACKGROUND

17. We note that enhanced interoperability of registers (ie a much more integrated system for cross-border procedures) is already required under Directives in relation to European Public Companies (SEs) and Cross Border Mergers. Interoperability would also be helpful (but not required) for overseas branches, but this would require a much more complex system because the need to monitor/remove discrepancies in branch information would require permanent/constant interconnection involving automated comparative checking.
18. The Green Paper examines two possible systems, IMI and BRITE.

IMI

19. The existing IMI (internal market information) system was designed to improve administrative cooperation between Member States. IMI currently includes a restricted set of questions (translated into all relevant languages) and a transparent set of procedures on how to deal with information requests. In this way, it provides a means of information exchange between competent authorities. However, it is not a flexible system, with restricted sets of questions (which we understand do not generally meet the needs of the searcher) and in any event this system is only accessible by competent authorities, and therefore it would not improve access to information (discussed in section A above).
20. Another disadvantage of IMI is that it could not be used for overseas branches, because automated comparative checking would not be possible in IMI. Therefore, if overseas branches were to be included in the interoperable system, this would require use of an alternative such as the BRITE project (see below).
21. However, the two aspects of interoperability that are already required under Directives (in respect of cross border mergers and seat transfers) are relatively straightforward procedures with well defined steps, and could be catered for by adapting this existing IMI system and, and as IMI is already operational in all Member States, it would be less costly than developing a more flexible/complex system.

BRITE (Business Register Interoperability throughout Europe)

22. The BRITE research project builds on the EBR. Its aim is to develop and implement an advanced and innovative interoperability model, and a management instrument for business registers to interact across the EU, and has been developed in around 8 Member States.
23. If it were to be rolled out to all Member States and combined with designation/ establishment of an entity that would be in charge of maintaining the necessary services extended to all Member States, (like the EBR) it could provide a more flexible and practical system than IMI and it could cater for overseas branches.
24. However, in order for the costs not to be prohibitive, it would need to be developed in conjunction with EBR, and so a by-product would be to facilitate access to information (examined in Section A above). Further, using a more complex system for interoperability (such as BRITE) would also facilitate some other future benefits such as more efficient and effective cross-border insolvency proceedings. However, it would be costly, and not all Member States have yet signed up to EBR and BRITE.
25. The possible options identified are:
 - a) use the relatively straightforward/cheap solution (IMI), which would cater for the mandatory interoperability requirements,
 - b) use a more complex/costly solution (eg BRITE) that could be used for overseas branches and also provide more enhanced/flexible information exchange (which would probably need to be underpinned by a legal requirement, ie an amendment to the Eleventh Directive), or
 - c) a combination of a) and b), for instance with IMI utilised as a transitional measure whilst BRITE is being developed.

RESPONSES TO SPECIFIC QUESTIONS ON INTEROPERABILITY

Q4. 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

26. We favour a combination of a) and b) described above.
27. We consider that IMI should be utilised as a transitional measure, to implement the mandatory cross-border functionality in relation to cross border mergers and seat transfers, because IMI is already operational in all Member States, and it would be less costly than urgently developing a more flexible/complex system.
28. However, as we mention at Q2 above, we think the EBR and BRITE networks should be allowed to continue to evolve voluntarily, leading to longer term enhanced interoperability, but removal of national and network obstacles to entry should be encouraged.

Q5. Whether they support the proposed solution on the disclosure of branches

29. Yes, we support improved interoperability in respect of overseas branches, which could eventually permit branches to file branch particulars in the member state where the company is registered, thereby eliminating double reporting. However, rather than this be mandated (by requiring the development of the BRITE project and EBR) we believe this should be a longer term aim, to be achieved through the voluntary evolution of the EBR and BRITE (see also Q2 above).

30. We also note that certain entries in national registers actually perform a national function (eg effecting incorporation) and therefore consideration will need to be taken as to how this would work with a fully interoperable system.

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