



**GERMAN CONFEDERATION OF SKILLED CRAFTS
AND SMALL BUSINESSES**

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Position paper

**referring to the European Commission's green
paper of the interconnection of
business registers**

**Legal Department
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ZENTRALVERBAND DES
DEUTSCHEN HANDWERKS

A. Remarks concerning the interconnection of business registers in general

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

The exchange of information in general becomes more important in economic life. Information about businesses and companies is one of the preconditions to create trust between economic parties. This aspect is especially relevant for cross-border businesses. In the regard of different legal systems and different company legal forms as well as foreign languages and commercial habits a lack of information concerning financial and legal issues are able to cause uncertainty and restraint commercial behaviour. In addition to that, the importance of trust for economic decisions gets even more relevance in difficult times like the current financial crisis.

The European Commission's green paper faces these points and considers an improved interconnection of business registers of the Member States as an appropriate instrument to resolve these burdens. Basically the present green paper points out three main aspects. Hereafter it is first of all necessary to offer an appropriate access to all relevant information about businesses and companies for all users of the European Internal Market. Beside the importance of creating access it is indispensable that the user can rely on the information he obtains. Furthermore the offered information has to be useful. In this regard the user has to obtain the information in the language he used for his demand.

According to the significance of information about businesses and companies for the economy in general a facilitated access to reliable information in a language chosen by the user is indispensable. The interconnection of the business registers of the Member States is able to offer a practicable instrument to achieve such an access.

The actual state of interconnection offers already a wide range of possibilities. The European Business Register (EBR) in particular enables an access to 24 national business registers. Furthermore the EBR offers the demanded

information to the user in his native language. Though, the actual scope of the EBR is not satisfying. As an instrument to advance the European Internal Market it is necessary that the business registers of all Member States are included. Without the involvement of all 28 Member States at least the instrument is less effective and the required and appropriate access to important information is not achieved. Therefore the scope of the EBR has a deficit of quantity.

Compared to the EBR the Internal Market Information System (IMI) involves already all Member States. Insofar the IMI enables an appropriate basis for a European-wide system. Though, the IMI is developed to improve the administrative cooperation between the Member States. In this regard the IMI functions only as a closed cross-border instrument for administrative issues and is not open to private users. Actually the IMI offers no links or services referring to national business registers. Furthermore the aim of the IMI is limited to improve the cooperation. In contrast to that, the IMI is not appropriate to create an interconnection between the administrations of the Member States.

The actual instruments mentioned in the previous paragraphs do not offer a satisfying system to obtain relevant information about businesses and companies from national business registers. Concerning those Member States which do not participate in the EBR, there is no possibility to receive information from business registers in every European language. Therefore there is a need to enlarge the scope of the EBR and to improve the interconnection of the national business registers of the Member States.

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

Comparing the actual systems only the EBR seems to be able to serve an appropriate basis for an improved interconnection of the business registers of the Member States. The main issue of the EBR is to interconnect the national business registers. In this regard the EBR is already focused on the aim to offer reliable information in the native language of private users.

As the European Commission already mentioned in its green paper the characteristic of the EBR as a voluntary cooperation has contributed to the its flexibility. This flexibility should be maintained even if it might be necessary to develop the EBR to an obligatory instrument. As already described, an effective interconnection of national business registers requires the involvement of all Member States at least. In this regard the scope of the EBR has to be enlarged though on the basis of a legal obligation.

To maintain the flexibility of the EBR it is primarily necessary to regulate and to harmonize the legal framework as less as possible. The aim should be an improved network and not to create a centralized data instrument. Therefore it is necessary that the Member States and the participating Third States are still authorized to apply their national law concerning the scope of the information as well as the data protection. Moreover the Member States should basically be entitled to determine the required charges. In addition to that, the scope of an improved network should be limited on business registers and its information. Special Registers, which do not exist or are not traditionally established in every Member State should not be involved in the foreseen network. Those registers include special information e.g. about special professions or skills. Such special information has no relevance for cross border relations and businesses at all and has therefore no advantages. Further more the involvement of such specialized registers requires a more intensive network. This causes a higher bureaucratic effort and cost but does not bring any additional utility.

A centralized network regulating main issues as well as specific details leads to a wide range of disadvantages. First of all a full harmonized interconnection system creates significant bureaucratic burdens. All participating States would be forced to adjust the content of their business registers to a certain level. Such an adjustment is neither necessary nor justified regarding the gained profit. The result of such a concentration would just achieve to higher costs and less flexibility.

To achieve a better but still flexible interconnection of the national business registers it is not only sufficient but necessary that the cooperation is determined by an intergovernmental agreement.

3. Is there any added value in connecting, in long term, the network of business registers to the electronic network set up under the Transparency Directive storing regulated information on listed companies?

The obligation of listed companies to publish a wide range of information has improved the level of transparency within the European Internal Market. The access to the published information is already well developed. There are in fact different possibilities to obtain information. As the Transparency Directive regulates in Article 21 (2) the home Member States have to ensure that there is at least one official mechanism to store the information and to offer the user an easy access to it. In this regard a further connection to the national business registers is not necessary and do not offer any added value.

Referring to a future and improved instrument for the interconnection of national business registers it might be useful to add a connection to the special information concerning listed companies. Such an additional connection would offer the user the possibility to obtain important information about businesses and companies by a single or a central access. In the regard of the user this would be an added value or at least an advantage. On the other hand the additional connection to information of listed companies should not achieve to an increasingly bureaucratic or technical effort. The gained advantages for the user do not justify an additional effort. The relation of the added value on the one hand and costs and efforts on the other one is not appropriate if any additional measures are required.

B. Remarks concerning the cooperation of business registers in cross-border mergers and seat transfers

Which solution or a combination of those solutions do you favour to facilitate communication between business registers in the cases of cross-border mergers and seat transfers? Do you support the proposed solution on the disclosure of branches?

Referring to cross-border mergers and seat transfers it is important that the business registers of the concerned Member States are informed about the changes in time. The correctness of information of official business registries is indispensable to create trust and to save costs and effort of the user by trying to obtain reliable information.

Beside the importance of an interconnection of business registers within the European Internal Market as already mentioned before the requirements concerning cross-border mergers and seat transfers rest primarily theoretical. Cases of cross-border mergers and seat transfers might increase as the European Commission declared in its green paper. Though, all in all these cases rest rare. Therefore there is no urgent requirement to implement short-term measures to improve the cooperation between the national business registers concerning cross-border matters.

As far as an improvement is considered as necessary, the proposed solution advances in the right direction. The European Commission takes all important aspects like the requirement of an automatic notification in account. The proposed combination of the results of the BRITE-project and the IMI offers the advantages of both systems. Though the development and the enlargement of the IMI on the basis of the BRITE-project should be seen and handled as a long-term measure. Therefore it is necessary to solve completely the legal and technical obstacles before. The new technologies of the BRITE-project are neither proofed appropriately in practise nor originally intended to add the IMI. Without more experiences it is not possible to apply the results of the BRITE-project in an useful, economic and unbureaucratic way. In addition to that the legal property of the technical invention of the BRITE-project belongs to the Members of the BRITE-consortium. The European-wide application of these techniques implies a contractual solution. Therefore the conditions of the application depend mainly on the contract-parties and cannot be completely regulated or foreseen by the European legislator.