

UK RESPONSE TO THE EU GREEN PAPER {SEC (2009) 1492} ON THE INTERCONNECTION OF BUSINESS REGISTERS

Introduction

The Green paper reflects the current situation and floats some options for further work to connect business registries. The UK is keen to work closely with both the Commission and other organisation to progress work on the interconnection of business registries prior to any formal proposals.

The UK agrees that it is important to improve access to information held on businesses across the EU, and further work in this area should benefit all member States and businesses without duplicating existing efforts.

At this stage the UK is not convinced that legislation in this area is appropriate, our preference is to build on existing work however if there is any move towards proposing a legal framework we would look closely at the impact assessment to ensure that the benefits clearly outweigh the costs of such an intervention.

Background

The Business Register for the UK is Companies House which is an executive agency and trading fund at the Department for Business, Innovation and Skills (BIS). Companies House has experience of both options identified in the Green Paper: the European Business Register (EBR) and the Internal Market Information System (IMI).

Companies House joined the EBR as an Information Provider in 2007 through an information sharing agreement (ISA). All members of the EBR are providers of national company information to the EBR network and some are information distributors of the EBR Service. Companies House is not a member of the EBR EEIG because of the guarantee of unlimited liability that this would require. Companies House is not an Information Distributor for EBR information because there is no statutory basis under which it could provide information from other registries.

Under the Services Directive, Companies House is a competent authority and as part of that role is linked to the IMI system.

Companies House experience of EBR

Companies House has taken an active role in helping to develop the EBR strategy, the main aim being to provide official European business register information across borders through a user friendly and reliable service. Companies House has also provided input to technical and marketing work streams. In particular Companies House works with EBR to achieve the following:

- Provide a good standard of service for requests for company information by EBR
- Provide access to all the company information which is provided in the national register
- Share best practice with other European registries.
- Identifying subjects of cooperation between the registers and promoting common solutions for improving services.

Questions in the Green paper

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

The UK believes that an improved network of Member State business registers is necessary primarily because the existing EBR network does not include all member states. There is also a mix of public and private sector organisations which mean that there are differing priorities for EBR. There are a number of areas where closer cooperation between the registries would be beneficial, for example to facilitate various aspects of European company law to help directives such as the cross-border mergers directive and the statute for a European company. It would also help registries to interact where no legislative framework exists, for example the transfer of a company seat throughout Europe.

An improved network would improve the transparency of company information throughout Europe and make it more accessible for customers without the need to visit each registry individually. UK company information is transparent and easily accessed through the Companies House website (companieshouse.gov.uk) but it is important for UK business that equivalent information is available across Europe. This is particularly important at a time of financial recovery when business is often conducted across borders and can involve a number of different companies.

The EBR strategy has highlighted areas for improvement and the UK is keen to enhance EBR. It needs commitment from members to achieve greater use of its services. These must be customer focussed, resilient, reliable and ideally self financing. A number of steps are being taken to achieve improvements (such as the development of key working groups to drive change) and membership is growing.

The work of the Commission in identifying options and producing a green paper demonstrates the importance of this work and will be helpful in improving the network of registries.

2. 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

The UK would support a requirement from the Commission for European registries to cooperate with each other. However the preference would be to have a simple solution rather than create a legislative burden and potential cost to registries in order to comply. The benefit of looking at this issue can be shown through the UK experience of the current EBR structure. Companies House has not been able to join the existing EEIG structure because of the reasons outlined above. This has resulted in the UK not being able to take a full part in decision making of the EBR Board and ISA which is matter of regret. Companies House has worked with EBR previously to see if there is an alternative vehicle and would support the continuation of this work. The suggested option by the Commission to lay down a requirement to connect all business registers may be one way to do this though this will of course require more thought.

One of the beneficial features of EBR is the flexibility and informality of the structure. This needs a light touch and would be most effective if Member States were left to agree on how the network would be set up by means of a governance agreement. Companies House was involved in the development of the current EBR Information Sharing Agreement (ISA) and this would be a good starting point for a developing a governance agreement which could be shared between registries.

If it is decided to formalise a European company register network the UK would like to see the current EBR network developed rather than duplicating the effort that has already been made. The EBR is a good example of what can be achieved in a practical way as a result of registries working together to resolve common problems.

3. 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

The UK is generally supportive of proposals to centralise as much information as possible and ensure that users are able to interrogate information as easily as possible. We would be open to further discussion of connecting the network of business registers to the electronic network set up under the Transparency Directive, however, the electronic network has not yet been set up and the individual storage mechanisms have been implemented in many different ways. There will therefore be significant technical barriers to overcome to link the two systems in both the Member States and then on a European Basis.

4. 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.

There is no doubt that these matters require a greater level of communication between registers than in the past. For example, under the Statute for a European Company when an SE transfers to a different member state the deletion of the old registration is reliant on a notification being sent from the new registry to the old registry. A delay to this notification will delay the successful transfer of an SE. The focus has moved increasingly to developing solutions (through BRITE for example) and is not just about accessing company information. As confirmed at meetings and EU working groups on this matter, the UK continues to support the use of EBR for this purpose.

In addition, Companies House is part of a working group set up by members of the European Commerce Registries Forum (ECRF) to look at closer working relationships between registries on issues such as the transfer of seat for SEs and facilitating aspects of the cross-border mergers directive. This group is working with EBR who would develop technical solutions in this area.

The UK believes there are a number of potential areas that closer working between registries could facilitate over and above looking solely at cross-border mergers and seat transfer. Some of these have already been discussed with and formed part of the focus of work by EBR and they naturally align with the work of business registries. The EBR was created specifically for business registers and therefore has a very good understanding of the differing legislative frameworks that the European business registers operate in, and the barriers that exist to cooperation.

The list below provides a number of examples where discussions could take place to enhance the work of registries across Europe. Some of these are already in development; others are new areas which could be discussed using the existing EBR network. These include:

- Co-operation between registries to ensure the compliance of branches as prescribed by the 11th Company Law Directive
- Links to explore ways to reduce the burden on filings – perhaps by use of the home register
- Further development of the current EBR work to establish a Central Name Index (CNI) for all company names registered throughout Europe
- Further development of current EBR and ECRF work to establish a Directory of Registers (DoR) which would hold basic contact details for all registers throughout Europe
- A central database of all SEs registered throughout Europe. At the moment an SE can change its name and number when it transfers from one member state to another, a central database would help customers throughout Europe to track an SE.

- Development of a European-wide policy on company names. This could, for example, prevent an SE (or possibly an SPE in the future) being able to transfer to the UK and register with a name that is considered 'sensitive', regardless of the language.
- A central database of disqualified directors. Under the Article 47(2)(b) of the Statute for a European company (SE) a director disqualified in any Member State should not act as a member of an SE. There is currently no way to comply with this requirement.

As the UK company register, Companies House has been using the Internal Market Information (IMI) system to meet its requirements under the Services Directive. Companies House was involved in the pilot scheme however usage has been limited. The system is reliant on structured questions and is not capable of interrogating large amounts of data, which would limit its usefulness for some of the work streams outlined above.

As the Commission paper recognises, the Internal Market Information (IMI) system has been developed for different purposes to that of EBR. The UK believes that it would be more effective to continue supporting the work of EBR to address all the issues relating to closer cooperation between business registers, including cross-border merger, seat transfer and the disclosure requirement of branches. The UK does not rule out exploring options for IMI but these would necessarily be limited in scope because of the way IMI is designed. For example, it may be possible to put a simple question to confirm whether a set list of requirements for transfer had been dealt with by the home registry – but it would be more logical for EBR to be able to facilitate this.

In addition, the potential integration of the EBR is already part of the action plan for the e-Justice portal. Therefore, developing the EBR network will also enhance and contribute to other ongoing projects.

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

The UK was one of the initial partners for the pilot 'branch disclosure service' undertaken by the EBR and is keen to build on this work. The results produced by the branch disclosure service have been very well-received by the other Member States and the UK would support the service being made available to all Member States. It would make sense to be able to access through a single portal rather than making bilateral arrangements with each member state.

We hope that the Commission find these Comments useful. It is clear that further discussion and debate is required in this area and the UK looks forward to taking an active role in moving to a solution that benefits all users of business registries.