



Position Paper The Netherlands Chamber of Commerce

September 2011

European Commission's proposal for a Directive on the interconnection of central, commercial and companies registers COM (2011) 79

Introduction

In its proposal for a Directive of the European Parliament and the Council, amending Directive 89/666/EEC, 2005/56/EC and 2009/101/EC as regards the interconnection of central, commercial and companies registers, the European Commission seeks to improve cross border access to official business information, the provision of up-to-date information of foreign branches and the cooperation between business registers in cross-border procedures.

The Directive provides for, inter alia, a requirement for all 27 EU member states to participate in an electronic network of registers, accessible through a single European platform with access to a common minimum set of up-to-date information, a unique European identification code for companies and branches, requirements on keeping data in the registers up-to-date and on notifications in cross-border merger and seat-transfer procedures.

Business registers perform an essential function in promoting a transparent and secure business environment: they register, examine and store company information, such as information on the company's official address, legal form, its seat, capital, legal representatives, company activities and annual accounts, and they make this information available to the public. In an increasingly integrated market with the accompanying rise in the cross-border set up of branches and trade or provision of services, the importance of cross border access to reliable company information, for example, to verify the legitimacy of potential business partners, has become increasingly important as demand for this information has grown.

The Netherlands Chamber of Commerce welcomes the Commission's proposal for the interconnection of business registers and, as manager of the business register in the Netherlands and Chair of the Board of the European Business Registers, we will facilitate and support rapid implementation after adoption of the proposal. Once implemented, it will give a boost to transparency and legal certainty, creating a safer European business environment. It is essential for entrepreneurs to obtain reliable, up-to-date information on their business partners in other countries, through an electronic network that involves all member states.

As a general comment we recommend to use as much as possible the developed existing solutions in EBR/BRITE in the implementation of the Directive, which 20 EU Member States have invested heavily in over the years .

Please find below our comments on specific topics and articles in the proposal.

The unique company identifier should build on companies existing registration number

Article 1 (1) Amendments to Directive 89/666/EEC and Article 3 (2) Amendments to Directive 2009/101/EC and corresponding recitals (11) and (12)

The Netherlands Chamber of Commerce considers it very important that the new Directive does not impose any new burdens on companies. It will be necessary and very useful to have the proposed internationally unique ID for a company. But it is equally important that such an international number builds on the existing national number to avoid that companies would have to change their number. The REID (Registered Entity Identifier), which was developed in the BRITE-project would be a good solution for this. It consists of the two Digit ISO country code, a register identifier, existing unique number within the register and a check character (display format: CCRRRRR.NNNNNNNN-P)



Therefore we propose to add through an amendment **“that the unique identifier shall comprise elements to identify the Member State of the register, the domestic register of origin, the company number in that register and, where appropriate, a check character to avoid identification errors”**. The same system should apply to all registered entities, so for the purpose of this Directive, this should apply to companies and branches.

Finally, it should be ensured that companies and branches are not obliged to change their stationary, invoices or other documentation, to include the unique identifier

The 15-day rule for the disclosure of changes poses serious practical difficulties

Article 3 (1) Amendments to Directive 2009/101/EC and corresponding recital (14)

The article states the following: “Member States shall take the measure required to ensure that any changes in the documents and particulars referred to in the first paragraph is disclosed within 15 calendar days”.

This might seem long but it could be much too short in case of incomplete or incorrect submissions. The subsequent communication with the company to obtain the correct information can sometimes take longer than the 15 days stipulated by the Directive, depending on local laws on document verification.

Therefore we strongly advise to change this to an **indicative period between 5-15 working days from the receipt of the complete and correct documentation** and that this provision **“will not apply to the accounting documents referred to by Article 2(f)”**

This last addition is very important, because of the overload of accounting documents received by the national registers just before the national deadlines.

Access via the E-Justice portal should be a complementary option, not the only option

Article 3a (1) Amendments to Directive 2009/101/EC and corresponding recitals (8) and (9)

To satisfy the aims of this proposal, it is essential that customers of business registers in other Member States have the possibility to obtain information from businesses in other Member States via their own national register as well. Access via the E-Justice portal is a very good complementary option, but should not be the only option. This is because the logical route and custom of companies from Member States to obtain company information of other companies, either within their Member State or cross-border, is via their national register. This also makes matters easier for users of register information, because they can then access business register information from abroad with their usual user-id, password and payment method.

Because of this, we strongly suggest to clarify in an amendment that there are **additional access points in the Member States** and that, regarding the use, storage and disclosure for internal purposes, there is no obligation on a Member State to change its national system of registers.

Attaching information explaining the legal effect of each single document according to national law is virtually impossible

Amendments to Directive 2009/101/EC, Article 3a (2) and corresponding recital (14)

We consider it of prime importance for businesses, that use business register information, to know the legal value of the registered information and to what extent they can trust it and rely on it. However, it is virtually impossible and also unnecessary to “attach” this to each single data element, it would suffice to make this information available by



means of a general explanation of the legal value of the information of each register on the website portal, in a user-friendly manner.

That is why we strongly recommend to replace the current wording with an amendment stating that “**clear information is made available at all access points of business register information explaining the provisions of national law according to which parties can rely on those documents and particulars, in accordance with paragraph 5,6 and 7 of Article 3**”.

Implementing Acts instead of Delegated Acts

Article 1 (3) Amendments to Directive 89/666/EC, Article 2 (1) 2 and (2) Amendments to Directive 2005/56/EC, Article 3 (4) 3 and (6) Amendments to Directive 2009/101/EC and corresponding recital (15)

Interconnecting central, commercial and companies registers requires the coordination of national structures with different technical specifications, which in turn entails operational cooperation and developing complex technical specifications taking into account national details as well as differences between registers.

In order to ensure uniform conditions for the implementation of this directive, implementing powers should be conferred on the Commission to tackle these technical and operational issues. These implementing powers should be exercised in accordance with Regulation (EU) No 182/2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

We therefore recommend to remove the provisions that include 'delegated acts' from the proposal and replace them with provisions for 'implementing acts' with the use of the *examination procedure*, mentioning that the Commission shall be assisted by a committee in the meaning of Regulation (EU) No. 182/2011 and applying Article 5 of this Regulation (examination procedure).

Furthermore, due to the technical nature of implementation, we suggest to mention the involvement of business register experts with sound expertise in the management and operation of business registers in the recitals, to assist and support the committee of government representatives.

Final comments

It would be advisable to include a provision on the *connection of third countries* (non-EU) to the network, for instance, via Mutual Recognition Agreements, in which countries agree to participate under the same conditions as the existing members of the network.

For further information on the position paper:

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About the Chamber of Commerce in the Netherlands

The Chamber of Commerce supports entrepreneurs and enterprising people to realise their entrepreneurial ambitions. It offers independent and professional information and support to entrepreneurs across the full range of entrepreneurship: from starting a company to international business. Furthermore, the business register of the Chamber of Commerce, with 2.2 million registered entities, offers reliable information on every company and sector. Finally, the Chamber of Commerce implements projects to promote a favorable business climate and stimulate the regional economy.