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REGULATORY SCRUTINY BOARD OPINION

Upgrading digital company law

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{SWD(2023) 178, 179}



Brussels,
RSB/

Opinion

Title: JUST - Impact assessment / Upgrading digital company law

Overall opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

Business registers keep information on companies, including their legal form, seat, legal representatives and annual accounts, and make this information available to the public. The Business Registers Interconnection System (BRIS), which became operational in 2017, interconnects all Member States' business registers. It gathers certain information about EU limited liability companies directly from Member States' business registers and makes it available to the public at EU level through a single access point at the European e-Justice Portal. Furthermore, EU company law was recently updated to allow for fully online formation of limited liability companies, registration of branches and fully online submission of documents in the business registers.

This initiative builds on these developments and aims to increase further the availability and reliability of company information in business registers. Especially at cross-border level, it strives to simplify the access to the information in business registers, by using digital tools and processes.

(B) Summary of findings

The Board notes the additional information provided by the DG and commitments to make changes to the report.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:

- (1) The report does not provide sufficient evidence on the consequences for businesses of the current lack of certain data in the business registers.**
- (2) The cost benefit analysis does not take into account all the recurrent costs for businesses resulting from this initiative.**

This opinion concerns a draft impact assessment which may differ from the final version.

(C) What to improve

(1) The report should strengthen the problem definition and the problem analysis. It should provide evidence of the existence of a problem for each of the types of data covered by the initiative that warrants their inclusion in BRIS. It should better explain, with evidence, the consequences of the lack of this data for businesses active in more than one Member State. In particular, it should substantiate the claim that the cross-border expansion of Small and Medium Enterprises is hindered by the current situation.

(2) The report should clearly separate stakeholder views from other evidence. It should explain that the need for more data is mainly gathered through the public and the targeted consultations. It should explain how the stakeholders were selected, how representative the samples are and what the limitations of the consultation activities are. The report should also be transparent on the data sources for the cost and benefit calculations.

(3) The report should make sure that all relevant costs and benefits are taken into account when assessing the options and classify them correctly for the purpose of the One In, One Out approach. In particular, it should identify and quantify, to the extent possible and proportionately, the recurrent costs for existing and newly created companies as a result of the proposed legal obligation to disclose and file new company data (e.g. place of management or place of economic activity) to business registers. If some recurrent costs are considered negligible, the report should demonstrate it. The report should always compare the policy options to the baseline and correctly take the business-as-usual costs into account. It should also be clear how the costs and benefits are distributed among the stakeholder groups.

(4) The main body of the report should clarify how the efficiency scores and the multi-criteria scores have been calculated, i.e. how costs and benefits have been weighted and integrated into the scores. It should be clear from the tables in the main report what the variations between scores represent.

(5) The report should define measurable, operational and time-bound objectives that indicate if the initiative is successful or not. These operational objectives should be based on more precise specific objectives.

The Board notes the estimated costs and benefits of the preferred option in this initiative, as summarised in the attached quantification tables.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG must take these recommendations into account before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Proposal for a Directive to further expand and upgrade the use of digital tools and processes in company law
Reference number	PLAN/2021/11038
Submitted to RSB on	14/09/2022
Date of RSB meeting	12/10/2022

ANNEX – Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board’s recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

I. Overview of Benefits (total for all provisions) – Preferred Option		
<i>Description</i>	<i>Amount</i>	<i>Comments</i>
<i>Direct benefits</i>		
Trust and transparency in the market	No quantified estimates available. Businesses, business registers, public authorities, legal professionals, and society at large will benefit from more transparency. Having more reliable company data in business registers will bring more trust and more legal certainty in the market.	See detailed description and motivation in Annex 4 on the sections on efficiency, (benefits under “Trust and transparency in the market”).
Ease of doing business	Companies will find more easily, comparable, multilingual (harmonised) information about business partners, potential clients etc. in other Member States through the measures on transparency. EUR 437 million recurrent cost savings per year for companies is expected from the measures that enable direct use of company data from business registers in cross-border situations	See detailed description and motivation in Annex 4 on the sections on efficiency (benefits under “Ease of doing business and access to the market”).
Savings in operational costs for business registers	No quantified estimates available. Business registers will benefit from increased company data in BRIS and from the interconnections with different systems. Adequate verification of company data will result receiving/being able to access more reliable data from other registers. This will facilitate their work. The use of the once-only principle will allow business registers to receive the documents directly from other registers which will result in more streamlined processes and cost savings.	See detailed description and motivation in Annex 4 on the sections on efficiency (benefits under “Operational cost savings for business registers”).
Savings in operational costs for public authorities	No quantified estimates available. Public authorities will benefit from more company data comparable and easily accessible cross-border. Enable direct use of reliable company data from business registers in cross-border situations will streamline procedures which will lead to cost savings	See detailed description and motivation in Annex 4 on the sections on efficiency (benefits under “Operational cost savings for public authorities”).
<i>Indirect benefits</i>		
Fight against fraud	More transparency and easier use of verified company data in cross-border situations will facilitate the work of public authorities fighting fraud and abuse.	See detailed description and motivation in Annex 4 on the sections on efficiency (benefits under “Fight against fraud and abuse”).

Digital company	More transparency, interconnection of information systems and the application of the once-only principle will have a strong impact on digitalisation.	See detailed description and motivation in Annex 4 on the sections on efficiency (benefits under “Digital economy”.)
Functioning of the internal market	More transparency and more reliable company data that can be used directly in cross-border situations will contribute to the creation of a more integrated and digitalised Single Market	See detailed description and motivation in Annex 4 on the sections on efficiency (benefits under “Functioning of the internal market”.)
Administrative cost savings related to the ‘one in, one out’ approach*		
Administrative burden reduction for companies	EUR 437 million cost savings per year (recurrent) for companies is expected from the measures that enable direct use of company data from business registers in cross-border situations	Recurrent

II. Overview of costs – Preferred option¹							
		Citizens/Consumers		Businesses		Administrations (business registers and other public authorities)	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Policy option 1c	Direct adjustment costs	-	-	-	-	€2.7 million IT development cost for business registers (€ 100.000 per MS)	-
	Direct administrative costs	-	-	EUR 311 million	-	-	-
Policy option 3b	Direct adjustment costs	-	-	-	-	-	2 FTEs per MS – 54 FTE altogether per year for business registers. EUR 4 million per year.
Policy option 4c	Direct adjustment costs	-	-	-	-	2,7 million IT development cost (100.000 per MS)	Loss of revenue of EUR 7,8 million per year
	Direct administrative costs	-	-	-	-	-	Loss of revenue of EUR 9.5 per year

¹ See details and explanations in Annex 4.

<i>Costs related to the 'one in, one out' approach</i>							
	Administrative costs (for offsetting)	-	-	EUR 311 million (one off)			