

Opinion of the European Economic and Social Committee on the proposal for a Directive of the European Parliament and of the Council amending Directives 2009/102/EC and (EU) 2017/1132 as regards further expanding and upgrading the use of digital tools and processes in company law

(COM(2023) 177 final — 2023/0089 (COD))

(2023/C 293/12)

Rapporteur: **Franca SALIS-MADINIER**

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Legal basis	Article 114 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted in section	2.6.2023
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Plenary session No	579
Outcome of vote (for/against/abstentions)	199/2/7

1. Conclusions and recommendations

1.1. The European Economic and Social Committee (EESC) welcomes the Commission's proposal, which aims to improve both the amount of information publicly available on companies through the Business Registers Interconnection System (BRIS) and the reliability and trustworthiness of this information. This proposal should benefit not only SMEs needing reliable information to support their cross-border activities but also other stakeholders with an interest in business transparency, such as large businesses, shareholders, creditors, consumers and employees. The proposal should also help undertakings reduce costs and save time in supplying the information needed in cross-border situations. The proposal will continue to facilitate the full use of the single market and digital single market.

1.2. The EESC supports further expansion of the use of digital tools to ensure communication between companies and authorities involved in cross-border activities, as well as the promotion of the 'digital by default' principle, providing that nobody is left behind.

1.3. The EESC supports the proposal to expand the scope covered to include partnerships, business groups and third-country company branches (Articles 7, 13, 13a, 14 and 36). As cooperatives and foundations also account for a substantial amount of business, the EESC recommends expanding the scope further to include these types of undertakings in the Directive and to require access to BRIS where information on these types of companies is already included in national registers.

1.4. The EESC supports the requirement for undertakings to make information on place of management and place of the main economic activity available in national registers and BRIS (Article 14). The EESC supports further expanding the list of information that must be provided and updated on an annual basis to include the number of employees, the sectors of activity (NACE code) and, in the case of undertakings formed by EU company law (Cross-border Conversions, Mergers and Divisions Directive, SE and SCE legislation), agreements on worker information, consultation and participation rights.

1.5. The EESC supports interconnecting BRIS with the beneficial ownership registers interconnection system (BORIS) and the Insolvency Registers Interconnection (IRI) system, and using the EUID (European unique company identifier) to link information stored in different systems (Article 22). BRIS should also include information on disqualified directors and enable more effective searches for companies by sector of activity (NACE code) and size (employee numbers and revenues).

1.6. The EESC supports the obligation to check a harmonised list of items when companies are formed (Article 10 on Preventive control), but recommends adding a verification of the identity of persons involved in its formation, including information on whether they have been disqualified from acting as a director in any EU Member State ('disqualified director'). It also recommends extending preventive control to the reorganisation of undertakings through EU company law (Cross-border Conversions, Mergers and Divisions Directive, SE and SCE legislation) and expanding the list of items to include a check that the agreements on worker information, consultation and participation required by such legislation have been concluded.

1.7. Reliable and trustworthy information is an important precondition for the smooth operation of the single market and companies' cross-border activities. The EESC supports the obligation for registers to provide up-to-date data (Article 15) but recommends strengthening Articles 28 and 40 to ensure that penalties for non-compliance are effective, proportionate and dissuasive.

1.8. The EESC supports the introduction of a European Company Certificate (Article 16b). However, it recommends that the list of items include the number of employees and the NACE sector(s) of activity, which should be updated on an annual basis. The list of information to be provided for partnerships should be harmonised with the list required from limited liability companies.

1.9. The EESC recommends strengthening Article 16c (Digital EU power of attorney) to require use of the highest level of assurance to verify the identity of persons authorised to represent a company and a check on whether this person has been disqualified as a director in EU Member States.

1.10. The EESC conditionally supports the once-only principle (no resubmission of company information) when a company from one Member State sets up subsidiaries or branches in another Member State. To prevent Member States from being forced to forego validity checks where there is a reasonable doubt that another Member State has not provided adequate levels of assurance of the reliability of information in its register, Article 16e (Safeguards in case of reasonable doubt) should be expanded to allow a Member State to decline accepting information from another Member State in such a case.

2. General comments

2.1. The proposal aims to enhance transparency about companies and trust between Member States as well as to create more connected public administrations, while reducing the administrative burden for companies and other stakeholders in cross-border situations. In particular, the proposal aims to make more information about companies publicly available through BRIS, ensure that company data in business registers is accurate, reliable and up-to-date, and cut red tape when companies use company information from business registers in cross-border situations.

2.2. The proposal aims to cut red tape and reduce the administrative burden by introducing an EU Company Certificate, a multilingual standard model for a digital EU power of attorney, expanding the use of the 'once-only principle' when setting up a company in other EU Member States and removing formalities such as the need for an apostille or certified translations for company documents. The impact assessment showed that the above-mentioned changes will reduce costs to EU businesses caused by administrative requirements by around EUR 437 million per year.

2.3. One relevant initiative for the proposal is the EU's digitalisation objectives, set out in the Commission Communication 2030 *Digital Compass: the European way for the Digital Decade* ⁽¹⁾. The proposal responds to the widely-seen need to upgrade the way that registries function and how they interact with undertakings, users and public authorities, including in cross-border contexts. A second initiative is the effort to reduce barriers preventing SMEs from conducting cross-border business, as outlined in the Commission Communications *Updating the 2020 New Industrial Strategy* ⁽²⁾ and *SME Strategy for a sustainable and digital Europe* ⁽³⁾. Both the 'once-only' principle to providing information and the reduction in translation and apostille requirements help SMEs achieve these goals.

⁽¹⁾ COM(2021) 118 final.

⁽²⁾ COM(2021) 350 final.

⁽³⁾ COM(2020) 103 final.

2.4. Corporate transparency has been acknowledged as an effective means of deterring corporate abuse. This proposal helps by addressing the need for more reliable information on companies and for greater transparency and trustworthiness in the information that is provided. The proposal also addresses the widespread problem of corporate abuse, including evasion of taxes and labour standards, money laundering, terrorism finance and consumer fraud⁽⁴⁾ ⁽⁵⁾. Such corporate abuse is enabled through mechanisms such as letterbox companies, identity theft, lack of transparency in corporate groups and the chain of ownership, exploitation of differences in national regulatory regimes and difficulties in cross-border cooperation in enforcement⁽⁶⁾. A recent study demonstrated that letterbox companies are a widespread phenomenon in the EU⁽⁷⁾. Key information for stakeholders, such as place of management and place of the main economic activity, is rarely found in company registers. Furthermore, the information that is provided is often out of date and it is not clear how trustworthy the information is.

2.5. In the interests of improving transparency even further, the proposal should also include cooperatives and foundations in the scope of the Directive, and information on them should be made available through BRIS insofar as this information is contained in national company registers. As these legal forms account for a significant proportion of business in the EU, there would be a major gap in transparency if they were not included in the scope.

2.6. Expanding the list of items to be provided by undertakings to include the place of management and the place of main economic activity is justified by the need for competent authorities to identify letterbox companies and possible corporate abuse before a pre-conversion certificate may be issued for a cross-border conversion (Article 86m) or a pre-division certificate for a cross-border division (Article 160m). These locations are also relevant in determining applicable national law in the case of insolvency. As noted in the impact assessment, many stakeholders have requested additional information and expanded search capabilities in BRIS. Workers' representatives need information on the number of employees, as employee number thresholds trigger many workers' rights, such as the rights to found a works council or have representation on a company's board. Partnerships should also disclose the same types of information that limited liability companies do.

2.7. Expanding the list of items for 'preventive control' for company formations to include checking the identity of key persons is justified by the prevalence of fraud through identity theft. 'Preventive control' should also apply to cross-border corporate reorganisations through cross-border mergers, conversions, divisions or conversions into SEs or SCEs. Research by the European Trade Union Institute (ETUI) shows that, though required by EU law, negotiations with workers' representatives over worker information, consultation and participation rights are often not concluded or even started before such reorganisations are approved by the competent authority. A completed agreement with workers' representatives should be included in this minimum list. In general, the Directive should require people to be identified at the highest assurance level, as lower levels of electronic identification reduce the effectiveness of these checks against identity fraud.

2.8. Up-to-date data are a significant benefit for a secure business environment and play a significant role in reducing costs for companies' cross-border activities and ensuring corporate social responsibility. Penalties required by EU law but left to the discretion of Member States to define may not satisfy the need for effectiveness, proportionality and dissuasiveness (cf. current discussion on EU Consumer Law). Articles 28 and 40 should be strengthened to ensure that penalties are effective, proportionate and dissuasive and to ensure a competitive and balanced business environment throughout the European Union.

⁽⁴⁾ European Parliamentary Research Service (2018), *An overview of shell companies in the European Union*, <https://op.europa.eu/en/publication-detail/-/publication/e8534eeb-e071-11e8-b690-01aa75ed71a1/language-en/format-PDF/source-search>

⁽⁵⁾ *The impact of letterbox-type practices on labour rights and public revenue* (2016), SOMO and ETUC, with the support of the European Commission.

⁽⁶⁾ European Commission/ICF SA in cooperation with Wavestone, the Center for the Study of Democracy, the University of Trento and Victims Support Europe (2022), *Study on online identity theft and identity-related crime*, <https://op.europa.eu/en/publication-detail/-/publication/f85399b3-abed-11ec-83e1-01aa75ed71a1/language-en/format-PDF/source-search>

⁽⁷⁾ European Commission/ICF Consulting Services (2021), *Letterbox companies: overview of the phenomenon and existing measures*, <https://op.europa.eu/en/publication-detail/-/publication/66764f95-5191-11ec-91ac-01aa75ed71a1>

2.9. The recommendation to apply the same reporting requirements to partnerships as to limited liability companies is based on the principle of creating a level playing field for different company forms. This principle also backs up the recommendation to include foundations and cooperatives in the scope of the Directive.

2.10. While the once-only principle and the abolition of apostille, requirements are important measures to reduce red tape, their implementation needs to be balanced by safeguarding the trustworthiness of information provided through Member States' company registers. Electronic identification of individuals should be done at the highest level of assurance, and Member States should have the right of refusal for information provided by company registers in Member States which have not achieved a proper balance, for example by not yet having transposed key elements of the Digital Tools Directive ⁽⁸⁾ or this proposed Directive (once passed).

2.11. In order to avoid additional costs for business, it is of the responsibility of Member States and national business registry, not to increase fees to cover costs for filling new information set by the Directive updating.

Brussels, 14 June 2023.

The President
of the European Economic and Social Committee
Oliver RÖPKE

⁽⁸⁾ Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law (OJ L 186, 11.7.2019, p. 80).