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PROPOSAL

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

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To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

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Subject: COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT Accompanying the document 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**

Delegations will find attached document SWD(2023) 179 final.

Encl.: SWD(2023) 179 final



Brussels, 29.3.2023
SWD(2023) 179 final

COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying the document

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} - {SEC(2023) 377 final} - {SWD(2023) 177 final} -
{SWD(2023) 178 final}

Executive Summary Sheet
Impact assessment report related to the initiative on Upgrading digital company law
A. Need for action
What is the problem and why is it a problem at EU level?
<p>Today, access to and use of reliable company information from business registers in cross-border situations is hindered by barriers.</p> <p>Firstly, company data that stakeholders, as direct users, are looking for is not yet sufficiently available in national business registers and/or at EU level through the Business Registers Interconnection System (BRIS). This concerns in particular information at EU level about legal forms other than limited liability companies (e.g. partnerships); companies' place of management and place of the main economic activity; groups of companies; and third country company branches. Currently, BRIS and other EU-level interconnection systems, for example, the beneficial ownership registers interconnection system (BORIS), are not connected.</p> <p>Secondly, the use of such company data when companies set up subsidiaries or branches in other Member States is hindered or not possible. Companies often need to resubmit company data, which exists in their national business registers, as well as complete burdensome formalities (e.g. legalisation/apostille, certified translation). Similar barriers were reported in other cross-border situations, including when dealing with competent authorities or courts. Registers or authorities often do not consider company data from other Member States as reliable enough, which results in legal uncertainty, costs and delays. National company extracts vary and cannot be used in cross-border situations without burdensome formalities.</p> <p>These problems need to be addressed at EU level as the current obstacles to cross-border access and use of company information are mainly caused by divergent national rules and lack of appropriate rules at EU level.</p>
What should be achieved?
<p>The overall objectives are to enhance transparency and trust in the business environment, achieve more digitalised and connected cross-border public services for companies, easier cross-border expansion for small and medium-sized enterprises (SMEs) and more effective EU action against abuse and fraud, in turn, leading to a more integrated and digitalised single market.</p> <p>More specifically, the initiative aims to:</p> <ul style="list-style-type: none"> - Increase the amount of company data available in business registers and/or BRIS, and improve its reliability; - Enable direct use of company data available in business registers when setting up branches or subsidiaries in other Member States and in other cross-border activities and situations.
What is the value added of action at the EU level (subsidiarity)?
<p>There is a strong value added of action at EU level because this initiative focuses on cross-border issues: access to, availability and reliability of company data in a cross-border context, and its cross-border use. Member States could not bring about sufficient improvement on their own because of the cross-border nature of the problems.</p> <p>Without EU-level action, national or regional initiatives to address the increasing demand for cross-border company data and the need to facilitate its cross-border use would likely result in divergent national rules and potentially overlapping reporting requirements, increasing the administrative burden on companies. Private sector initiatives, e.g. by commercial service providers, would not be able to provide reliable company data for official use.</p>
B. Solutions

<p>What are the various options to achieve the objectives? Is there a preferred option or not? If not, why?</p>
<p>The impact assessment analyses the policy options under 4 main issues relevant for the planned initiative:</p> <ol style="list-style-type: none"> 1. Making more company information available in business registers and/or BRIS 2. Interconnecting BRIS with other systems and enabling better searches 3. Ensuring that company data is verified adequately before it is entered in a business register 4. Enabling direct use of company data from business registers in cross-border situations. <p>All 4 policy options assessed would entail legislative measures, given that the problem drivers are legal, and any measures would need to amend the existing EU company law framework (including BRIS). The preferred option consists of a package of the preferred measures under each of the 4 main issues:</p> <ol style="list-style-type: none"> 1. Making information available in national registers/BRIS about partnerships, third country company branches, cross-border group structures and ownership, and place of management and place of the main economic activity; 2. Connecting BRIS with BORIS and the Insolvency registers interconnection system (IRI), using the European unique company identifier (EUID) and adding new search functionalities to BRIS; 3. Obligation to check a harmonised list of elements and follow common basic procedures to ensure reliable and up-to-date company data; 4. Once-only principle for setting up subsidiaries or branches in another Member State, harmonised company extract, mutual recognition of certain company data, and abolition of formalities (apostille).
<p>What are different stakeholders' views? Who supports which option?</p>
<p>Overall, stakeholders across the consultation activities (public consultation, consultation of SMEs, targeted consultations with companies, legal practitioners, Member States, company law professors) confirmed the identified problems and supported action at EU level.</p> <p>A large majority of stakeholders, including SMEs, encountered difficulties when looking for information about companies in other Member States, and there was support across stakeholder groups (companies, business organisations, business registers, legal professionals, authorities, citizens) to make more harmonised company information available at EU level.</p> <p>Many stakeholders, and in particular legal practitioners, highlighted the importance of reliable company data for legal certainty and considered that defining minimum rules for verifying company data before it is entered in a business register would facilitate its cross-border use.</p> <p>Stakeholders in general confirmed the need to enable cross-border use of company data (including applying the once-only principle, introducing a harmonised company extract, reducing formalities).</p> <p>In particular, companies and legal practitioners confirmed obstacles faced when setting up subsidiaries or branches abroad, or in other cross-border situations (including the need to resubmit company data, to obtain legalisation/apostille and certified translation).</p>
<p>C. Impacts of the preferred option</p>
<p>What are the benefits of the preferred option (if any, otherwise of main ones)?</p>
<p>The package of preferred measures will be highly beneficial for companies, in particular SMEs, due to its expected strong positive impact on ease of doing business and access to other Member States' markets. Companies would benefit from increased transparency, improved accessibility and reliability of company data and thus, from higher legal certainty in cross-border situations. It will bring substantial recurrent cost savings (administrative burden reduction) for companies creating new subsidiaries or branches in other Member States and for all companies</p>

engaging in cross-border business activities, estimated to amount to around EUR 437 million per year.

The increased accessibility and reliability of company data, higher legal certainty and better connections between registers (thanks to the once-only principle and connecting other EU level systems/registers to BRIS) should result in savings for **business registers** due to easier searches for company data from other Member States and a reduced need to request documents from companies.

As regards other **public authorities**, easier access to more sets of reliable company data would facilitate their work as they could consult company data directly in business registers and BRIS and so require fewer documents from companies, resulting in some savings.

The package is also expected to be **highly beneficial for society** in general, including consumers, due to its **expected positive impact on providing more accessible and reliable company data across the EU**, and therefore allowing consumers to make more informed choices when buying from or entering into contracts with companies from other Member States. More available, accessible and reliable cross-border company data will also facilitate efforts to tackle abuse and fraud, and this initiative will thus contribute to creating a fairer single market.

What are the costs of the preferred option (if any, otherwise of main ones)?

The package will result in **one-off costs** for those companies, which currently do not file certain information to a register, estimated at around EUR 311 million.

These will be limited by the fact that Member States should not apply filing fees separately for each new item of company data filed. The expected recurrent benefits for companies (explained above) would far outweigh these one-off costs.

What are the impacts on SMEs and competitiveness?

The package of preferred measures, by improving availability and reliability of company data, will be beneficial for companies and will facilitate access to finance and the creation of businesses. In addition, enabling the cross-border use of such data will result in important recurrent cost savings (burden reduction) for companies and thus substantially ease the conduct of cross-border business activities and facilitate access to other Member States' markets.

By increasing transparency and trust in the market as well as by facilitating cross-border company creation and having a positive impact on cross-border activities, the initiative should stimulate cross-border trade, services and investment flows and thus **contribute to competitiveness and growth** in the single market.

These measures will apply to around 16 million limited liability companies and 2 million partnerships in the EU. As **SMEs** account for 98-99% of limited liability companies in the EU and around 40% of SMEs engage in cross-border activities, they **will particularly benefit from the expected reduction in administrative burdens**. The measures, including the resulting increased legal certainty, will be strongly beneficial to SMEs, as they do not have the resources of large companies and are usually more affected by unclear and complex rules.

Will there be significant impacts on national budgets and administrations?

This package is a **continuation of developments related to digitalisation** that have been taking place in company law so far. Due to the **need for business registers to adapt IT systems**, the package is estimated to amount to around an EUR 5.4 million one-off cost for all business registers together, and **recurrent costs e.g. to carry out ex-ante verification of company data**, estimated at around EUR 4 million per year for all registers.

However, Member States would be able to build on IT investments they have already made for BRIS in the recent years, and adjustment costs for verification should be limited given the ex-ante checks already in place. It is also likely that there will be some loss of revenue for registers, which charge fees for company extracts for cross-border use, estimated at around EUR 7.9 million for all registers.

As to the other authorities, although authorities in charge of issuing apostille will lose revenue from apostille,

<p>estimated at EUR 9.5 million per year, abolishing of the apostille is estimated to result in overall administrative burden reduction, given the current legal uncertainty and the related human resources and time needed to issue it.</p>
<p>Will there be other significant impacts?</p>
<p>The use of the once-only principle for setting up subsidiaries or branches in other Member States, connecting BRIS with other EU-level systems of interconnection and with other EU-level systems or registers through the use of EUID would greatly contribute to creating more connected public administrations across the EU, and, therefore, to a more digitalised single market.</p>
<p>Proportionality?</p>
<p>The preferred option will strongly contribute to meeting the objectives of increasing the amount and reliability of company data cross-border and enabling its direct use in cross-border situations, while not going beyond what is necessary to achieve those.</p> <p>The initiative is targeted, as it focuses on the needs of direct users, such as companies, other stakeholders and public authorities, to access and use in the cross-border context reliable and up-to-date official company data from business registers, which is based on legal obligations. It focuses on cross-border aspects and introduces solutions, none of which could be achieved by Member States acting alone.</p> <p>The administrative burden and costs related to the preferred option are also commensurate with the objectives to be achieved. Overall, the preferred option will provide a clear net benefit for companies and society as a whole. It will also provide legal certainty and facilitate cross-border activities while taking into account existing national company law procedures.</p>
<p>D. Follow up</p>
<p>When will the policy be reviewed?</p>
<p>The legislative proposal will include a provision to carry out an evaluation of the new initiative.</p>