

EU Company law: Expanding and upgrading the use of digital tools and processes

Impact assessment (SWD(2023) 178, SWD(2023) 179(summary)) accompanying the Commission 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

This briefing provides an initial analysis of the strengths and weaknesses of the European Commission's [impact assessment](#) (IA) accompanying the above-mentioned [proposal](#), submitted on 29 March 2023 and referred to the European Parliament's Committee on Legal Affairs (JURI). The proposal was included in the Commission's 2023 [work programme](#) and in the [working document](#) accompanying the [joint declaration](#) on EU legislative priorities for 2023 and 2024.

In line with the Commission's priorities for the transition to a [digital Europe](#), the Commission's intention to take action in the policy area of EU company law digitalisation has been signalled in several political initiatives. This includes the Commission's [communication](#) on 2030 Digital Compass, calling for an accelerated digital transformation in Europe. The [communication](#) on Digitalisation of justice in the European Union highlights the important role of modern digital tools in enabling businesses, in particular SMEs, to access information, interact with national public authorities and enjoy effective access to justice. In its [communication](#) on An SME strategy for a sustainable and digital Europe, the Commission proposed to promote cross-border digital tools (and platforms) and envisaged to assess the need for additional company law measures to facilitate economic cross-border expansion and scale-up by SMEs. The [Digitalisation Directive](#) from 2019, which amended [Directive \(EU\) 2017/1132](#) relating to certain aspects of company law, aims to facilitate the establishment of businesses by electronic means and to ensure that company law procedures can be carried out online throughout company lifecycles.¹ With the creation of the Business Registers Interconnection System ([BRIS](#)),² operational since 2017 and gathering certain information about EU limited liability companies, all EU Member States' business registers are now interconnected.³

The present proposal aims to make it easier for companies to use digital tools and processes in EU company law. The provisions focus on increasing transparency of reliable and accurate information about companies, making it publicly available at EU level through BRIS. It proposes to apply the 'once-only' principle (companies would not need to re-submit business information when setting up a branch or a company in another Member State), and establish an EU company certificate containing basic company information free of charge in all EU languages. Certain formalities, such as the need for an apostille or certified translations for company documents, would be abolished.

Problem definition

The IA starts by outlining its scope and the political and legal context, as well as identifying the policy issues it seeks to examine with regard to the EU and Member States' company law framework. The purpose is to address the need of users (such as companies, legal professionals and public authorities) to access and use reliable, accurate and up-to-date official company data from business registers. The IA does not cover the re-use of company information for commercial and non-commercial purposes.⁴



The IA identifies two **main problems**:

- official and reliable company data is not sufficiently available and/or comparable in a cross-border context, i) for companies and business registers; and ii) for authorities and courts in their efforts to fight fraud and abuse (**P1**);
- direct use of company data is hindered or not possible, i) when setting up cross-border branches or subsidiaries; and ii) in all cross-border activities and situations (including administrative and court procedures) (**P2**).

The IA defines and explains the **problem drivers** as follows:

- Member States run checks at different levels of intensity and apply different procedures to verify the correctness of company information before it is entered in business registers (**P1/P2**);
- company data – in particular, information at EU level about legal entities other than limited liability companies (e.g. partnerships, groups of companies) (**P1**) – is not available in the national business registers and/or cross-border through BRIS;
- BRIS has limited functionalities (it is not connected with other EU interconnection systems; limited search criteria) (**P1**);
- company data originating from other Member States' business registers is not recognised cross-border and is subject to formalities, which results in legal uncertainty, costs and delays (**P2**);
- across Member States, company extracts (that provide, in one document, company data that is available in the business register) diverge in terms of structure, content, costs and language used (**P2**).

The IA substantiates its findings with references to several sources, in particular the Commission's consultation activities in the preparation of the IA, supporting study surveys and desk research (see the section on 'Stakeholder consultation' below). The problem definition appears to be well supported by evidence. The IA makes a well-structured analysis of the existing situation, by providing, for instance, information on the number and types of companies, cross-border branches and subsidiaries in the EU, including practical and concrete examples to support the underlying problem definition. With the aid of a problem tree, the IA illustrates the drivers behind the problems and the consequences deriving from them. It comprehensively and transparently describes the views of stakeholders on the problem drivers. An intervention logic shows how the options address the problems and meet the objectives (IA, Annex 5).

The IA examines the nature and scale of the problems, as well as **who** it affects (business registers, public authorities, businesses, citizens/consumers) and **how** (IA, Annex 3). It describes the expected evolution of the problems without EU action: the transparency and availability of reliable and accurate company data (about 16 million limited liability companies and about 2 million partnerships) in business registers will continue to be limited; barriers to the use of company data in a cross-border context (e.g. setting-up of cross-border branches and subsidiaries, administrative procedures, court proceedings) will persist; and the 'once-only' principle will not be achieved for cross-border procedures between public authorities and companies.

Subsidiarity / proportionality

The legal basis of the proposal is [Article 50](#) (right of establishment) of the Treaty on the Functioning of the European Union (TFEU) combined with [Article 114](#) TFEU. The IA includes a section on subsidiarity (IA, pp. 22-23), where it describes the legal basis and explains the necessity for and added value of EU action. As recommended by the [Task Force on subsidiarity, proportionality and 'doing less more efficiently'](#), a separate [subsidiarity grid](#) accompanies the IA, which also covers **proportionality**. The IA explains that 'a coherent legal framework for cross-border transparency and availability of company data, and for cross-border use of company data can be achieved exclusively at EU level' (IA, p. 23). The current situation cannot be adequately addressed by action at Member

State level. The proposal for a directive would give Member States the necessary flexibility to meet their obligations in line with their national legal traditions and systems. The initiative builds on the use of existing and operational interconnection systems of registers. The deadline for the [subsidiarity check](#) by national parliaments was 12 June 2023. No reasoned opinions were submitted by the deadline.

Objectives of the initiative

The **general objective** of the initiative is to contribute to a more integrated and digitalised single market. This includes i) enhancing transparency and trust in the business environment; ii) establishing more interconnected and digitalised cross-border public services; iii) facilitating cross-border expansion of businesses (in particular SMEs); and iv) fostering EU action against abusive and fraudulent companies. The **specific objectives (SO)** outlined by the IA are i) to increase the amount and improve the reliability of company data available in business registers and/or BRIS (SO1); ii) to enable direct use of company data available in business registers when setting up subsidiaries or branches in another Member State and in other cross-border activities and situations (SO2).

The objectives correspond to the problems and the problem drivers identified in the IA. With regard to the S.M.A.R.T. criteria (specific, measurable, achievable, relevant and time-bound), the specific objectives appear to fulfil them. The IA presents operational objectives, which it defines in terms of the deliverables of specific policy actions, after identifying and selecting the preferred option. The IA includes monitoring indicators and time-bound monitoring periods connected to specific objectives (see Better Regulation Toolbox, [Tool #15](#)).

Range of options considered

The two specific objectives are addressed in four intervention areas and the IA identifies options for each of them, which include **sub-options** in addition to the baseline scenario (no further EU action).

Table 1: Overview of policy options

SO1	Making more company data available in business registers and/or BRIS
Baseline	BRIS could not provide access to additional information beyond what is regulated in the codified Company Law Directive (Article 14: documents and particulars to be compulsory disclosed by companies; Article 19: fees chargeable for documents and particulars); stakeholders would need to access national registers to find data on partnerships, third-country company branches, single-member companies; no data in BRIS about the place of management, place of the main economic activity and groups.
Option 1a	Make information available in BRIS about partnerships (around 2 million in the EU) and third-country company branches (no estimations available).
Option 1b	Option 1a + make information available about cross-border group structures (around 135 000 cross-border groups of companies in the EU) and ownership (single-member structure for the single-member limited liability companies) in national registers and BRIS.
Option 1c	Option 1b + make information available about the place of management and the place of the main economic activity in national registers and BRIS.
SO1	Interconnecting BRIS with other systems and enabling better searches
Baseline	Each EU level interconnection system of registers would be developed separately, without interconnections; stakeholders need to access each system separately for company searches.

Option 2a	Interconnection of BRIS with the EU Beneficial Ownership Registers Interconnection System (BORIS); use of the existing European unique company identifier (EUID) to link the available information about a particular company in both registers; new search functionalities in BRIS (e.g. search for the legal status of a company).
Option 2b	Option 2a + interconnection with the Insolvency Registers interconnection system (IRI).
SO1	Ensuring verification of company data before it is entered into business registers
Baseline	Common requirements continue to apply, mainly to the online registration of private limited liability companies; no requirements to check the reliability of company data.
Option 3a	Obligation to check, in a similar manner, a harmonised list of elements (e.g. identity of applicants; compliance with legal requirements) before the company data enters the register at the time of registration of a new company and each time new company data is filed; checks would apply to limited liability companies and partnerships.
Option 3b	Option 3a + additional procedural requirements (e.g. harmonised deadlines for companies to file changes to their company data in the register); ensuring timely filing of information and correct data by Member States; obligation on business registers to keep their data updated.
SO2	Enabling direct use of company data from business registers in cross-border situations
Baseline	Whenever a company wants to set up a subsidiary or a branch, it has to re-submit information that already exists in its business register, and go through formalities such as obtaining an apostille or certified translations ; authorities and courts do not directly use existing company data from business registers but require companies to re-submit their company information and obtain apostilles or certified translations.
Option 4a	Application of the ' once-only ' principle: no re-submission of company information when a company sets up subsidiaries or branches in another Member State.
Option 4b	Option 4a + harmonised company extract , which would contain a common set of company data (e.g. company name, registered office, legal representatives) + mutual recognition of certain company data. Companies could use the company extract in all cross-border situations, including administrative procedures and court proceedings.
Option 4c	Option 4b + abolition of existing formalities (apostille); business registers would provide electronic certified copies of the required information.

Data source: Author's own compilation based on the IA (IA, pp. 26-32).

The separate options are not alternatives to each other; they are clustered in groups of (sub-) options for each of the intervention areas. The sub-options under each option are cumulative – it is questionable whether they qualify as alternative options under the Better Regulation Guidelines. The IA describes the discarded options in a separate Annex 10; overall, the descriptions are sufficient albeit sometimes lacking in detail. The IA is open about the reasons for discarding the options (e.g. opposition or low support by stakeholders; technical and legal feasibility to interconnect BRIS and other registers, such as the land registers interconnection (LRI); technical difficulties to making information about co-operatives in the EU available via BRIS). The options that were retained are linked to the specific objectives and the problem drivers.

Assessment of impacts

The IA describes the options' key **benefits** and **costs**, exploring how each performs in achieving the initiative's objectives as regards the relevant stakeholder groups (companies, citizens, business

registers and other national public administrations). The assessment is focused on the **economic impacts**. When assessing **social impacts**, the IA explains that it is expected that consumers would have better access to company information and be able to make more informed decisions when entering into contracts with companies from another Member State. In the assessment of **environmental impacts**, the IA expects relatively small positive impacts. These would stem, for instance, from the use of digital procedures and tools between business registers and companies (e.g. less use of paper), and therefore consistency with the 'do no significant harm' principle.

In the rather general assessment of impacts on **fundamental rights**, the IA mentions positive impacts of the preferred set of options on the implementation of the right of establishment (Article 15(2) of the Charter of Fundamental Rights of the European Union, CFR) and the freedom to conduct a business (Article 16 CFR). The IA explains that the required disclosure of and (cross-border) access to information on legal entities (e.g. limited liability companies, partnerships) and certain personal data (partners, single-member shareholders) will not have a negative impact on personal data protection (Article 8 CFR, EU law on data protection). The IA states the proposed policy measures are 'necessary and proportionate to enhance transparency, create trust between Member States when using company information cross-border and contribute to fight against fraud and abuse' (IA, p. 48). As regards the **UN Sustainable Development Goals (SDGs)**, the IA mentions SDG8 (decent work and economic growth) as relevant and describes – in fairly general terms – the expected progress towards the goal, which would be an indirect contribution to economic growth through an enhanced business environment in the single market (IA, p. 72). The IA does not discuss **territorial impacts**, although the Member States' starting positions vary on issues such as the provision of information about companies in business registers; and the ex-ante scrutiny for limited liability companies and partnerships or divergent company extracts. A general overview about national rules on partnerships, groups of companies and ex-ante scrutiny is given in Annex 12.

When comparing the options, the IA considers their **effectiveness, efficiency, coherence and proportionality**. However, it states that 'in the scoring, the options are compared to the baseline and not between the options' (IA, p. 33). The sub-options have been compared on the basis of the comparison analysis to select the preferred set of options. In an effort to facilitate the assessment of the above mentioned criteria, the IA presents all options in summary tables showing how the options score from 0 (no increase in costs/benefits) to 5 (very large increase in costs/benefits). When assessing effectiveness, efficiency and coherence, options 1c, 2b, 3b and 4c score highest. The IA therefore describes the **preferred set of options**:

Option 1c: Making information about partnerships and third country company branches available in BRIS; and making information about cross-border group structures and ownership, as well as place of management and place of the main economic activity, available in national registers and BRIS.
Option 2b: Connecting BRIS with the beneficial ownership registers interconnection system (BORIS) and with the insolvency registers interconnection system (IRI); use of EUID (European unique company identifier); and new search functionalities in BRIS.
Option 3b: Obligation to check a harmonised list of elements and common procedural requirements for ensuring reliable and up-to-date data.
Option 4c: 'Once-only' principle (no resubmission of company information) when a company from a Member State sets up subsidiaries or branches in other Member States; harmonised company extract; mutual recognition principle for certain company data; and abolition of formalities (apostille).

According to the IA, with the preferred set of options, companies, in particular SMEs, would **benefit** from more transparent, accessible and reliable company data in doing business across borders. It would bring substantial recurrent cost savings (administrative burden reduction) estimated at around €437 million a year. As business registers could search more easily for company data from other Member States, they would need to make fewer requests for documents from companies. The

same would apply to other public authorities (e.g. tax, labour), as they too would have easier access to reliable company data and could consult company data directly in business registers and BRIS. Consumers would be able to make more informed decisions when buying from or entering into contracts with companies from another Member State. The proposed preferred set of options could facilitate efforts to tackle abuse and fraud. When assessing **costs**, the preferred policy package will result in one-off costs, estimated at around €311 million, for filing new information to the register. Adapting the business registers' IT systems is expected to amount to around €5.4 million in the form of a one-off cost for all business registers together. Recurrent costs, for instance, to carry out ex-ante verification of company data (for Member States concerned), are estimated at around €4 million a year for all business registers. The IA expects some loss of revenue for registers, which charge fees for company extracts for cross-border use, estimated at around €7.9 million for all registers. However, it is estimated that the application of the 'once-only' principle and a common company extract could bring more benefits than costs for registers. Authorities in charge of issuing apostilles will lose revenue, estimated at around €9.5 million a year. On the other hand, abolishing the apostille is estimated to result in overall administrative burden reduction, considering the legal uncertainty engendered by the requirement of obtaining an apostille and the related human resources and time needed to issue it. According to the IA, the preferred set of options promotes 'digital by default' solutions to 'increase transparency about EU companies and 'digital by default' company law procedures to facilitate the use of the company data cross-border' (IA, p. 47).

SMEs/ Competitiveness

The IA observes that around 98-99 % of the limited liability companies in the EU are small and medium-sized enterprises (SMEs). Around 40 % of SMEs in the EU are engaged in economic cross-border activities. In line with the Better Regulation Guidelines (see also the Better Regulation Toolbox, [Tool #23](#)), an SME test has been carried out as part of the IA, the main findings of which are described in a separate annex (IA, Annex 13, pp. 158-159). The IA considers that SMEs would particularly benefit, as their administrative burden would be reduced and legal certainty increased. It expects that the initiative will also facilitate the expansion of [start-ups](#). Evidence was gathered through a targeted consultation of SMEs (SME panel), the results of which are well described in a separate annex (IA, Annex 14, pp. 160-166). It gives an overview of the respondents (e.g. total number of replies, participation by country, size of the responding companies) and provides information about the main obstacles SMEs are facing when engaging in cross-border activities (see also Section on 'Stakeholder consultation' below). Impacts on companies are measured in all the policy options. According to the IA, no specific mitigating measures are necessary to ease compliance for SMEs, since recurring benefits are expected to outweigh one-off adjustment costs. With regard to **competitiveness**, the IA is somewhat short on detail, but maintains that the initiative would stimulate cross-border trade, services and investment flows.

Simplification and other regulatory implications

In line with the ['one-in, one-out' approach](#), the IA identifies benefits for businesses as a result of a reduced administrative burden. Companies would incur new one-off costs for having to file information to the register. Citizens/consumers would benefit from more reliable and accessible company data (IA, pp. 71-72). In a separate Annex 9 the IA provides a clear overview of EU rules in other policy areas relevant to this initiative, such as the Anti-money-laundering Directive, the Unshell initiative to prevent misuse of entities for tax purposes, the Single Digital Gateway Regulation, the Open Data Directive and the eIDAS Regulation and its revision. According to the IA, the initiative is fully coherent with the above mentioned rules and with other EU rules.

Monitoring and evaluation

The IA presents operational objectives, including monitoring indicators, which appear relevant to the achievement of the specific objectives, among them the increase in the number of requests for company data available through BRIS and also through BORIS and IRI, the reduction in the costs

incurred by companies for setting up cross-border subsidiaries or branches, and the number of issued common company extracts. The indicators are complemented by corresponding data sources and specific monitoring periods to ensure that the achievements are monitored regularly. The IA states that 'the draft proposal ... would include a commitment to carry out an evaluation in the future to assess the impacts of the new initiative' (IA, p. 49). Under the proposal, the Commission would carry out an evaluation 5 years after the end of the transposition period of the directive.

Stakeholder consultation

The IA provides a description of the stakeholder consultations in a separate annex as required in the Better Regulation Guidelines (IA, Annex 2). It includes a list of the relevant stakeholder groups consulted (IA, pp. 55-56), in particular business registers, national authorities, business associations/organisations, trade unions, legal professionals, companies, citizens, investors and academic experts. The consultation on the [inception impact assessment](#) received 8 responses between 20 July 2021 and 17 August 2021. The Commission carried out an [open public consultation](#) from 21 December 2021 to 8 April 2022 (83 responses), meeting the 12-week requirement of the Better Regulation Guidelines. A large majority of respondents were in favour of more transparency through better access to more information about companies in the single market. An SME panel consultation took place from 2 May to 10 June 2022 (158 replies). According to the IA, 39 % of replies came from micro-enterprises or self-employed persons, 32 % from small, 22 % from medium-sized and 7 % from mid-cap and bigger companies. A number of other consultation activities were also conducted: surveys in the context of an external supporting study; workshops with companies and business registers; meetings and interviews with key stakeholders, such as notaries, in-house lawyers and law firms; bilateral meetings (targeted consultations) with key stakeholders in the field of company law (see IA, Annex 15); meetings of the Commission company law expert group ([CLEG](#)) and the Commission informal company law expert group ([ICLEG](#)). Overall, the IA comprehensively provides the views of stakeholder groups on the problems, the problem drivers, the objectives and options. In particular, the IA describes the expected impacts of the preferred set of options on the stakeholder groups, namely citizens/consumers, businesses and business registers, and other public authorities. The summary of the stakeholder consultations is comprehensive and detailed. Whenever different stakeholder groups had diverging views (e.g. on the use of virtual registered offices, or on making information on cooperatives available via BRIS), these were presented in a transparent manner. It appears that the stakeholders support the preferred set of options.

Supporting data and analytical methods used

The IA describes the supporting data and analytical methods in an extensive annex (IA, Annex 4). With regard to **supporting data**, the IA relies, among others, on a referenced and publicly available [supporting study](#),⁵ on extensive consultation activities, on an expert assessment and on evidence collected through desk research. It explains the **analytical methods** used, such as a scoring system to compare the options, the standard cost model (see Better Regulation Toolbox, [Tools #58-60](#)), a multi-criteria analysis to compare the options in their relative impacts, a sensitivity analysis (on 12 main assumptions of the calculations of costs and benefits) to verify the robustness of the Commission's initial standard cost model results.

Follow-up to the opinion of the Commission Regulatory Scrutiny Board

The Regulatory Scrutiny Board (RSB) gave a [positive opinion with reservations](#) on the draft IA report on 14 October 2022, stressing the following significant shortcomings: i) insufficient evidence about the consequences for businesses of the current lack of certain data in the business registers; and ii) the cost benefit analysis does not take into account all the recurrent costs for businesses. The IA explains how the RSB comments have been addressed (IA, pp. 51-52). It appears that the RSB's recommendations for improvement have been taken into account in the revised version. For instance, the IA comprehensively describes the consequences of the lack of reliable company data

on stakeholders in a cross-border situation (e.g. cross-border expansion of SMEs). The IA shows the costs and benefits for all stakeholder groups both in the main report and in Annex 3.

Coherence between the Commission's legislative proposal and IA

The proposal appears to follow the preferred set of options laid out in the IA.

The initiative's objective is to facilitate the use of digital tools and processes in EU company law. The problem definition appears to be well supported by evidence. The IA substantiates the nature and scale of the problem, as well as who it affects (business registers, public authorities, businesses, citizens/ consumers) and how. The policy options are not alternatives to each other but each one of them is a group of (sub-) options for each of the four intervention areas. The sub-options under each option are cumulative – it is questionable whether they qualify as alternative options under the Better Regulation Guidelines. The assessment of the options' impacts (economic, social and environmental) is qualitative and quantitative and appears to be based on sound research and analysis. The IA provides a comprehensive summary of the costs and benefits of the preferred set of options for the affected stakeholder groups. The IA considers that SMEs would particularly benefit from the reduction of administrative burden and increase in legal certainty. It provides the views of stakeholder groups on the problems, the problem drivers, the objectives and options in a transparent manner. It appears that the preferred set of options is supported by the stakeholders.

ENDNOTES

- ¹ See M.-A. Huemer, [Revision of Directive 2019/1151/EU on digital tools and processes in company law](#), implementation appraisal, EPRS, April 2023.
- ² See a description of the Business Registers Interconnection System (BRIS) in Annex 11 of the IA (pp. 151-154).
- ³ 'Business registers are established by law to facilitate the interaction of companies operating under the jurisdiction of the register with the Member State's authorities, other companies and the public, both when those businesses are established and throughout the course of their lifespan' (IA, p. 4).
- ⁴ The initiative is about company information based on legal obligations and thus, does not cover commercial information about companies. The re-use of company information from business registers for non-commercial purposes is regulated by [Directive \(EU\) 2019/1024](#) on open data and the re-use of public sector information (recast).
- ⁵ Study on the disclosure and cross-border use of company data, and digital developments related to company law (Milieu Consulting SRL), 2022.

This briefing, prepared for the Committee on Legal Affairs (JURI), analyses whether the principal criteria laid down in the Commission's own Better Regulation Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the impact assessment. It does not attempt to deal with the substance of the proposal.

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