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Upgrading EU Digital Company Law

BUSINESSEUROPE is the leading advocate for growth and competitiveness at European level, standing up for companies across the continent and actively campaigning on the issues that most influence their performance. We speak for all-sized enterprises in 35 European countries whose national business federations are our direct members.

BUSINESSEUROPE has taken note of the public consultation on upgrading digital company law¹ launched by the European Commission (DG JUST) aiming to review and further adapt EU company law to the continuing digital developments.

BUSINESSEUROPE has been strongly involved in the legislative process² towards the adoption of the Directive 2019/1151/EU and has since long advocated for increasing digitalisation in this area³. Hence, we are happy to contribute to this debate that will have an impact on the EU legislation on company law over the coming years.

I. MAIN MESSAGES

- Being a strong supporter of the digital transition, BUSINESSEUROPE is in favour of **continuing the process of digitalisation of EU company law**.
- Access to digital tools to perform key company operations is essential for companies. It helps EU entrepreneurs to act faster in a **highly competitive and increasingly connected European and global business environment**.
- **We remain open to examine any future complementary measures**, building on Directive 2019/1151/EU on the use of digital tools and processes in company law, that may enable companies to better operate within the internal market.
- BUSINESSEUROPE supports better cross-border access to publicly available company information, which can be achieved **by making a more efficient use of the existing infrastructure of national company registers and platforms** and

¹ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13055-Upgrading-digital-company-law_en

² https://www.business europe.eu/sites/buseur/files/media/position_papers/legal/2018-06-28_eu_company_law_package.pdf

³ https://www.business europe.eu/sites/buseur/files/media/position_papers/legal/2016-01-13_digitalisation_company_law_and_corporate_governance.pdf



ensure better connectivity and visibility between them. This should be the aim for any potential complementary measures in EU digitalisation of company law.

- Such measures **must not lead to an increase of the administrative burden** for companies regarding data provided, nor to a transfer of the obligations from the commercial register to individual companies. There has been a substantial increase of information requirements for companies in the past years and adding on would potentially create excessive and overlapping burdens.
- An important priority for the European Commission and for Member States should be to **ensure the timely and smooth transposition of Directive 2019/1151/EU** which BUSINESSEUROPE strongly supported. Gold-plating should be avoided as it hinders the benefits of digitalisation processes and raises barriers within the internal market.
- The possibilities across the internal market of creating a company digitally, registering branches digitally, and doing so only one time – following the “**once only**” **principle** – have clear added value, which European businesses should be able to benefit from without delay.
- Careful consideration must be taken to ensure **balance between transparency and protection of other values** such as protection of economic and physical integrity and privacy of entrepreneurs (whose personal data can often be found in business registers) **as well as cybersecurity**.

II. ON BETTER ACCESS TO AND USE OF INFORMATION

- Digital company information **should be easy to obtain and to share between companies, in particular in a cross-border context** (e.g. in commercial transactions and when combating fraud). Access to publicly available information is usually easier when operating in a domestic context. Business is therefore open to examining ways to facilitate better cross-border access, including further targeted harmonisation measures, provided that the right safeguards are there.
- Better cross-border access to information would be positive but **must not entail more information requirements for companies**. Companies must already today comply with many different mandatory disclosure requirements (which have multiplied in previous years) when operating or when setting up a new business. Limited liability companies are already subject to the information requirements in the 1st and 11th Company law directives, the Transparency directive, the Shareholder Rights directive and others which have harmonised all the important information. We have concerns about setting up new requirements as these:
 - would add unnecessary administrative burden;



- risks failing to serve its intended purpose as the end result could be overlapping, contradictory and confusing information that would not be useful to anyone;
- could open the door for abusive and opportunistic uses of company data (e.g. spamming, information selling, fraud) given that this data sometimes also includes personal information such as mobile numbers, email addresses and/or residential addresses of the entrepreneur, board members, managers or legal representatives of a company.
- It should be highlighted that not all company law forms in the EU are covered by EU harmonisation rules. Before considering further initiatives for limited liability companies, it would be useful to first check **whether there are important regulatory gaps** in non-harmonised or less-harmonised company forms (e.g. trusts and partnerships).
- An important **distinction needs to be made between information required in business registers** and information required in annual accounts or on the website of companies.
- Access to **cross-border information on groups** is important (e.g. for business partners, creditors or investors) but solutions around better connectivity of publicly available information should be explored first before considering additional requirements. EU law already provides quite an extensive set of requirements on groups in the Accounting Directives, International Accounting Standards, the Transparency Directive, the Take-Over-Bid Directive, the Prospectus Regulation, the AML framework and others. A simplification exercise would probably be more suitable rather than add-ons to these rules.
- **BUSINESSEUROPE strongly supports the “once only” principle.** Data that has been submitted once should then be available to use for several different purposes without companies having to re-submit, as this creates overly redundant administrative burden. To facilitate the use of the “once only” principle, improvements could happen for example by providing for better alignment between the formats in which the information is registered (e.g. company extracts) so it can be easily transferable and recognised between company registers of different member states.
- **The Business Registers Interconnection System (BRIS)** can play a role here as it already provides for an infrastructure to achieve this “mutual recognition”. This tool (BRIS) is today known to most companies, however, given its limitations it is not being used to its full potential. Another concrete idea would be to make it possible and easier to search using different search criteria and combination of criteria (e.g. company name, company form, persons’ name, country of registration, etc.).
- **Access to information does not necessarily mean that all information is automatically free at any time.** Totally free access to company detailed company



data may increase **opportunities for criminals**, or at least facilitate unwanted contacts. In the most extreme scenario, disproportionate access to company information and demand for companies to disclose sensitive information might lead to it being abused. Entrepreneurs, board members and legal representatives are more vulnerable to criminal or other illegal activities if their (personal) contact info is a) being registered and b) made publicly known. However, if there is a cost imposed, it should not be of such level that deters those with a legitimate reason to access company relevant information.

- A concrete step towards better access and use of company information could be to further **streamline the eJustice Portal**. It needs to become more user-friendly, e.g. by improving the search functions and enable for more detailed assessments. A further idea could be that the portal leads directly to the section of the national website where purchase of the particularly requested information/document can be made in order to save steps.
- **eIDAS regulation** should be efficiently implemented so it allows for proper identity validation, especially in a cross-border context, for access, updating and use of information held by national company registers.
- Careful consideration must be taken to ensure **balance between transparency and protection of other values such as privacy**. Business registers often include personal data of entrepreneurs (e.g. home address) who can become easier targets to less scrupulous actors. Member States should have the possibility to provide solutions that can preserve the safety and privacy of entrepreneurs.
- Updating Digital European Company Law should also imply considering different **cybersecurity implications and needs**.

III. ON FURTHER DIGITALISATION MEASURES

- The digitalisation is here to stay. Therefore, the more we can make use of digital processes and tools, the better businesses will be able to operate in the internal market. Business is general open to further digitalisation measures.
- Nevertheless, taking into account the different starting points in member states when it comes to digitalisation (e.g. in digital infrastructure) and/or the different digital literacy levels among entrepreneurs in the EU, we believe that **physical must always remain as an option**. This is the case specifically when it comes to interacting with business registers or other company law operations.
