

INCEPTION IMPACT ASSESSMENT

TITLE OF THE INITIATIVE	Upgrading digital company law
LEAD DG (RESPONSIBLE UNIT)	DG JUSTICE and CONSUMERS, A3 Company law unit
LIKELY TYPE OF INITIATIVE	Legislative
INDICATIVE PLANNING	Q4 2022
ADDITIONAL INFORMATION	Company Law and Corporate Governance European Commission (europa.eu)

A. Context, Problem definition and Subsidiarity Check

Context

The ongoing digital transition of the economy and the society has substantial impacts on companies, and in particular SMEs. The COVID-19 pandemic has shown even more the crucial importance of and the dependence on digital tools to ensure business continuity.

The planned initiative will directly contribute to the digitalisation objectives set out in the 2021 Communication "[2030 Digital Compass: the European way for the Digital Decade](#)", which stressed the importance of providing key public services online for European citizens and businesses (with a target of 100% of such services available online by 2030) and of creating connected public administrations, including the application of the once-only principle. In addition, it would also contribute to the aim of the 2020 Communication on [digitalisation of justice in the European Union](#), which stressed the importance of digital tools for businesses to access information, interact with authorities and enjoy access to justice, and the need for appropriate tools for authorities and legal professionals to communicate, exchange or submit documents securely cross-border.

This initiative also follows the Commission's 2020 "[SME Strategy for a sustainable and digital Europe](#)" and 2021 "[Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe's recovery](#)"; the former announced that the Commission would consult and assess the need for additional company law measures to facilitate cross-border expansion and scale-up by SMEs.

A report on the functioning of the [Business Registers Interconnection System \(BRIS\)](#)¹ will be prepared in parallel to this initiative and will feed into it as necessary.

Problem the initiative aims to tackle

The COVID-19 pandemic showed that digital tools are essential to ensure the continuity of business operations and interactions with authorities on company law related issues. Authorities need to adapt their working methods and ways of cooperation among each other, and with businesses and other stakeholders, to using digital technologies. Companies, in particular SMEs, should be able to have full recourse to digital tools when they are set up and throughout their operations across the single market. There is an increasing need for stakeholders, e.g. companies, creditors, legal professionals or authorities, to easily access and use trustworthy company information on a cross-border basis.

[Directive 2019/1151/EU on the use of digital tools and processes in company law \(Digitalisation Directive\)](#) provided the first step in advancing digital tools and procedures in company law (e.g. online creation of companies). It is necessary to further modernise EU company law for several reasons.

Currently there is still insufficient transparency about company data in the EU because EU harmonised disclosure requirements in [Directive 2017/1132/EU relating to certain aspects of company law](#) (Company Law Directive) concern only limited liability companies and some types of company information. The availability of information about other types of companies (e.g. partnerships) or other company data (e.g. on groups of companies) differs

¹ Required by [Directive 2012/17/EU](#) as regards the interconnection of central, commercial and companies registers, codified into [Directive 2017/1132/EU relating to certain aspects of company law](#).

between Member States; stakeholders cannot access such data centrally at EU level. Insufficient transparency makes it more difficult for creditors, investors or companies to get information which they need to do business cross-border and may also hinder authorities in taking effective action against fraudulent companies.

In addition, the exchange of information between business registers and the application of the once-only principle is still limited to a few situations under the Company Law Directive. The different national approaches as regards the legal value of company information in business registers² sometimes prevent seamless cross-border company law procedures (e.g. registers do not accept information received from registers in other countries). This means that companies cannot use the information validly submitted to the register in one Member State when expanding or operating cross-border. This creates administrative costs and an access barrier in particular for start-ups. Different authorities find it difficult to verify information about companies cross-border and use often time or labour-intensive mechanisms to do so or require companies to resubmit the information. The legal professionals often cannot make use of cross-border company information in administrative or court proceedings.

Some of the existing EU company law procedures are also not adapted to the digital age yet, e.g. some still require physical presence or paper filing. The digitalisation of the economy has also enabled other developments, such as e.g. virtual registered offices, which are not addressed in EU rules.

Basis for EU intervention (legal basis and subsidiarity check)

The legal basis would be Articles 50(1) and 50(2) of the Treaty on the Functioning of the European Union (TFEU) which gives EU competence to act in order to attain freedom of establishment. This initiative would amend the codified Company Law Directive.

Action at EU level would be needed because individual actions by Member States would not lead to increased availability and accessibility of comparable company information at EU level and would not lift barriers to the use of data about companies on a cross-border basis. It would be also unlikely that Member States could introduce sufficiently similar rules on digital tools and procedures in company law to allow cross-border interaction. An important part of the initiative would build on BRIS, which is based on a common set of rules set out in the Company Law Directive, and any initiative to expand its functioning would need to be done at EU level.

B. Objectives and Policy options

The objective of the planned initiative would be to upgrade the digital EU company law. In particular, it would aim to enhance transparency about companies in the EU through increased availability of company information at EU level; to enable the cross-border use of authentic and trustworthy data about companies e.g. by companies, consumers, creditors, legal professionals or authorities, including through the application of the once-only principle; and to make the existing rules and procedures fit for the digital age.

Baseline scenario – no policy change:

In the baseline scenario, without any company law policy change at EU level, the disclosure of company data would continue to vary across the EU limiting the overall transparency about companies in the EU and no additional company data would be accessible centrally at EU level via Business Registers Interconnection System (BRIS). In addition, the exchanges of information between business registers and the application of the once-only principle would be limited, in particular as regards cross-border situations, to the few cases already provided for in EU legislation. Also, certain procedures would continue to require physical presence or paper filing. Finally, Member States would continue to develop their own rules about virtual registered offices, without any safeguards at EU level.

Policy change:

Depending on the scope of the initiative, it would need to be assessed to what extent legislative and to what extent non-legislative measures would be best suited to meet the objectives sought. For example, a legislative measure would be needed, e.g. when providing for new procedures, new disclosure requirements or introducing new functionalities to BRIS.

² E.g. as regards ex ante verification before the information is entered into the registers.

The policy options would be developed as a combination of all or some of the elements and sub-elements listed below³:

- **Increased transparency and access to information:** this could include making more comparable company data available centrally at EU level via BRIS, introducing new disclosure requirements to provide transparency about additional types of companies (i.e. beyond the existing requirements related to limited liability companies) and regarding additional company data (e.g. about groups of companies, place of management or economic activities).
- **Enhanced use of authentic and trustworthy company data cross-border:** this could address the use of company information available from business registers through BRIS in cross-border administrative and court procedures; expanding the application of the once-only principle in cross-border exchanges between business registers via BRIS e.g. as regards the setting up of subsidiaries or branches in other Member States.
- **Making the EU company law rules and procedures fit for digital age:** this could refer to making it possible to file online all documents and information under company law procedures and ensuring that physical presence is not required save in exceptional cases; making it possible to form a company other than limited liability company fully online; assessing the need to address the developments such as e.g. the virtual companies in the EU rules.

C. Preliminary Assessment of Expected Impacts

Likely economic impacts

The initiative could contribute to economic growth, increased cross-border investment and to the EU's competitiveness by making the single market a more attractive place to do business. In particular, the initiative could help SMEs including start-ups.

Companies should be able to carry out their business in a more efficient manner and to expand to other Member States due to lower costs and less administrative burden in company law procedures. In particular, the increased application of the once-only principle in the context of setting up subsidiaries and branches in other Member States should make it quicker and less costly for companies to expand to other markets. More and better information about SMEs (e.g. whether they are part of a group) could help investors, creditors and other third parties to make better informed decisions and provide necessary protection to third parties. Increased information would also help SMEs themselves to find accurate information about business partners.

Being able to use the company data more easily cross-border should also save time and costs for companies, legal professionals, authorities and other stakeholders when they need to use such data in company related procedures with authorities or courts.

Likely social impacts

Having more company data easily available at EU level would provide more transparency and more protection to stakeholders and contribute to fighting against abuses and fraud. Increased use of digital procedures and application of the once-only principle in company law would have a positive social impact in terms of more secure procedures. The initiative could also bring positive social effects in terms of employment by helping SMEs, in particular start-ups to expand cross-border.

Likely environmental impacts

The initiative could have positive environmental impacts due to increased possibility to use digital procedures and tools a) between business registers and companies and b) between business registers in different Member States through BRIS, and increased application of the once-only principle. This would mean e.g. reducing the use of paper and mandatory travel.

Likely impacts on fundamental rights

This initiative should contribute to helping companies to benefit more fully from their right to conduct business, in

³ The initiative will also include assessing the use of European digital identity wallets following the [Commission proposal for a Regulation as regards establishing a framework for a European Digital Identity](#).

<p>particular on a cross-border basis (the freedom to conduct business (Art. 16 of the Charter of Fundamental Rights of the EU)).</p> <p>Building on BRIS and creating more connected public authorities, the initiative should contribute to better administration within public authorities.</p> <p>This initiative would involve processing of some specific personal data and these would need to be compliant with the fundamental right to protection of personal data (Art. 8 of the Charter) and EU law on protection of personal data.</p>
<p>Likely impacts on simplification and/or administrative burden</p> <p>This initiative has potential for simplification. By expanding the use of digital tools and the use of BRIS, including the application of once-only principle, this initiative would simplify company law related procedures and reduce related administrative burden for companies and public authorities. By enabling better cross-border access to and use of authentic and trustworthy company data it would also make it easier for other stakeholders to find information about companies across the EU and to make use of such data in company related procedures.</p> <p>The related investments into information technology tools and systems in public administrations should be moderate. This is because BRIS already exists and is operational since 2017, and the initiative would not change its infrastructure but provide a legal basis for disclosure of additional data and for further exchanges of information through BRIS between business registers.</p>
<p>D. Evidence Base, Data collection and Better Regulation Instruments</p>
<p>Impact assessment</p> <p>An impact assessment is being prepared to support the preparation of this initiative and to inform the Commission's decision.</p>
<p>Evidence base and data collection</p> <p>Research and data gathering is on-going. An external contractor study will gather data to support the impact assessment work. The work carried out by the Informal Expert Group on Company law and Corporate governance will also directly contribute to this initiative.</p> <p>In addition, quantitative data available through BRIS will be used to support the impact assessment. The impact assessment will be also informed by the open public consultation planned to be launched in Q4 2021. A targeted stakeholder consultation and interviews will complete the open public consultation.</p> <p>Also, feedback and data was gathered in the context of other initiatives; for example, in the context of the 2020 Communication on "Identifying and addressing barriers to the single market" and Staff Working Document "Business Journey on the Single Market: Practical Obstacles and Barriers". In addition, the results of the consultations on the Digital Compass Policy Programme and on the European Digital Principles will feed into the evidence base.</p>
<p>Consultation of citizens and stakeholders</p> <p>The consultation activities will provide feedback on the issues to be covered by this initiative and will cover the relevant groups of stakeholders, including representatives of business organisations, trade unions, legal professionals involved in company law procedures, companies, authorities including business registers, investors, creditors and other users of company data. The consultation activities will include the following elements:</p> <ul style="list-style-type: none"> • A 12-week open public consultation, available in all EU languages on the Commission's central public consultations page, on issues covered by the planned initiative to be launch in Q4 2021. • Targeted consultation with Member State experts in Company Law Expert Group (CLEG) • Targeted consultations of SMEs, e.g. through the SME focused associations and networks • Targeted discussions in dedicated stakeholder groups and bilateral meetings with the stakeholders mentioned above. <p>The consultation activities will be promoted on the Commission's policy company law website and in targeted</p>

contacts with stakeholders.
Will an Implementation plan be established?
The need for an implementation plan will be assessed in light of the outcome of the impact assessment and the decision about which policy option to retain.