



**CCBE POSITION ON THE PROPOSAL FOR A DIRECTIVE OF THE
EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING
DIRECTIVES 89/666/EEC, 2005/56/EC AND 2009/101/EC AS
REGARDS THE INTERCONNECTION OF CENTRAL, COMMERCIAL
AND COMPANIES REGISTERS**

CCBE position on the proposal for a directive of the European Parliament and of the Council amending Directives 89/666/EEC, 2005/56/EC and 2009/101/EC as regards the interconnection of central, commercial and companies registers

The Council of Bars and Law Societies of Europe (CCBE) is the representative organisation of around 1 million European lawyers through its member bars and law societies from 31 full member countries, and 11 further associate and observer countries. The CCBE responds regularly on behalf of its members on policy issues which affect European citizens and lawyers.

In 2010, the CCBE issued a response to the European Commission Green Paper on the interconnection of business registers (SEC(2009) 1492) available [here](#).

Lawyers are in all Member States companies' source of legal advice. As such, they constantly use information from business registers to determine the legal and economic position of companies involved in the cases they handle. Moreover, they provide on behalf of their clients legal regularity of their operations and draw up corporate documents required by company law.

Once established, a consultation tool for legal data concerning all European companies will facilitate the work of lawyers to their clients' benefit and support the provision of their services throughout the community area, including legal support for cross-border transactions.

The CCBE therefore welcomes the Commission's initiative to submit a proposal "amending Directives 89/666/EEC, 2005/56/EC and 2009/101/EC as regards the interconnection of central, commercial and companies registers". The CCBE encourages each new register interconnection project, given the differences between registers and their various legal frameworks.

However, the CCBE did note that some paragraphs should be clarified and therefore wishes to propose the following concrete changes to the proposed directive:

<i>Text proposed by the Commission</i>	<i>Amendment suggested by the CCBE</i>
<p><i>Recital 12:</i></p> <p><i>"As for companies, branches should also have, in addition to their number in the register, a unique identifier that allows their unequivocal identification in the European Economic Area."</i></p>	<p><i>Recital 12:</i></p> <p><i>"As for companies, each branches should also have, in addition to its their number in the register, a unique identifier other than that of the company to which the branch belongs, that allows its their unequivocal identification in the European Economic Area."</i></p>
<p><i>Article 1</i></p> <p><i>Amendment to Directive 89/666/EEC</i></p> <p><i>Article 1, paragraph 3:</i></p> <p><i>"Branches shall have a unique identifier that allows their unequivocal identification in the European Economic Area".</i></p>	<p><i>Article 1</i></p> <p><i>Amendment to Directive 89/666/EEC</i></p> <p><i>Article 1, paragraph 3:</i></p> <p><i>"Each Branchesbranch shall have a unique identifier that allows theirits unequivocal identification in the European Economic Area".</i></p>

Justification:

Amendments to Article 1 relating to branches and Article 3 relating to companies intend for both branches and companies to have "a unique identifier that allows their unequivocal identification in the European Economic Area". As regards this text, it is not entirely clear whether it is suggested to introduce a unique identifier (the same identifier for the company and its branch(es)) or a unique identifier for each company or each branch.

The wording of the proposed Directive seems to logically imply that each branch has a unique identifier which is different from the identifier of the company itself. Any ambiguity could be removed by slightly modifying the beginning of recital 12. Such a solution does seem appropriate for clear identification purposes.

In addition, it is not quite clear whether each and every branch of a company must have its own unique identifier. Therefore, the CCBE suggests including the word "each".

<i>Text proposed by the Commission</i>	<i>Amendment suggested by the CCBE</i>
<i>Amendment to Directive 2009/101/EC</i> <i>Article 3a § 1:</i> <i>(...)</i> <i>"can be obtained, on application by any applicant, by electronic means through a single European electronic platform accessible from every Member State"</i>	<i>Amendment to Directive 2009/101/EC</i> <i>Article 3a § 1:</i> <i>(...)</i> <i>"can be obtained, on direct application by any applicant, by electronic means through a single European electronic platform accessible by applicants from every Member State"</i>

Justification:

These amendments suggested by the CCBE emphasise that documents and particulars should be obtained without necessarily going through the intermediate level of national registers. According to the CCBE, accessibility should be provided 24/7, both for consulting documents and ordering extracts and copies.

<i>Text proposed by the Commission</i>	<i>Amendment suggested by the CCBE</i>
<p><i>Amendment to Directive 2009/101/EC</i></p> <p><i>Article 3a:</i></p> <p>§ 1 (...)</p> <p>§ 2 <i>Member States shall also ensure that for each document and particular kept in their register and transmitted in accordance with paragraph 1, clear information is attached explaining the provisions of national law according to which third parties can rely on those documents and particulars, in accordance with paragraphs 5, 6 and 7 of Article 3.</i></p>	<p><i>Amendment to Directive 2009/101/EC</i></p> <p><i>Article 3a:</i></p> <p>§ 1 (...)</p> <p><i>"1a (new) Member States shall ensure strict compliance with the requirement for complete information and integrity of documents and particulars referred to in Article 2 when being processed and transmitted through the single European electronic platform accessible from every Member State.</i></p> <p>§ 2 <i>Member States shall also ensure that for each document and particular kept in their register and transmitted in accordance with paragraph 1, clear information is attached explaining the provisions of national law according to which third parties can rely on those documents and particulars, in accordance with paragraphs 5, 6 and 7 of Article 3.</i></p>

Justification:

The CCBE would like the interconnection of central, commercial and companies registers to have an indisputable legal basis, ensuring companies and lawyers who consult social information in this way that such information is identical and has the same legal value as information recorded in national registers. This requirement of completeness and integrity is essential in order to ensure full legal certainty for users of the European system of interconnection between national business registers. Article 3a §2 of the draft Directive aims to achieve this. Indeed, the verb "*transmitting*" (2nd line) suggests that "*documents and particulars*" will be strictly identical and bear the same legal value as those recorded in national registers.

However, it would be more desirable to complete these two paragraphs with an intermediate paragraph (1a), which could stress the need for completeness and integrity when processing information transmitted between registers and which is accessible through the European electronic platform.

<i>Text proposed by the Commission</i>	<i>Amendment suggested by the CCBE</i>
<p><i>Amendment to Directive 2009/101/EC</i></p> <p><i>Article 4a - § 2</i></p> <p><i>"The register of the company shall notify, without delay, through the electronic network the register of its branch (...)"</i>.</p>	<p><i>Amendment to Directive 2009/101/EC</i></p> <p><i>Article 4a - § 2</i></p> <p><i>"The register of the company shall notify, without delay, through the electronic network the register of each of its the company branches (...)"</i>.</p>

Justification:

It would be desirable to modify this paragraph since a company may have one or more branches, in one or more Member State.

Conseil des barreaux européens – Council of Bars and Law Societies of Europe

association internationale sans but lucratif

Avenue de la Joyeuse Entrée 1-5 – B 1040 Brussels – Belgium – Tel.+32 (0)2 234 65 10 – Fax.+32 (0)2 234 65 11/12 – E-mail ccbe@ccbe.eu – www.ccbe.eu

21.05.2011