

M. le Commissaire Michel Barnier
Commission européenne
Direction générale du marché intérieur et
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Brussels, 14th September 2010

Re: Green Paper on the interconnection of business registers

Dear Commissioner,

I am writing to you on behalf of the Council of Bars and Law Societies of Europe (CCBE) concerning the response of the Council of the Notariats of the European Union (CNUE) on the European Commission's Green Paper on the interconnection of business registers.

In its response¹ regarding the transmission of data on branches, the CNUE suggests that the direct and automatic transmission of data from one Member State's register to another "should, at the very least, be subject to respect for a procedure which guarantees the safety of the Host Member State's Business Register, such as a certificate issued by the relevant authority in that Host State, as is the case in the cross-border directive".

Articles 10 and 11 of Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies effectively make it possible for Member States to demand that a notary intervene and issue a certificate prior to a cross-border merger and verify its legality.

The CCBE, which has also responded to the European Commission Green Paper², considers that the position of the CNUE may well have had as its purpose to confer a monopoly on notaries, or at least grant them the prime competence in the certification of the information at stake. In addition, the parallel drawn by the CNUE between certification provided under the Directive on cross-border mergers and certification proposed for the interconnection of business registers seems inappropriate.

In actual fact, the certification provided for by the Directive on cross-border mergers is devised to monitor the legality of an operation. This examination of legality is normal for a cross-border merger, where it is legitimate to verify that the various vested interests have been respected (shareholders, staff of the merging companies, third party creditors, etc.). This is very different to the case of the transmission of legal information on foreign branches, which faces quite different challenges. The only objective in the latter case is to strive to ensure that in the automatic transmission of such information from one business register to another - in fact most often from the company register to that of the branch - the data is up-

¹ Response available at: http://www.netvoice.be/cnue-2009/pdf/pdf_en_20100202113319-80.pdf

² Response available at: http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/EN_Livre_vert_Interc1_1265013437.pdf

to-date, including all changes to the original register, and that the transfer or its updates take place without any alteration to the data.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'JMD', written over a horizontal line.

José-María Davó-Fernández
CCBE President