

CCBE RESPONSE TO DG MARKT CONSULTATION ON THE CROSS-BORDER TRANSFERS OF REGISTERED OFFICES OF COMPANIES

22/03/2013

(Please note that the CCBE submitted its response via the Commission's online questionnaire which can be downloaded from the Commission's website, click [here](#). The CCBE response which is set out below has the Commission online questionnaire as a basis.)

Questions marked with an asterisk * require an answer to be given.

Please fill in the following questionnaire:

What kind of entity are you?*

- A company
- A business organisation, a trade union, a university, an individual, etc. (i.e. any kind of entity or person other than a company)

I. Information about your company/organisation

1. Size of the company/organisation and number of employees*

- micro (0-9)
- small (10-49)
- medium-sized (50-249)
- big (more than 250)

2. Legal form*

- sole trader
- private limited company
- public limited company
- European Company (SE)
- other (unlimited company, partnership, etc)

3. Field of activity*

- goods
- services
- other

3.1 – Please specify your sector of activity (maximum 500 characters)

N/A

4. Country of your current registered office?*

Belgium

5. Is your business engaged already in cross-border trade in the EU?*

- yes
- no
- not applicable

6. Are you planning to be engaged in cross-border trade in the foreseeable future?*

- yes
- no
- do not know
- not applicable

Section II and III are not applicable to CCBE given the replies in section I.

IV The current possibilities to transfer registered offices abroad

1. How many companies have transferred their registered offices from your country to another EU Member State within last 3 years?

N/A

- less than 50
- between 50 – 500
- between 500 - 5,000
- between 5,000 - 50,000
- more than 50,000
- do not know

Specify the number of companies (maximum 500 characters)

N/A

1.1. How many companies have transferred their registered offices from your country to another EU Member State by winding up the old company and creating a new one?*

- less than 50
- between 50 – 500
- between 500 - 5,000
- between 5,000 - 50,000
- more than 50,000
- do not know

Specify the number of companies (maximum 500 characters)

N/A

1.2 How many companies have transferred their registered offices from your country to another EU Member State by doing cross-border mergers?*

N/A

- less than 50
- between 50 – 500
- between 500 - 5,000
- between 5,000 - 50,000
- more than 50,000
- do not know

Specify the number of companies (maximum 500 characters)

N/A

1.3. How many companies have transferred their registered offices from your country to another EU Member State by using the European Company Statute?*

N/A

- less than 50
- between 50 – 500
- between 500 - 5,000
- between 5,000 - 50,000
- more than 50,000
- do not know

Specify the number of companies (maximum 500 characters)

N/A

2. Have the majority of companies transferred cross-border their:*

- registered office;
- registered office and at the same time their headquarters (main office);
- registered office and headquarters (main office) together with their business activities (e.g. production site)?
- do not know

3. How many companies, according to your information, would consider transferring their registered office, if a specific EU instrument on the direct cross-border transfer of registered offices were available?*

- less than 50
- between 50 – 500
- between 500 - 5,000
- between 5,000 - 50,000
- more than 50,000
- do not know

4. Would the majority of companies, according to your information, consider cross-border transfers of their:*

- registered office;
- registered office and at the same time their headquarters (main office) ;
- registered office and headquarters (main office) together with their business activities (e.g. production site)?
- do not know

5. Does the recent ECJ case-law (e.g. judgement in case VALE) provide an adequate solution for cross-border- transfer of registered offices?*

- yes
- no
- no opinion

Why?*

Existing European case law does not provide sufficient certainty as to when and how a company can transfer its registered office to another member state. It would be very helpful for there to be a common procedure for companies to follow, which would be recognised by courts and registrars of companies in all member states. This would provide certainty and reduce costs. It could also set

out minimum protections for shareholders, creditors and employees that are common throughout the EU.

6. What is the main motivation for companies to transfer their registered office abroad? (you can choose more than one answer)*

- favourable company law regime
- favourable insolvency law regime
- favourable "business climate"
- favourable taxation regime
- Tax mitigation
- favourable social law regime
- stable legal framework
- others
- do not know

Please specify (Maximum 500 characters)

The main motivation for companies to transfer their registered office varies from case-to-case (for the full response please see below Additional Comments) **

7. How much does the average cross-border transfer of registered office through the merger cost?

- less than 10,000 euro
- between 10,000 – 50,000 euro
- between 50,000 – 100, 000 euro
- more than 100, 000 euro
- do not know

8. How much could an average company save in terms of costs, if a specific EU instrument on the direct cross-border transfer of registered offices were available (in comparison to the transfer of the registered office by a cross-border merger)?*

- less than 5,000 euro
- between 5,000 – 10,000 euro
- between 10,000 - 50,000 euro
- more than 50,000 euro
- do not know

V. The design of an instrument - What should an EU instrument on the direct transfer of registered offices of companies look like?

1. Should the transfer of a registered office be compulsory along with the transfer of the headquarters (main office)?*

- yes
 no
 do not know

Why? (Maximum 500 characters)

The CCBE believes that if a company wishes to be subject to the company law of a member state, the company should be required to have its registered office in that member state. However, a company should be given the flexibility to have its headquarters elsewhere if the transferee member state allows.

2. Would the choice left to the Member State whether the transfer of the registered office has to be followed or not by the transfer of the headquarters (main office) be workable?*

- yes
 no
 do not know

Why? (Maximum 500 characters)

It is for each member state to decide if the headquarters must be in that member state or can be elsewhere.

3. How should the question of employee participation be optimally solved in the case of a transfer of a registered office?

By applying the same rules on the employee participation as in: *

- Cross-Border Merger Directive
 SE Statute
 other

Please specify (Maximum 500 characters)

We think the Cross-Border Merger Directive provides a better starting point than the SE Statute but that improvements could be made to it.

4. Are there any issues to consider with regard to the design of such an instrument?
(Maximum 500 characters)

Yes. The appropriate protections for shareholders, creditors, employees and any persons taking legal action against the company.

Additional Comments

(Provided to the Commission in a separate document)

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, companies and lawyers.

The CCBE believes an EU instrument would provide an enabling power for companies to transfer, subject to appropriate safeguards, and that this would be beneficial for the Internal Market. In the opinion of the CCBE, the lack of a specific EU instrument to allow the transfer of a registered office to another member state is the very reason why, as far as the CCBE is aware, there have been so few transfers of companies from one member state to another so far, even though companies could, in some cases, also achieve the same result by the more complicated and more expensive route of a cross-border merger. In the CCBE's view, using the route of the cross border merger is not an acceptable alternative for companies.

We are concerned that the consultation questions focus too heavily on the experience of companies that have used or considered a cross border transfer and the cost savings that could be achieved if there were to be an EU instrument. We think the potential benefit of an EU instrument in this area may be hard to estimate, as companies that may wish to take advantage of such an instrument in future may not be aware of, or respond to, the consultation – but would nonetheless benefit from an instrument. The case law has recognised that an instrument is needed if companies are to be able to take advantage of the freedom of establishment more easily without having to resort to individual court cases (which can be very time-consuming and expensive). The reasons for a company to move to another member state are many and varied and will vary from one case to another. There may be real benefits for a company in being able to move to another member state and companies should be able to do this more easily than is presently the case, making companies more like natural persons. Although a company may be able to move to another member state by using the Cross Border Merger Directive, the process for a cross border merger is necessarily more complicated and expensive, because it involves two companies in different member states. It should not be necessary for a company to have to use this process and involve another company to achieve its aims. An EU instrument would provide a clear process for companies to follow, which would be of benefit for the company concerned and its shareholders, creditors and employees and reduce costs compared to using a cross border merger. We believe this could lead to an increase in cross border business and could increase competition. Members of the CCBE advise many clients on the possibility of moving a company from one member state to another and how this can be done. The cost of legal advice on this could be reduced if there were to be an EU instrument that provided more certainty on the procedure.

** Full response to question 6, section IV:

The main motivation for companies to transfer their registered office varies from case-to-case. The shareholders or directors may want to move from one member state to another and move their company too or it may be driven by a change in important customers or suppliers and a desire to be closer to these. For regulated businesses it may also reflect a view that regulation by a different member state is preferable. Normally any decision usually reflects a balance of different factors, including company law, the business regime, whether there is a stable legal regime, tax and where management wishes to be based.