



FEBIS is the federation of leading Business Information Services Providers. Today it has developed into an organization comprising 108 full members involved in providing credit management solutions, debt collection services and marketing information services of national and international importance. Supported by a combined workforce of over 27.000 employees, FEBIS members and associate members analyse over 1,300 million entities annually for over 1.6 million customers (businesses of all sizes and economic sectors), providing these clients with business support for the provision of credit and other commercial services on all economical agents in Europe. Aggregate sales turnover of FEBIS members and its associate members is about € 11,000 million. More information on FEBIS at [www.febis.org](http://www.febis.org)

## **FEBIS comments on Sole Entrepreneurs Data**

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### The role of Business Information Providers

FEBIS members represent **business** information providers whose main mission is to provide business information to enterprises (all sizes, including sole entrepreneurs; all sectors) to help them to decide e.g. the payment delay they will grant to their trade counterparts (which is called “trade credit”) and manage efficiently their cash.

This mission should be associated to the objectives of the Late Payment Directive, and especially to avoid the “cascade of insolvencies”, that may happen if a business is in distress.

Sole entrepreneurs have an essential role in the European Economy, and as any other business, they have customers and suppliers. As such, sole entrepreneurs are part of BtoB relations.

**In order to daily manage their cash, through payment delays they grant or they are granted, businesses need to access information about their clients and suppliers – which are businesses as well (B2B).**

This information is available from public sources like Business Registers, *Craftspeople Register*, National Enterprises Repertory etc. but also from Business Information Providers, that aggregate data (in particular Public-Sector Information listed here above) to develop business reports and statistical scoring about each business. The score calculated by Business Information Providers aims to rank a company / business on a scale of risk classes. It is an indicator / an assessment of its risk of default.

Credit scores and business reports can be accessed by all companies no matter what their size is and are usually available on the whole business population of a country, from independent entrepreneurs and very small companies to big ones. **Business Information Providers, as independent third parties, always take both parties into consideration: the business which is scored and the business that may want or already trade with the first one.**

Please note that such a score is also very useful for the scored entity itself, as it may be used an “early warning” tool, to detect its own financial difficulties.

Business Information Providers of course do not want to access sensitive company information (such as business plans or trade secrets) nor do they ask that companies, SMEs or sole entrepreneurs should be required to do as extra- reporting.

**But accessing basic general, financial and accounting information on each business, whatever its size, and then including sole entrepreneurs, for business information and scoring purposes is essential to ensure that business reports and scores can be based on accurate material, and to guarantee that trade counterparts, who also have their own information, can take informed credit or payment delay decision.**



As a matter of fact, it must be considered as an “economic circle”.

## The crucial issue of sole entrepreneurs’ information which is lacking

- *The grey zone of private/business capacity and data protection*

In many EU countries, accessing and re-using data on sole entrepreneurs for business reporting is an issue, mainly because they are still lying in a grey zone as regards personal data protection.

Sole entrepreneurs, as businesses, should also be considered when discussing about public reporting. Even if they are not required to file annual accounts (except some of them), the Commission’s ~~last~~ website on GDPR seems to consider them as individuals according to the GDPR, ([https://ec.europa.eu/info/law/law-topic/data-protection/reform/rules-business-and-organisations/application-regulation/do-data-protection-rules-apply-data-about-company\\_en](https://ec.europa.eu/info/law/law-topic/data-protection/reform/rules-business-and-organisations/application-regulation/do-data-protection-rules-apply-data-about-company_en))

But, as identified by the European Council in the latest discussions on the draft e-privacy regulation, (<http://data.consilium.europa.eu/doc/document/ST-5569-2018-INIT/en/pdf>) : “During previous meetings, the status **of natural persons that act in a professional capacity** (having a status of an independent worker) was discussed, more in particular, whether they should fall under the rules on the inclusion of contact details in publicly available directories for end-users who are natural persons or legal persons. The delegations are requested to take into account the level of protection currently provided for this group in various Member States and this group’s interests.”

Indeed, sole entrepreneurs have suppliers and customers just as legal persons. This is why they are also considered rightly as “enterprises” or “businesses”. Acting in their professional / business capacity is different from acting in their private / personal capacity, as a consumer for example.

**GDPR should apply when the individual is acting as a private consumer/individual only and not for sole entrepreneurs acting in their business capacity.**

The transactions where sole proprietorships and non-registered companies, are directly involved are highly significant in each Member State and the lack of information **to properly assess the business (not the individual)** to contract with causes losses in the overall economy. This, especially, affects weaker layers of micro (including other sole proprietorships) and medium sized companies which, very often, trade with them, with no qualified means for assessment. These above-mentioned transactions represent a big portion of the *trade credit* which in turn reflect a significant percentage of national GDP. **It must be clarified that sole entrepreneurs are businesses, and that, as such, Public Sector Information about the latter should be easily accessible for re-use, especially if the purpose of re-use is compatible with the purpose of original collection by the public bodies.**

Not considering sole entrepreneurs like “normal businesses” may be detrimental to them, which is regrettable considering the role they have in the EU economy. This is why it seems to us essential to alert on the fact that sole entrepreneurs are not considered in the same way all over regulations and laws (company law, financial regulation, GDPR ...) concerning them.



- *The blurred information on insolvency and over-indebtedness*

Furthermore, as outlined by the proposed amendment 50 laid down in the JURI report on the draft directive on insolvency and second chance, there is very often blurred information on sole entrepreneurs which lays to financial information not being available. The amendment 50 proposes to put in place a new article 2-1-13 stating that “ *over-indebted entrepreneur' means a natural person exercising a trade, business, craft or profession, who is otherwise than temporarily unable to pay debts as they fall due, and also means an entrepreneur who is unable to pay debts incurred as a natural person but that are linked to the financing of the start of the entrepreneur's business activity, as well as a person whose business activity is exclusively a side activity and whose professional debts and personal debts cannot be reasonably separated. “*

This can be understood in terms of debt discharge, meaning that debts contracted by a natural person at the start of his/her own business may be considered as **happening in his/her business and not in his/her private capacity. Then, and for reasons cited above, this information should therefore be made available to credit and business information providers who can feed back alert information in early-warning mechanisms** to help prevent insolvencies of entrepreneurs. Please note that this kind of information can / will of course be kept confidential, ie not disclosed, but used to feed scoring calculation algorithms.

FEBIS thanks you for your consideration and is of course willing to provide you with more information on this issue should you need it (email to [stephanie@svmconsult.com](mailto:stephanie@svmconsult.com)).