

# Company law and corporate governance: interconnection of central, commercial and company registers

2011/0038(COD) - 14/02/2012 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a legislative resolution 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.

Parliament adopted its position on first reading following the ordinary legislative procedure. The amendments adopted in plenary are the result of an agreement negotiated between Parliament and Council. They amend the Council position as follows:

**Legal basis:** the legal basis of the Directive is Article 50 of the Treaty on the Functioning of the European Union.

**Electronic platform:** cross-border access to business information on companies and their branches opened in other Member States can only be improved if all Member States engage in enabling electronic communication between registers and transmitting information to individual users in a standardised way, by means of identical content and interoperable technologies, throughout the Union.

Accordingly, the Directive provides for the establishment of a European central platform. The system of interconnection of registers shall be composed of: (i) the registers of Member States; (ii) the platform; (ii) the portal serving as the European electronic access point.

Member States shall ensure the interoperability of their registers within the system via the platform. They may establish optional access points to the system of interconnection of registers. They shall notify the Commission of their establishment and of significant changes to their operation, without undue delay.

Access to information from the system of interconnection of registers shall be ensured through the portal and through the optional access points established by the Member States.

On the basis of unique identifiers, the platform should have the functionality of distributing information from each of the Member States' registers to the competent registers of other Member States in a standard message format (an electronic form of messages exchanged between information technology systems as for example: xml) and the appropriate language version.

Should the Commission decide to develop and/or operate the platform through a third party, it shall, by means of implementing acts, determine the technical specifications for the purpose of the procurement procedure and the duration of the agreement concluded with that third party, and adopt detailed rules on the operational management of the platform.

**Scope of accessible data:** the Directive is not aimed at establishing any centralised registers database storing substantive information about companies. **At the stage of implementation of the system of interconnection of central, commercial and companies registers** ("the system of interconnection of registers"), **only the set of data necessary for the correct functioning of the central platform should be defined.** The scope of these data should include, in particular, operational data, dictionaries and glossaries. It should be determined taking also into account the need to ensure the efficient operation of

the system of interconnection of registers. These data should be used for the purpose of carrying out of the functions by the platform and in a direct form it should never be made publically available. Moreover, the **platform should modify neither the content of the data on companies stored in domestic registers nor the information about companies transmitted through the system of central commercial and companies registers.**

Member States are not obliged to change their internal system of registers, in particular as regards the management, storage of data, fees, use and disclosure of information for national purposes.

**European e-Justice Portal:** the European e-Justice Portal will deal, through the use of the platform, with queries put forward by individual users, concerning the information on companies and their branches opened in other Member States, which is stored in the domestic registers. That will enable the presentation of the search results on the Portal, including the explanatory labels in all the official languages of the Union listing the provided information.

**Unique identifier:** companies and their branches opened in other Member States should have a unique identifier that allows their unequivocal identification in the European Union. The identifier is intended to be used for communication between registers through the system of interconnection of central, commercial and companies registers. Therefore, companies and branches are not obliged to include the unique identifier in the company letters or order forms mentioned in Directives 2009/101/EC and 89/666/EEC. They should continue to use their domestic registration number for their own communication purposes.

**Connection between the register of the company and the registers of its branches opened in other Member States:** the aim is to exchange information on the opening and termination of any winding-up or insolvency proceedings of the company and on the striking off of the company from the register, if this entails legal consequences in that Member State. While Member States should be able to decide on the procedures they follow with respect to the branches registered in their territory, they should ensure, at least, that the branches of a dissolved company are removed from the register without undue delay and, if applicable, after liquidation proceedings of the branch. This obligation will not apply to branches of companies that have been removed from the register, but which have a legal successor, such as in the case of any change in the legal form of the company, a merger or division, or a cross-border transfer of its registered office.

The Directive will not apply to the branch opened in a Member State by a company which is not governed by the law of a Member State.

It could be desirable for third countries to be able, in the future, to participate in the system of interconnection of registers.

**Updating information:** Member States should ensure that any changes of information, entered in the registers, concerning companies are updated without undue delay. The update should be disclosed, normally, within 21 days from the receipt of the complete documentation regarding those changes, including the legality check in accordance with national law. This time limit shall not be applicable as regards the accounting documents that companies are obliged to submit for each financial year. The time limit of 21 days should be suspended in cases of force majeure.

**Charging fees:** Member States shall ensure that the following particulars are available free of charge through the system of interconnection of registers; (a) the name and legal form of the company; (b) the registered office of the company and the Member State where it is registered; and (c) the registration number of the company.

In addition to those particulars, Member States may choose to make further documents and particulars available free of charge.

The Directive does not limit the rights of Member States to charge fees for obtaining information on companies through the system of interconnection of registers, if such fees are required under national law. Therefore technical measures and specifications for the system of interconnection of registers should allow for the establishment of modalities of payments. The Directive does not prejudge in this respect any specific technical solution, as the modalities of payments should be determined at the stage of adopting the implementing acts, taking into account widely available on-line payment facilities.

**Funding of the system of interconnection of registers:** the European Union and its Member States should take part in the financing of that system. Member States should bear the financial burden of adjusting their domestic registers to that system, while **the central elements - the platform and the European e-Justice Portal serving as the European single access point - should be funded from an appropriate budget line in the general budget of the Union.**

**Data protection:** the processing of personal data carried out in the context of the Directive shall be subject to Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data and Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

**Report and regular dialogue:** the Commission shall, not later than five years after the final date for application of the provisions referred to in Article 4(1a), publish a report concerning the functioning of the system of interconnection of registers, in particular examining its technical operation and its financial aspects. That report shall be accompanied, if appropriate, by proposals for amending this Directive.

**Transposition:** the system of interconnection of registers requires the Member States to make necessary adaptations consisting, in particular, in the development of an interface linking each register to the platform in order for that system to become operational. Therefore, the Directive provides for a deferred time limit for the transposition and application by the Member States of the provisions regarding the technical operation of that system. This time limit follows the adoption by the Commission of all the implementing acts concerning the technical measures and specifications for the system of interconnection of registers.

**Delegated acts:** Members consider that the power to adopt delegated acts should be conferred on the Commission in respect of charging fees for accessing company information. This does not affect fees for the maintenance and functioning of the platform at the national level. The conditions for exercising delegated powers are laid out in the text.