

Basic information	
<b>2011/0038(COD)</b>  COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Company law and corporate governance: interconnection of central, commercial and company registers  Amending Directive 2005/56/EC <a href="#">2003/0277(COD)</a> Amending Directive 2009/101/EC <a href="#">2008/0022(COD)</a>	
<b>Subject</b>  2.60.04 Economic concentration, mergers, takeover bids, holding companies 3.45.01 Company law 3.45.03 Financial management of undertakings, business loans, accounting 3.45.08 Business environment, reduction of the administrative burdens	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	JURI Legal Affairs	LECHNER Kurt (PPE)	22/03/2011
		Shadow rapporteur  REGNER Evelyn (S&D)  THEIN Alexandra (ALDE)  LICHTENBERGER Eva (Verts/ALE)  KARIM Sajjad (ECR)  MAŠTÁLKA Jiří (GUE/NGL)  SPERONI Francesco Enrico (EFD)	
European Parliament	Committee for opinion	Rapporteur for opinion	Appointed
	ECON Economic and Monetary Affairs	MARTIN Hans-Peter (NI)	08/03/2011
	IMCO Internal Market and Consumer Protection	The committee decided not to give an opinion.	
Council of the European Union	Council configuration	Meetings	Date
	Competitiveness (Internal Market, Industry, Research and Space)	3133	2011-12-05

	Education, Youth, Culture and Sport	3164	2012-05-10
European Commission	<b>Commission DG</b> Financial Stability, Financial Services and Capital Markets Union	Commissioner	BARNIER Michel

Key events			
Date	Event	Reference	Summary
24/02/2011	Legislative proposal published	COM(2011)0079	 Summary
08/03/2011	Committee referral announced in Parliament, 1st reading		
05/12/2011	Debate in Council		 Summary
26/01/2012	Vote in committee, 1st reading		
01/02/2012	Committee report tabled for plenary, 1st reading	A7-0022/2012	 Summary
13/02/2012	Debate in Parliament		
14/02/2012	Decision by Parliament, 1st reading	T7-0033/2012	 Summary
14/02/2012	Results of vote in Parliament		
10/05/2012	Act adopted by Council after Parliament's 1st reading		
13/06/2012	Final act signed		
13/06/2012	End of procedure in Parliament		
16/06/2012	Final act published in Official Journal		

Technical information	
Procedure reference	2011/0038(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	Amending Directive 2005/56/EC <a href="#">2003/0277(COD)</a> Amending Directive 2009/101/EC <a href="#">2008/0022(COD)</a>
Legal basis	Treaty on the Functioning of the EU TFEU 050-p2-ag
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	JURI/7/05464

Documentation gateway
European Parliament

Document type	Committee	Reference	Date	Summary
Committee opinion	ECON	PE464.798	19/07/2011	
Committee draft report		PE473.716	07/10/2011	
Amendments tabled in committee		PE475.794	27/10/2011	
Committee report tabled for plenary, 1st reading/single reading		A7-0022/2012	01/02/2012	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0033/2012	14/02/2012	Summary

#### Council of the EU

Document type	Reference	Date	Summary
Draft final act	00005/2012/LEX	13/06/2012	

#### European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2011)0079 	24/02/2011	Summary
Document attached to the procedure	SEC(2011)0222 	24/02/2011	
Document attached to the procedure	SEC(2011)0223 	24/02/2011	
Commission response to text adopted in plenary	SP(2012)213	21/03/2012	
Follow-up document	SWD(2023)0079	29/03/2023	

#### National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	IT_SENATE	COM(2011)0079	02/05/2011	
Contribution	PT_PARLIAMENT	COM(2011)0079	02/05/2011	
Contribution	PL_SEJM	COM(2011)0079	03/05/2011	
Contribution	RO_SENATE	COM(2011)0079	04/05/2011	

#### Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EDPS	Document attached to the procedure	N7-0069/2011 OJ C 220 26.07.2011, p. 0001	06/05/2011	Summary
EESC	Economic and Social Committee: opinion, report	CES0989/2011	15/06/2011	

Additional information		
Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act
<p>Directive 2012/0017 OJ L 156 16.06.2012, p. 0001</p> <p><a href="#">Summary</a></p>

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

2011/0038(COD) - 05/12/2011

The Council reached an agreement on a **general approach** concerning a draft directive on interconnection of central, commercial and companies' registers. The directive is aimed at improving access to up-to-date and trustworthy information on companies.

Under the **proposed system**, all Member States will engage in making possible 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.

**The interoperability of registers** should be ensured through the Member States' delivery of information from their registers, by providing services that will constitute interfaces to a European central platform. This platform will be a centralised set of information technology tools and services, used by all domestic registers.

**The European e-Justice Portal** will serve as one of the electronic access points. Companies and their branches in other Member States will have a unique identifier that allows them to be unequivocally identified.

**A multi-language support** will facilitate access and use of information both for consumers and businesses.

The future directive will require an update of three existing company law directives:

- Directive 89/666/EEC on the requirements of branches opened in other member states;
- Directive 2005/56/EC on cross-border mergers of limited liability companies; and
- Directive 2009/101/EC on coordination of safeguards, which ensures, amongst other things, that documents and particulars stored in the register can be accessed.

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

2011/0038(COD) - 01/02/2012 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Legal Affairs adopted the report by Kurt LECHNER (EPP, DE) 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.

It recommended the European Parliament's position adopted at first reading, under the ordinary legislative procedure, should be to amend the Commission proposal as follows:

**Legal basis:** the Directive should be based on Article 50 of the Treaty on the Functioning of the European Union (TFEU).

**Electronic platform:** Members stress that 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. **This interoperability of registers should be ensured by the registers of Member States ("domestic registers") providing services which should constitute interfaces to the European central platform ("the platform").**

- The platform should be a centralised set of information technology tools integrating services and should form a common interface. That interface should be used by all domestic registers. The platform should also provide services constituting an interface to the European e-Justice Portal, serving as the European electronic access point, and to 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**, an appropriate degree of Member States' involvement in this process should be ensured by establishing the technical specifications for the purpose of the public procurement by means of implementing acts.

**Scope of accessible data:** the report notes that this 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.

There should be no obligation on the Member States 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:** Members highlight that it should be made possible to establish a clear connection between the register of the company and the registers of its branches opened in other Member States, consisting in the exchange of 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 should 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.

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

**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 which companies are obliged to submit for each financial year.

**Charging fees:** this Directive **should 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 should 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:** according to Members, an equitable solution regarding the funding of the system of interconnection of registers entails that both the European Union and its Member States should take part in the financing of that system. The 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**.

**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.

**Delegated acts:** Members consider that in order to supplement non essential elements of the present directive, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of charging fees for accessing company information.

# 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.

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

2011/0038(COD) - 13/06/2012 - Final act

**PURPOSE:** to establish a system for the interconnection of central, commercial and companies registers.

**LEGISLATIVE ACT:** Directive 2012/17/EU of the European Parliament and of the Council amending Council Directive 89/666/EEC and Directives 2005/56/EC and 2009/101/EC of the European Parliament and of the Council as regards the interconnection of central, commercial and companies registers.

**CONTENT:** the Council adopted a directive setting up a **system for the interconnection of central, commercial and companies registers** aimed at improving access to up-to-date and trustworthy information on companies.

**Interoperability of registers:** under the new Directive, all EU member states will 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. This interoperability of registers should be ensured by the registers of Member States ('domestic registers') providing services, which should constitute interfaces to the **European central platform** ('the platform'). The platform should be a centralised set of information technology tools integrating services and should form a common interface. That interface should be used by all domestic registers.

The platform should also provide services constituting an interface to the portal serving as the European electronic access point, and to the optional access points established by Member States. This platform will be a centralised set of information technology tools and services, used by all domestic registers. The European **e-Justice Portal** will serve as one of the electronic access points.

Within the framework of this Directive, the portal will deal, through the use of the platform, with queries submitted 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 search results to be presented on the portal, including the explanatory labels in all the official languages of the Union, listing the information provided.

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 platform should be defined**.

**Unique identifiers:** on the basis of unique identifiers, the platform should be capable 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, such as, for example, xml) and in the relevant language version.

Companies and their branches opened in other Member States should have a unique identifier allowing them to be unequivocally identified within the Union. The identifier is intended to be used for communication between registers through the system of interconnection of registers.

**A multi-language support** will facilitate access and use of information both for consumers and businesses.

**Changes to information:** Member States should ensure that, in the event of any changes to information entered in the registers concerning companies, the information is updated without undue delay. The update should be disclosed, normally, within **21 days** from receipt of the complete documentation regarding those changes, including the legality check in accordance with national law.

That time limit should not be applicable as regards the accounting documents which companies are obliged to submit for each financial year.

**Charging of 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.

This Directive should not limit the right of Members States to charge fees for obtaining information on companies through the system of interconnection of registers, if such fees are required under national law.

**Funding of the system of interconnection of registers:** an equitable solution regarding the funding of the system of interconnection of registers entails participation both by the Union and by its Member States in the financing of that system. The Member States should bear the financial burden of adjusting their domestic registers to that system, while the central elements — the platform and the portal serving as the European electronic 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 this Directive shall be subject to Directive 95/46/EC and Regulation (EC) No 45/2001.

**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 5(2) (transposition), 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.

**ENTRY INTO FORCE:** 06/07/2012.

**TRANSPOSITION:** 07/07/2014. The Directive provides a time limit for the transposition and application of the provisions of the Directive regarding the technical operation of the system of interconnection of registers should be sufficient to enable Member States to accomplish the legal and technical adaptations needed in order to make that system fully operational within a reasonable time-frame.

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

2011/0038(COD) - 24/02/2011 - Legislative proposal

**PURPOSE:** (i) improve cross-border access to business information; (ii) ensure that up-to-date information is stored in the register of branches and establishing clear channels of communication between registers in cross-border registration procedures.

**PROPOSED ACT:** Directive of the European Parliament and of the Council.

**BACKGROUND:** the Competitiveness Council Conclusions of 25 May 2010 confirmed that **improving access to up-to-date and trustworthy information on companies** could encourage greater confidence in the market, help recovery and increase the competitiveness of European business. Business registers play an essential role in this regard.

Cross-border access to business information requires the cross-border cooperation among business registers. The High Level Group of Independent Stakeholders on Administrative Burdens was fully in support of achieving **interoperability between trade registers throughout Europe**.

The interconnection of business registers is one of the proposals in the Communication on the [Single Market Act](#) that aim to create a more business-friendly legal and fiscal environment and can also contribute to the agenda [Europe 2020](#) by improving confidence in the single market.

**IMPACT ASSESSMENT:** the issues around the interconnection of business registers were grouped in three sections:

- ***lack of up-to-date business information in the register of foreign branches:*** the impact assessment concludes that EU legislation should lay down a legal requirement for registers to cooperate by electronic means with regard to updating the registration of foreign branches and the Commission should determine the technical details of such cooperation in a delegated act.
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- **difficulties of cooperation between registers in cross-border merger and seat transfer procedures:** EU legislation should delegate powers to the Commission to determine the technical details in cross-border merger and seat transfer procedures in a delegated act;
- **difficult cross-border access to business information:** in this respect, the best option to: (i) improve the existing situation would be for EU law to lay down a requirement for Member States to participate in an electronic network of registers; (ii) determine the list of information to be transmitted through the network; (iii) determine the frequency of updating the registered information and that the Commission should determine the technical details of the cooperation in a delegated act.

LEGAL BASIS: Article 50(2)(g) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: the amendments proposed to Directives 89/666/EEC, 2005/56/EC and 2009/101/EC aim to:

- facilitate cross-border access to official business information by setting up an **electronic network of registers** and determining a **common minimum set of up-to-date information** to be made available to third parties by electronic means in every Member State;
- ensure that the business register of a company provides **up-to-date information** on the status of the company to the business register of foreign branches all across Europe;
- improve a cooperation framework between business registers in cross-border merger procedures.

More specifically, the proposal aims to

- makes sure that the documents and particulars in the Member States' business registers are always up to date. They have to make sure that the registered data is updated within 15 calendar days after the underlying change occurs. In order to comply with this requirement, Member States have to ensure that the companies file the relevant changes on time and the change is registered without delay;
- introduce a unique identifier for all European limited-liability companies that would facilitate their identification at the European level and would allow for easier identification between companies and their foreign branches. Such an identifier could also be used by other registers identifying, for example, listed companies, financial institutions or multinational groups;
- improve cross-border access to a common minimum set of registered business information by requiring Member States to make the documents and particulars listed in the proposed Directive and registered under the Directive's requirements available through a single European electronic platform, e.g. a central web-service that allows search in all EU business registers.

This proposal is complementary to the e-Justice project and should contribute to easier access to business information through the portal.

BUDGETARY IMPLICATIONS: this proposal has no implications on the EU budget.

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.

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

2011/0038(COD) - 06/05/2011 - Document attached to the procedure

**Opinion 2011/C 220/01 of the European Data Protection Supervisor 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 conclusions.**

The EDPS supports the objectives of the Proposal, and makes the following points:

**Essential data protection safeguards should be set forth in the proposal itself and should not be left for delegated acts:** the text requires disclosure of the appointment, termination of office and particulars of the persons who are (i) authorised to represent the company and/or (ii) are otherwise involved in the company's administration, supervision or control. This is not a new requirement in Member States – the novelty of the proposal is that the information which has thus far been available in a fragmented manner, often only in local languages and via local websites, will now be easily accessible, via a common European platform/access point, in a multilingual environment. The proposal leaves all further details to delegated acts.

The EDPS emphasises that the necessary data protection safeguards should be clearly and specifically provided for directly in the text of the Directive itself, since he considers them essential elements. Among the privacy risks present (due to easy availability of the data in digital form over a common electronic access point) are identity theft and other criminal activities, as well as the risk that the information disclosed may be unlawfully harvested and used by companies for commercial purposes that were not foreseen initially, after profiling the individuals concerned. Without adequate safeguards, the information may also be sold to others, or combined with other information and sold back to governments to be used for unrelated and undisclosed purposes (e.g. for tax law enforcement or other criminal or administrative investigations) without an adequate legal basis. For these reasons, it must be carefully assessed what personal information should be made available via the common European platform/access point, and what additional data protection safeguards — including technical measures to restrict search or download capabilities and data mining — should apply. Additional provisions regarding the implementation of specific safeguards can be set forth in delegated acts.

The EDPS goes on to state that the issues of **governance, roles, competences, and responsibilities** need to be addressed in the proposed Directive, rather than in the delegated acts. To this end, the proposed Directive should establish:

- whether the electronic network will be operated by the Commission or by a third party and whether it will have a centralised or decentralised structure;

- the tasks and responsibilities of each party involved in the data processing and the governance of the electronic network, including the Commission, Member State representatives, the holders of business registers in Member States and any third parties;
- specific and unambiguous elements to determine whether a particular actor should be regarded as a 'controller' or as a 'processor'.

**Legal basis:** according to the EDPS, any data exchange or other data processing activity using the electronic network (e.g. public disclosure of personal data via the common platform/ point) should be based on a binding EU act adopted on a solid legal basis. This should be clearly laid down in the proposed Directive.

**Applicable law:** since it is possible that the Commission or another EU institution/body may also process personal data in the electronic network (e.g. by acting as an

operator of the network, or by retrieving personal data from it), a reference should also be made to Regulation (EC) No 45/2001. It should also be clarified that Directive 95/46/EC applies to the business registers as well as other parties acting under their national laws in Member States, whereas Regulation (EC) No 45/2001 applies to the Commission and other EU institutions and bodies.

**Transfer of personal data to third countries:** the proposal should clarify that in principle, and with the exception of cases falling under Article 26(1)(f) of Directive

95/46/EC, transfers can only be made to a third country that does not afford adequate protection if the controller adduces adequate safeguards with respect to the protection of the privacy and fundamental rights and freedoms of individuals and as regard the exercise of the corresponding rights. Such safeguards may in particular result from appropriate contractual clauses in place under Directive 95/46/EC. Further, the Commission should assess what technical and organisational measures to take to ensure that privacy and data protection are designed into the architecture of the electronic network ('privacy by design') and that adequate controls are in place to ensure data protection compliance and provide evidence thereof ('accountability').

Other recommendations of the EDPS include:

- the proposed Directive should clearly specify that the electronic network should enable (i) on one hand, specific manual data exchanges between business registers; and, (ii) on the other hand, automated data transfers. The proposal should also be modified to ensure that (i) delegated acts will comprehensively cover both manual and automated data exchanges and (ii) all processing operations that may involve personal data (not only storage and retrieval); and that (iii) specific data protection provisions in delegated acts will ensure the practical application of relevant data protection safeguards;
- the proposal should modify Article 2 of Directive 2009/101/EC to clarify what, if any, personal data, in addition to the names of the individuals concerned are required to be disclosed. It should be also clarified whether data regarding shareholders are required to be disclosed. In doing so, the need for transparency and accurate identification of these individuals should be carefully considered but must also be balanced against other competing concerns such as the need to protect the right to the protection of personal data of the individuals concerned;
- it should be clarified in the proposal whether Member States may eventually publicly disclose more information via the common portal (and/or exchange more information with each other) based on their own national laws, subject to additional data protection safeguards;
- the proposed Directive should specifically provide that personal data that have been made available for purposes of transparency will not be misused for additional, unrelated purposes and that to this effect, technological and organisational measures should be implemented, following the principle of privacy by design.

Lastly, the proposal should also include specific safeguards with respect to notice provision to data subjects as well as a requirement to develop the modalities of an arrangement to enable data subjects to make use of their rights in delegated acts.