



Council of the
European Union

Brussels, 1 March 2024
(OR. en)

6823/24

LIMITE

DRS 28
COMPET 205
EJUSTICE 17
CODEC 561

Interinstitutional File:
2023/0089(COD)

NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. Cion doc.:	7953/23 + ADD 1-5
Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directives 2009/102/EC and (EU) 2017/1132 as regards further expanding and upgrading the use of digital tools and processes in company law - Preparation for the trilogue

I. INTRODUCTION

1. On 29 March 2023, the Commission submitted to the Council and the European Parliament a proposal for a Directive of the European Parliament and of the Council amending Directives 2009/102/EC and (EU) 2017/1132 as regards further expanding and upgrading the use of digital tools and processes in company law¹, which aims to further adapt EU company law to the ongoing digital developments.

¹ ST 7953/23+ ADD1-5.

2. The draft Directive is based on Article 50(1) and (2) of the Treaty on the Functioning of the European Union (TFEU) (ordinary legislative procedure). The draft Directive is one of the key-actions under the “Europe fit for the digital age” political priority. The proposal mainly aims to reduce administrative burden when companies use company information from business registers in cross-border situations, and to improve transparency and trust in the business environment in the Single Market, by making more information about companies publicly available and by ensuring that company information in business registers is reliable and up to date.
3. The European Economic and Social Committee delivered its opinion on 14 June 2023².
4. In the European Parliament, the Committee on Legal Affairs (JURI) has the lead responsibility. Mr. Emil RADEV (EPP, Bulgaria) was appointed rapporteur. The JURI Committee voted on its amendments to the Commission proposal on 29 November 2023. The European Parliament confirmed the JURI Committee decision to enter into interinstitutional negotiations during its plenary session on 13 December 2023.
5. At its meeting of 14 February 2024, the Permanent Representatives Committee approved the Council’s mandate for negotiations with the European Parliament³.

² 10776/23.

³ 6210/24.

II. STATE OF PLAY

6. One political trilogue took place on 15 February 2024.
7. Following discussions between the Presidency, the European Parliament and the Commission at 5 technical meetings, as well as at the Company Law Working Party at its meetings on 21 and 29 February 2024, progress has been achieved on the file.
8. In view of seeking a mandate from the Permanent Representative Committee for the second and last trilogue foreseen on 13 March 2024, the Presidency is exploring possible compromises that could provide the basis for an agreement with the European Parliament. The aim is to find solutions that are workable in practice, ensure legal certainty and do not entail excessive costs for companies and administrations. The main elements of the compromise suggestions are explained under Section III.

III. MAIN ISSUES

9. Part 1.

10. During the technical meetings, the Presidency explained the work done in the Council and the Parliament could accept most of the changes from the Council mandate. However, a number of important issues remain to be resolved. After discussions in the two Working Party meetings, the Presidency considers that there is a margin of flexibility for negotiations with the European Parliament (EP) on a number of issues. These elements include:

- i) the insertion of the object of the company in the EU Company Certificate with the use of NACE codes, where these codes are used pursuant to applicable national law, and where the object is recorded in the national register;
- ii) shorter deadline for updating the information in the national registers, along the lines discussed in the Working Party meetings;
- iii) clarification of the scope of the Digital EU Power of Attorney in the operative part, and listing some elements that should be included in the template;
- iv) the disclosure of the particulars of limited partners and make them available through the system of interconnection of registers (BRIS), where this information is made publicly available in the national register;
- v) a review clause on the possible future extension of the Company Law Directive to cooperatives;
- vi) slightly shorter deadlines for the transposition and application of the Directive, along the lines discussed in the Working Party meetings;
- vii) each company in Annexes II and IIB can obtain its EU Company Certificate in electronic form free of charge at least once per calendar year.

11. **Part 2.**

12. During the negotiations, the EP has already agreed provisionally on many elements which are important for the Council (e.g., provisions on translations, disclosing particulars of limited partners only where made publicly available in the national register, etc.). However, to ensure the EP's ultimate support on these elements, to be able to reach an overall agreement that maintains the General Approach on other core political issues (e.g., on points such as the EP's position on requesting a written instrument for partnerships, or introducing an assessment of equivalence by the Commission) and to be able to maintain a strong negotiating position against mandatory filing/disclosure of the power of attorney in the business register, additional flexibility is required with respect to the transparency-related requests by the EP. As the issues listed in part 1 will not be sufficient for the EP, the Presidency asks for flexibility in order to move ahead in the negotiations.
13. Therefore, in addition to the aforementioned elements on which the Council would be able to show flexibility, the Presidency invites COREPER to accept the following point to reach a compromise:
- i) companies in Annexes II and IIB can obtain their EU Company Certificate in electronic form free of charge, unless this causes serious prejudice to the financing of the national register, in which case the price cannot exceed the administrative cost thereof, including the costs of development and maintenance of registers.
14. In addition, the Presidency invites COREPER to indicate if they cannot accept the following point:
- ii) to exchange, free of charge through the system of interconnection of registers, information on groups of companies. Only parent companies listed in Annex II or IIB would fall under the scope of this provision, if they publish financial statements in accordance with the accounting directive. Member States can either retrieve this information from the financial statements by automated means, or decide to introduce an obligation for parent companies to submit additional data in a data extractable format. Longer transposition and application deadlines would apply.

IV. CONCLUSION

15. The Presidency is of the opinion that compromises as outlined above could cater for the most important concerns of the European Parliament, while preserving the essential aspects of the Coreper mandate, and that an approach along the lines suggested would thus pave the way for an overall balanced compromise package on this important proposal. The Presidency is therefore hopeful that such a compromise could be supported by a majority of delegations.
16. The Permanent Representatives Committee is invited to:
- confirm the flexibilities asked for in Section III, part 1 above;
 - examine the proposal as set out in Section III, part 2 above, and indicate if they cannot accept it; and
 - mandate the Presidency to continue the negotiations with the European Parliament at the second and last trilogue scheduled on 13 March 2024 on the basis of the approach outlined above.
-