Council of the European Union
General Secretariat

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Interinstitutional files:
2026/0074 (COD)

Brussels, 14 September 2026

WK 13964/2026 INIT

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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Company Law
Subject:	Irish Presidency Flash 17 September 2026 - Company Law WP meeting

Delegations will find attached the Irish Presidency Flash in view of the Company Law Working Party meeting on Thursday 17 September 2026.

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A chairde,

This Working Party will be dedicated to two subjects:

1. Morning session: Continued examination of the second Presidency compromise; and
2. Afternoon session: Employee participation.

1. MORNING SESSION: CONTINUED EXAMINATION OF THE SECOND COMPROMISE

Please refer to the flash from the 10 September Working Party (WK 13584/2026) which outlines the main changes in this text. Please also refer to the compromise itself (ST 12824/26).

Delegations have now had more time to digest and analyse the text. As you know, written comments are due on **18 September**, the day after this Working Party.

As also announced at the 10 September Working Party, the Presidency considers that the text is approaching technical maturity after two rounds. Given the deadline imposed by our leaders, we now need to focus in on the most fundamental issues.

In light of this, **Delegations are invited to do three things**:

1. **Outline the (at most) four most important aspects of the text which should not be changed and (at most) four most important aspects which should be changed**. In selecting these issues, Delegations are invited to leave to one side the political issues that are reserved to Coreper level (legal basis, employee participation and EU-ESOs). Those positions are taken as read.
2. **Ask any other questions seeking clarification**.
3. **Address the three specific question set out below regarding Article 52 and 52a**.

Further detail on point 3: Withdrawal and expulsion of shareholders

In the Commission proposal, **Article 52 on withdrawal of a shareholder** provides for a right of withdrawal for a shareholder where a court finds that the company's affairs are being or have been conducted "*in a manner oppressive to him or her*". The accompanying recital 37 of the Commission proposal explains that this Article is a means to protect minority shareholders in exceptional cases of flagrant prejudice and lists examples of potential cases of such flagrant prejudice[1] but emphasises that the assessment of the conditions for withdrawal would be reserved to the court, which should take into account all relevant circumstances of the individual case.

The first and second Presidency compromise text include several technical amendments to the Article 52, notably clarifying that the right of withdrawal is conditioned on the company's affairs

[1] *"[…] for example, cases where the company has been deprived of a significant proportion of its assets, where the general meeting has instructed directors to miss a significant business opportunity without the consent of the withdrawing shareholder or where the company's activities have changed substantially"*.

or the powers of the directors being or having been conducted "in a manner that unjustly harms or excludes a shareholder".

The first and second Presidency compromise texts also introduce a new **Article 52a on expulsion of a shareholder** which allows for the articles of association to provide for the conditions and procedures for the expulsion of a shareholder. Article 52a furthermore includes some mandatory procedural rules for such expulsion, as well as default rules which may be displaced by alternative provisions in the articles of association.

Member States have expressed different views on both Article 52 on withdrawal and on Article 52a on expulsion. Against this background, the Presidency invites the delegations to provide their views on Articles 52 and 52a, with a particular focus on the questions below.

Questions for delegations on point 3 (withdrawal/expulsion)

1. **Should the Regulation:**
   a. Provide for a mandatory right of withdrawal, expulsion or both?
   b. Permit the articles of association to provide for such a right/rights?

2. **What should the mandatory or default rules for such a procedure:**
   a. **Should either (or both) require a court order?**
   b. **Should the grounds for either (or both) be:**
      (i) open-ended and entail case-by-case assessment (e.g. conduct that '*unjustly harms or excludes a shareholder'*); or
      (ii) based on a closed list? If the latter, please specify the grounds.
   c. **Who should pay for either (or both)?**
      (i) The remaining shareholders should purchase the withdrawing/expulsed shares; or
      (ii) The company should purchase the withdrawing/expulsed shareholder's shares. In this case, what should happen if purchasing the shares would jeopardise the company's financial viability?
   d. **Should either (or both) also apply to listed EU Inc. companies?**

3. **Should the procedural rules set out in Question 2 be:**
   a. Mandatory (the articles of association may not depart from them); or
   b. Default (i.e. the articles may lay down different rules, or establish a separate right of withdrawal/expulsion with different grounds)?

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2. PM SESSION: EMPLOYEE PARTICIPATION

Please refer to the flash from the 1 September Working Party (WK 11202/2026) which outlines the context. Please also refer to recital 16, Article 12, Article 26(1)(b) and Article 103a of the second Presidency compromise (ST 12824/26). This compromise notably presents two options:

- Option 1: a reinforced version of the Commission proposal.
- Option 2: a refined version of the German proposal.

As explained in the 10 September flash (WK 13584/2026), the Presidency intends to refine the drafting of the two options at technical level, thereby enabling Coreper to take an informed political decision.

The aim of this afternoon session is to achieve that refinement.

There is broad agreement that this may prove **the most sensitive point in the negotiations,** particularly with the Parliament. There is also broad agreement that a solution needs to be found to address the concerns regarding employee participation, without unduly undermining the EU Inc. proposal's ambition. The Presidency is grateful for Delegations' constructive engagement and willingness to find a solution, and asks that this continues.

A. Option 1

In the second compromise text, Option 1 consists of four components:

- Art.12: the employee participation law of the Member State of registration applies.
- Art.26: EU Incs must publish employee numbers broken down by Member State.
- Recital 16: Clarity that this rule is limited to employee participation because it *'directly affects a company's essential corporate structure'*. Clarity that all other worker involvement law, and any employment law, are not affected.
- Art.103a: abuse clause for wholly artificial arrangements. Specific clarification that this could include circumvention of employee participation rules.

Nevertheless, Option 1 could go further to address the concerns of those Delegations and Parliament factions that seek strong protection for employee participation rules. Whilst it caters for situations of abusive wholly artificial arrangements, these are difficult to prove. It also does not address cases where there is no abuse, but MS B's employee threshold is nevertheless exceeded.

i. Possible drafting changes

The Presidency is considering strengthening Option 1 by adding the following language to Article 12 (**Option 1+**):

> *'2a. Where:*
>
> *a. the majority of an EU Inc.'s EU-based employees habitually work in a Member State ('Member State B') other than the Member State of registration;*
> *b. the number of employees of the Member State B branch or branches exceeds Member State B's employee participation threshold; and*
> *c. the employee participation rules in the Member State of registration do not provide for at least the same level of employee participation, measured in accordance with Article 160l(2), point (a), as those of Member State B,*

then this may be an indicative factor suggesting that the EU Inc. is operating as a wholly artificial arrangement designed to circumvent Member State B's employee participation law within the meaning of Article 103a.'

A stronger variation of this option could be as follows (**Option 1++**).

'*2a. Member States may choose whether to apply paragraph 2b. Member States that choose to apply it shall communicate the applicable employee participation threshold to the Commission, which shall publish them via the central interface.'*

2b. Where:

a. the majority of an EU Inc.'s EU-based employees habitually work in a Member State ('Member State B') other than the Member State of registration, and
b. the number of employees of the Member State B branch or branches exceeds Member State B's employee participation threshold,

then the EU Inc. shall undertake a division by separation, or other appropriate action, in order to create a subsidiary in Member State B that employs Member State B employees.

2c. For the purposes of paragraph 2a, the number of employees shall be the average number of employees employed during the previous financial year.'

Turning things around, this **Option 1++** is like Option 2 (mandatory spinoff), but limited to cases where most of the employees are in Member State B. Imagine Member State B's threshold for employee participation is 300 employees. If an EU Inc. based in Member State A has 1000 employees across the EU, of which 400 are in Member State B, then Member State A's employee participation rules still apply. But if it only has 700 employees across the EU, with 400 in Member State B, then Member State B can require a spin-off, and so the application of their employee participation rules.

ii. Questions for Delegations

Q1: Could Option 1 be further strengthened?

A. No. Option 1 only.

B. Yes: Option 1+.

C. Yes: Option 1++

D. Yes: *other <u>specific</u> drafting proposals*.

Q2: Could you live with Option 1? If not, what <u>specific drafting</u> changes (other than those listed above) could help you to live with it?

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B. Option 2

In the second compromise text, Option 2 consists of the following:

- Art.12: MS A's employee participation law applies.
- Art.12(2a and 2c): However, an EU Inc. may not exceed the employee participation threshold in MS B in two consecutive financial years. Where it exceeds that threshold in one financial year, it must take appropriate steps, such as carrying out a division by separation, creating a subsidiary under MS B's law (or take other steps to stop exceeding the threshold). In most cases, MS B's employee participation law will apply to the subsidiary.[2]
- Art.12(2b): this mechanism is entirely optional for Member States.
- Art.12(2d): simplifications to the cross-border conversion process (to be fleshed out).

Four issues require consideration here.

i. Optionality and enforcement

The second compromise made this mechanism entirely optional for Member States. Even if a Member State chooses to apply employee participation rules to domestic EU Incs, they are not required to limit the freedom of establishment of foreign EU Inc. companies. The Presidency wishes to confirm that Member States desire this optionality (**Suboptions A vs B)**.

Additionally, some Delegations suggested that this obligation could be enforced privately, i.e. by employees, rather than publicly, i.e. by national authorities. The Presidency has doubts about this obligation being purely private. However, it proposes the following text, based on the original German proposal. The obligation remains of a mandatory, public-law nature, but national authorities are not required to monitor or proactively ensure compliance (**Suboption C**).

Suboption	Text
Suboption A (optional)	*Art.12(2b): Member States may choose whether to apply paragraph 2c. Member States that choose to apply it shall communicate the applicable employee participation threshold to the Commission, which shall publish them via the central interface.*
Suboption B (mandatory)	*Art.12(2b):* ~~***Member States may choose whether to apply paragraph 2c.***~~ *Member States* ***whose*** ~~***that choose to***~~ ***employee participation rules apply to EU Incs*** ~~***it***~~ *shall communicate the applicable employee participation threshold to the Commission, which shall publish them via the central interface.*
Suboption C (optional + privately enforced)	*Art.12(2b): Member States may choose whether to apply paragraph 2c. Member States that choose to apply it shall communicate the applicable employee participation threshold to the Commission, which shall publish them via the central interface.* ***Those Member States shall also ensure that employees and their representative are able to institute proceedings to enforce the obligation laid down in paragraph 2c, and that their courts and authorities have jurisdiction to enforce that obligation****.* Recital 16: **'[…]** ***In the first instance, it should be for employees and their representatives to enforce this obligation, if necessary via court proceedings. Member State authorities should not be obliged to monitor employee numbers on their territory on a proactive basis.'***

[2] In certain cases, e.g. where there are employee participation rules in both MS A and MS B and so negotiation is required (Article 160l of Directive 2017/1132), different rules may ultimately apply.

Q3: In terms of enforcement and optionality, which suboption do you prefer: A, B or C?

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ii. Formulation of the mechanism

Two models have been presented:

- The German proposal envisaged **mandatory division by separation**. If a foreign EU Inc. company exceeds the employee threshold for a certain period, it must undertake a separation by division. That separation by division must lead to the subsidiary obtaining all of the former branch's assets and liabilities, including all of its employees.

  This model aims to ensure that the MS B branch is converted, as closely as possible, into a MS B subsidiary. Because it requires the EU Inc. to achieve a specific result in a specific way, it may have disadvantages. First, the EU Inc. is required to use one method. It cannot use other methods to achieve the same result (e.g. creating a subsidiary and transferring the employees to that subsidiary). Nor does it have any discretion as to how the assets and liabilities are divided. Second, it provides no leeway if circumstances change during the division (which could take over a year), e.g. if the business environment changes and the EU Inc. needs to rebalance its presence in Member State B. Third, it provides no leeway if the division by separation runs into an obstacle, e.g. if the general meeting votes against or Member State A's authorities refuse a pre-conversion certificate.

- The second Presidency compromise envisaged a **prohibition on exceeding the threshold for two consecutive financial years**. If a foreign EU Inc. exceeds the threshold in financial year one, it must take steps to avoid exceeding it in a second year. The text specifically identifies division by separation as one course of action.

  This model aims to respect the EU Incs' freedom of action, particularly in the situations where 'leeway' is required. However, some Delegations found it more difficult to understand. Moreover, there was concern that this model risked, politically, signalling that the EU Inc. could take undesired actions (such as repatriating or even laying off workers in Member State B).

In light of this discussion, the Presidency proposes three alternatives below. **Suboption A** is a revised version proposed by the German Delegation. **Suboption B** is a refined version of Subotpion A, providing leeway in the case that circumstances change. **Suboption C** is a revised version of the second compromise proposal, which leaves freedom to the company without implying that lay-offs or repatriation of employees could be a suitable approach.

Suboption	Text
Suboption A (new DE model)	*Art.12(2c):* *If the average number of Member State B employees during the financial year exceeds the applicable employee participation threshold under Member State B's law for two consecutive financial years, the EU Inc. company shall undertake a division by separation, in accordance with Chapter IV of Title II of Directive (EU) 2017/1132, with the aim of creating a subsidiary that has its registered seat in Member State B and is employing the Member State B employees.* *The subsidiary shall take the legal form of an EU Inc. or any other company that is subject to employee participation.*
Suboption B (new DE model + leeway)	*Art.12(2c):* ***Where*** ~~*If*~~ *the average number of Member State B employees during the financial year exceeds the applicable employee participation threshold* ~~***under Member State B's law for two consecutive financial years***~~*, the EU Inc. company shall undertake a separation by division, in accordance with Chapter IV of Title II of Directive (EU) 2017/1132, with the aim of creating a subsidiary whose registered seat is in Member State B and* ***which employs*** ~~***is employing***~~ *the Member State B employees.* *The subsidiary shall take the legal form of an EU Inc. or any other company form that is subject to the same employee participation rules.* ***The EU Inc. shall complete the division by separation by the following financial year. Where circumstances change in the intervening period, Member State B's authorities shall assess whether alternative action is appropriate.***
Suboption C (compromise model + further freedom)	*Art.12(2c):* ***Where*** ~~*If*~~ *the average number of Member State B employees during the financial year exceeds the applicable employee participation threshold* ~~***under Member State B's law for two consecutive financial years***~~*, the EU Inc. company shall* ***ensure respect for Member State B's employee participation rules, insofar as concerns the Member State B employees, by the end of the following financial year. The EU Inc. has freedom as to how to achieve this, including by:*** ***(a) Undertaking a separation by division, in accordance with Chapter IV of Title II of Directive (EU 2017/1132, in order to form a subsidiary in Member State B which employs the Member State B employees;*** ***(b) Forming such a subsidiary with such employees in any other way;*** ***(c) Amending its articles of association to grant the employees the rights required by Member State B law, insofar as consistent with Member State A's law and with this Regulation; or*** ***(d) Taking any other steps that achieve compliance.***

Q4: In terms of the functioning of the mechanism, which suboption do you prefer: A, B or C?

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iii. Simplification of procedures

Some Delegations expressed concern about the burden of the procedure for division by separation (art.160a-160u Directive 2017/1132). This process involves several steps, including:

- The drawing up and publication of the draft terms, at least one month before the general meeting (art.160d, art.160g), together with implementation of employee information and consultation rights (art.160k);
- Decision by the general meeting (art.160h);
- Outbound procedures in parallel (any creditor challenges (art.160j), employee participation negotiation in certain cases, which can take over a year (art.160l), and the outbound authorities' scrutiny of the procedure, which can take 3-6 months (art.160m);
- Inbound authorities' scrutiny and registration (arts 160o and 160p).

(Certain other steps, such as the independent expert report, do not apply: Article 160s).

The German delegation has proposed the following text and footnote to simplify the procedures:

> *'2d. If an EU Inc. company has to undertake a division by separation according to paragraph [2c] sentence 3 and applicable national law, the procedure applicable to such division by separation shall be simplified as follows:*
>
> > *(a) the EU Inc. shall be exempted from the disclosure requirement in accordance with Art. 160g par. 2 of Directive (EU) 2017/1132;*
> >
> > *(b) the information referred to in Art. 160g par 3 shall not be submitted to the register but to the shareholders registered in accordance with Art. 54;*
> >
> > *(c) for purposes of the registration the once-only-principle applies[3];*
> >
> > *(d) Art. 160d lit. e), h) and k), Art. 160g paragraph 5 and 6, Art. 160h paragraph 2, and Art. 160l of Directive (EU) 2017/1132 shall not apply; the company resulting from the division by separation shall be subject to the employee participation provisions of the Member State where it has its registered office.*
>
> *Member States shall ensure the registration of the company resulting from the division by separation in accordance with lit. c) through e).'*

[3] '*For purposes of the registration of the division by separation in the registers of both the company being divided and the company resulting from the division by separation the company being divided shall only be required*

(1) to apply for issuance of the pre-division certificate pursuant to Art. 160m of Directive (EU) 2017/1132,
(2) to apply for registration of the division by separation with its register pursuant to Art. 160p of Directive (EU) 2017/1132, and
(3) to submit the information and documents that are required for the registration of the company resulting from the division of separation to its register;

For the registration of the recipient company, the register of the company being divided shall include into the transmission according to Art. 160n the information referred to in lit (c) Nr. 3; the involved registers shall initiate and complete all subsequent proceedings without any further applications by the company or its directors being required; the exchange of documents and information shall be facilitated through the system of interconnection of registers;

For purposes of registration of the recipient company according to lit. b), the register of the recipient company shall only request further information and documentation from the company to be divided to the extent such information or documentation is not obtainable through consultation with other relevant authorities;'

These simplifications notably disapply the potentially most lengthy and burdensome part (Article 160l on employee participation). This means that if Member State A's employee participation law is more favourable than Member State B's, the Member State B employees will not be able to rely on the negotiation procedure or default rules set out in Article 160l. The justification for this is that here, unlike in the case of voluntary cross-border mobility, the law mandates the division by separation precisely in order to guarantee employee participation rights.

Q5: Could the Mobility Directive's division by separation rules be simplified?

A. No. The existing rules should apply in full.

B. Yes. Include some of the proposed simplifications (please list and explain).

C. Yes. Include all of the proposed simplifications.

iv. Option 2: overall

Q6: Could you live with Option 2? If not, what <u>specific further drafting</u> changes could help you live with it?

The Irish Presidency Team

14 September 2026

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