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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Company Law
Subject:	Irish Presidency Flash 29 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 29 September 2026.

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Flash: 29 September 2026 Company Law Working Party – EU Inc.

A chairde, dear colleagues,

This Working Party will be dedicated to discussion on various more technical issues. This aims to respond to several Delegations' request for dedicated Working Party time to discuss such issues in advance of the third compromise text. To ensure that all Delegations have time to air their views, please keep in mind that brevity is the soul of wit.

1. Morning session:
    a. First round: Directors' duties (Article 44) and groups;
    b. Second round: Digital share register and share transfers (Articles 54 and 59).

2. Afternoon session: Any final technical issues Delegations wish to raise.

1. MORNING SESSION, FIRST ROUND: DIRECTORS' DUTIES (ARTICLE 44) AND GROUPS

As recital 34 explains:

- There is a '*harmonised set of general **directors' duties***', without prejudice to other duties that may arise in specific cases such as in view of insolvency; and

- **Directors' liability** to is primarily left to national law; however, '*the core of liability towards the company, and exceptiosn to that liability, should be harmonised*.'

Delegations have raised various concerns and questions. Several of these have been addressed in the first and second compromise texts, such as the inclusion of de facto and shadow directors. In general, it seems that an appropriate balance has already been reached: some Delegations request less harmonisation, others request more, and still others think the balance is right.

However, two issues in particular seem to require further discussion:

- Whether the harmonised duties are clear enough – particularly concepts like '*best interests of the company*' (Article 44(1)(b));

- The appropriateness and functioning of the so-called "business judgement rule" in Article 44(3)(a).

In the second compromise text, the Presidency sought to clarify the meaning of 'best interests' (recital 34) and raise the standard of the 'business judgement rule' by requiring professional, rather than reasonably prudent, care. However, some Delegations request further clarification of the meaning of 'best interests' and find the word 'professional' less clear.

Additionally, one Delegation has proposed wording to deal with the specific situation of groups (see **Annex**). This proposal is linked to Article 44 because, amongst other things, it would require directors of a parent company to take into account the '*corporate interests of the subsidiary*' and it would exempt directors of subsidiaries from liability where they follow instructions of the parent company '*issued in the legitimate interests of the group*'. This

proposal would have the advantage of bringing further harmonisation to the EU Inc. proposal. The EP Rapporteur has also proposed provisions in this respect.[1] At the same time, the Presidency is conscious that group law is one of the most complex and contested areas of company law, and that previous attempts to harmonise it at EU level have not succeeded.

The Presidency is considering proceeding, in the third compromise text, as follows:

- Providing more detail (without being exhaustive) on the meaning of '*best interests of the company*';
- Adjusting the so-called 'business judgement rule' in Article 44(3)(a) as follows:
    - Making clear that the burden is on the director, not the company, to prove that this exception (or indeed the Article 44(3)(b) exception) applies;
    - Replacing the phrase '*exercised the care to be expected of a professional*' with '*exercised the care that a reasonably diligent and prudent director would use*'; and
    - Clarifying in the recitals that the final part of the rule – '*and had the reasonable belief that he or she was acting in the best interests of the company*' – requires that the belief be objectively reasonable, which allows national courts to assess the substance of the decision.

Additionally, the Presidency is considering whether to include text on EU Inc. groups, based on the **Annex** proposal.

Q1: Do Delegations agree with the above proposals on Article 44? Do you have any specific wording proposals, including for the partial definition of '*best interests*'?

Q2: Do Delegations agree with the proposal to include certain provisions on groups?

2. MORNING SESSION, SECOND ROUND: DIGITAL SHARE REGISTER AND SHARE TRANSFERS (ARTICLES 54 AND 59)

Digital share register (Article 53)

Please refer to Articles 53(1), 54(1) and 54(1a) of the second Presidency compromise (ST 12824/26) and to Recitals 38, 38a and 38aa.

Under the EU Inc. proposal, shares of an EU Inc. are dematerialised and recorded in a digital register and registration in that register has constitutive effect. That is, it evidences share ownership and, under Article 59(6), a transfer of shares becomes effective only upon its registration. Article 54(1a) allows the EU Inc. to outsource maintenance of the register to a third party while keeping the EU and its directors solely responsible for its accuracy. Recital 38 explains that this approach, already used in several Member States, ensures a high level of legal certainty and trust between market participants, and that where the duties imposed on the company are not followed, aggrieved parties would have a remedy pursuant to applicable national tort or other law.

[1] PE791.130v-01-00, Amendment 1224 (Article 44a).

A number of delegations have raised concerns about this model. The core concern is that in several Member States, ownership of shares under national law derives from the underlying legal transaction rather than from a register entry. Under those systems, making registration in a company-maintained private register constitutive of property in the share deviates from national law and could be require difficult changes. Additional concerns have been raised regarding the risk of manipulation of company-maintained registers and the evidentiary difficulties this creates for shareholders seeking to challenge inaccurate entries.

The Presidency sees three ways forward, described below under **Q3.**

Share transfers (Article 59)

A central objective of the EU Inc. proposal is to facilitate investment and financing in EU Incs. To that end, it is important to have a clear, simple, digital way for investors to trade shares. There is broad support for this approach. At the same time, certain Delegations are concerned about possible risks linked to such transfers, and propose to increase the checks and reporting that EU Inc. companies must carry out. In line with those requests, the second Presidency compromise incorporated an obligation to notify the tax authorities about transactions (art.59(10a)). One Delegation has objected to this addition; others wish to add further obligations.

Q3: Regarding the digital share register, which of the following do you support:

1. **Retain the current approach;**
2. **Keep the digital share register, but remove its constitutive effect. The register would be binding only vis-à-vis the company, otherwise being merely evidentiary. National law would then govern the actual constitution of property in such shares; or**
3. **Another approach? Please send specific drafting in writing.**

Q4: Regarding share transfers, should the checks and reporting obligations be:

A. **Reduced? Please give specific drafting in writing;**
B. **Kept as in the second Presidency compromise; or**
C. **Increased? Please give specific drafting in writing.**

3. AFTERNOON SESSION: ANY FINAL ISSUES

Delegations are free to raise any final technical topic which would benefit from specific discussion and attention. There have been two drafting rounds and two working parties examining the second compromise text, and the Presidency is carefully studying all of the written comments Delegations have already sent. Delegations are kindly invited not to relitigate issues but to focus on technical topics where further discussion would add new value, limiting their interventions to **three minutes at most**.

The Irish Presidency Team

24 September 2026

ANNEX: Possible drafting on groups

Below is the text as proposed by one Delegation, with limited editorial adjustments.

Article 2

Definitions

[…]

(31) 'group of companies' means a parent company and its subsidiaries;

(32) 'parent company' means an EU Inc. company that fulfils the criteria of Article 41a(2);

(33) 'subsidiary' means a company whose activity is subject to the management and coordination of a parent company.

[…]

Article 41a

Group of companies

1. An EU Inc. may act as a parent company or as a subsidiary within a group of companies. An EU Inc. that is a parent company shall act in the interests of the group.

2. An EU Inc. shall be considered as a parent company, managing and coordinating the activity of its subsidiaries, where it:

   (a) holds, directly or indirectly, a majority of the voting rights in a subsidiary;

   (b) has the right to appoint or remove a majority of the members of the management body of a subsidiary;

   (c) has the right to exercise a dominant influence over a subsidiary pursuant to its articles of association, a shareholders' agreement or any other legal arrangement; or

   (d) effectively exercises a dominant influence over a subsidiary.

Article 41b

Management and coordination of subsidiaries' activity

1. In the management and coordination of the subsidiary, the parent company shall duly consider the corporate interests of the subsidiary.

2. A parent company shall be liable towards the subsidiary's shareholders and creditors where the subsidiary suffers harm as a result of the parent company's management and coordination being exercised to the detriment of the subsidiary's interests and there are no compensatory benefits arising from being part of the group.

3. Directors of a subsidiary shall not incur liability solely because they acted in accordance with parent company instructions issued in the legitimate interests of the group.

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Article 41c

Intragroup transactions

1. Transactions between an EU Inc. and another undertaking belonging to the same group shall be carried out on terms that are fair and reasonable for the EU Inc.

2. Material intra-group transactions shall be documented by the board of directors of the EU Inc., including an explanation of the economic rationale of the transaction, the expected benefits and risks for the EU Inc. and any measures adopted to mitigate conflicts of interest.

3. The documentation referred to in paragraph 2 shall be made available to the supervisory board, where established, and to shareholders, upon request, subject to the protection of trade secrets and confidential information.

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