



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 27 February 2012

6387/12

**Interinstitutional File:
2011/0038 (COD)**

**CODEC 349
DRS 24
EJUSTICE 14
PE 55**

INFORMATION NOTE

from:	General Secretariat
to:	Permanent Representatives Committee/Council
Subject:	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 – Outcome of the European Parliament's first reading (Strasbourg, 13 to 16 February 2012)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

¹ OJ C 145, 30.6.2007, p.5

In this context, the rapporteur, Mr Kurt LECHNER (EPP, DE) presented a presented a report on the proposal for a Regulation containing 68 amendments, on behalf of the Committee on Legal Affairs. These amendments reflect what had been agreed during the informal contacts referred to above.

II. VOTE

When it voted on 14 February 2012, the plenary adopted the report containing 68 amendments. The result of the vote corresponds to what was agreed between the three institutions and ought therefore to be acceptable to the Council. Consequently, once the Legal/Linguistic Experts have examined the text, the Council should be in a position to adopt the legislative act.

The text of the report adopted and the European Parliament's legislative resolution are set out in the Annex hereto. The amendments are presented in the form of a consolidated text where added wordings are highlighted in ***bold and italics***, the symbol "■" indicates deleted text.

Interconnection of central, commercial and companies registers *I**

European Parliament legislative resolution of 14 February 2012 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 (COM(2011)0079 – C7-0059/2011 – 2011/0038(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0079),
 - having regard to Article 294(2) and Article 50 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0059/2011),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 15 June 2011¹,
 - having regard to the opinion of the European Data Protection Supervisor of 6 May 2011²,
 - having regard to the undertaking given by the Council representative by letter of 27 January 2012 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Economic and Monetary Affairs (A7-0022/2012),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C 248, 25.8.2011, p. 118.

² OJ C 220, 26.7.2011, p. 1.

Position of the European Parliament adopted at first reading on 14 February 2012 with a view to the adoption of Directive 2012/.../EU 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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular *Article 50* thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

■

Acting in accordance with the ordinary legislative procedure²,

Whereas:

- (1) Businesses *are* increasingly *expanding* beyond national borders, using the opportunities offered by the internal market. Cross-border groups, as well as ■ many restructuring operations, such as mergers and divisions, involve companies from different Member States. Consequently, there is an increasing demand for access to information on companies in a cross-border context. *However*, official information on companies is ■ not always *readily* available on a cross-border basis.
- (2) ■ Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company

¹ OJ C 248, 25.8.2011, p. 118.

² Position of the European Parliament of 14 February 2012.

governed by the law of another State¹ establishes the list of documents and particulars that companies have to disclose in the register of their branch. However, there is no legal obligation on the registers to exchange data concerning foreign branches. This leads to legal uncertainty for third parties *as despite the removal of the company from the register its branch may continue to operate.*

- (3) Operations such as cross-border mergers ■ have made day-to-day cooperation *between* business registers a necessity. Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies² requires the registers to cooperate across borders. There are, however, no established channels of communication that could accelerate procedures, help overcome ■ language problems and enhance legal certainty.
- (4) Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty, with a view to making such safeguards equivalent³ ensures, *inter alia*, that documents and particulars stored in the register can be accessed by paper *means* or by electronic means. However, citizens and companies still need to search *the register on a country-by-country basis*, in particular *because* the current voluntary cooperation between registers has not proved to be sufficient.
- (5) The Commission Communication on the Single Market Act identified the interconnection of central, commercial and companies registers as a measure *required* to create a more business-friendly legal and fiscal environment. The interconnection should contribute to *fostering* the competitiveness of European business by reducing administrative burdens and increasing legal certainty and thus *contributing to an exit from* the crisis, *which is* one

¹ OJ L 395, 30.12.1989, p. 36.

² OJ L 310, 25.11.2005, p. 1.

³ OJ L 258, 1.10.2009, p. 11.

Editorial note: The title of Directive 2009/101/EC has been adjusted to take account of the renumbering of the articles of the Treaty establishing the European Community, in accordance with Article 5 of the Treaty of Lisbon; the original reference was to the second paragraph of Article 48 of the Treaty.

of the priorities of the agenda Europe 2020. It should also improve cross-border communication between registers by using ■ innovations *in* information and communication technology.

- (6) The Council Conclusions of 25 May 2010 on the interconnection of business registers¹ 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.
- (7) The European Parliament ■ in its resolution of 7 September 2010 on the interconnection of business registers *emphasised* that the usefulness of the project for the further integration of the European Economic Area can only be exploited if all Member States take part in the network.

¹ 9678/10.

- (8) The ***Multi-annual*** European e-Justice Action Plan ***2009-2013***¹ provides for the development of a European e-Justice portal ("the portal") as the single ***European electronic*** access point for legal information, legal and administrative institutions, registers, databases and other services and considers the interconnection of central, commercial and companies registers ***to be*** important ■ .
- (9) 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 portal, serving as the European electronic access point, and to the optional access points established by Member States. The platform should only be conceived as an instrument for the interconnection of registers and not as a distinct entity possessing legal personality. 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, such as, for example, xml) and in the appropriate language version.***
- (10) ***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 those 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. Those data should be used for the purpose of carrying out***

¹ ***OJ C 75, 31.3.2009, p. 1.***

of the functions by the platform and should never be made publicly available in a direct form. 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.

- (11) Since the objective of this Directive is not to harmonise national systems of central, commercial and companies registers, there is no obligation on the Member States to change their internal systems of registers, in particular as regards the management and storage of data, fees, and the use and disclosure of information for national purposes.*
- (12) Within the framework of this Directive, the 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 information provided. In addition, in order to improve the protection of third parties in other Member States, basic information on the legal value of particulars and documents disclosed pursuant to the laws of Member States adopted in accordance with the provisions of Directive 2009/101/EC should be available on the portal.*
- (13) Member States may establish one or more optional access points, which may have impact on the use and operation of the platform. Therefore, the Commission should be notified of their establishment and of other significant changes to their operation, in particular of their closure. Such notification should not in any way restrict the powers of Member States as to the establishment and operation of the optional access points.*
- (14) 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 registers. Therefore, companies and branches are not obliged to include the unique identifier in the company letters or order forms mentioned in Directives 89/666/EEC and 2009/101/EC. They should continue to use their domestic registration number for their own communication purposes.*
- (15) It should be made possible to establish a clear connection between the register of a 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.

- (16) *This Directive should not apply to a branch opened in a Member State by a company which is not governed by the law of a Member State, as provided for in Article 7 of Directive 89/666/EEC.*
- (17) Directive 2005/56/EC should also be amended in order to ensure that communication between registers is carried out through the *system of interconnection* of registers.
- (18) *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 receipt of the complete documentation regarding those changes, including the legality check in accordance with national law. This time-limit should be interpreted as requiring Member States to make reasonable efforts in order to meet the deadline laid down in this Directive. It shall not be applicable as regards the accounting documents which companies are obliged to submit for each financial year. This exclusion is justified by the overload on the domestic registers during reporting periods. In accordance with general legal principles common to all Member States, the time-limit of 21 days should be suspended in cases of force majeure.*
- (19) *Should the Commission decide to develop and/or operate the platform through a third party, this should be done in accordance with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities¹. An appropriate degree of Member States' involvement in this process should be ensured by establishing the technical specifications for the*

¹ OJ L 248, 16.9.2002, p. 1.

purpose of the public procurement by means of implementing acts adopted in accordance with the examination procedure referred to in Article 5 of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers².

- (20) *Should the Commission decide to operate the platform through a third party, the continuity of the provision of services by the system of interconnection of registers and a proper public supervision of the functioning of the platform should be ensured. Detailed rules on the operational management of the platform should be adopted by means of implementing acts adopted in accordance with the examination procedure referred to in Article 5 of Regulation (EU) No 182/2011. In any case, the involvement of Member States in the functioning of the whole system should be ensured by means of a regular dialogue between the Commission and the representatives of Member States on the issues concerning the operation of the system of interconnection of registers and its future development.*
- (21) *The interconnection of central, commercial and companies registers necessitates the coordination of national systems of varying technical characteristics. This entails the adoption of technical measures and specifications which need to take account of differences between registers. In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission to tackle these technical and operational issues. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.*
- (22) *This Directive should not limit the right 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. This Directive should not prejudge in this respect any specific technical solution, as the modalities of payments should be determined at the stage of adoption of the implementing acts, taking into account widely available online payment facilities.*

² *OJ L 55, 28.2.2011, p. 13.*

- (23) *It could be desirable for third countries to be able, in the future, to participate in the system of interconnection of registers.*
- (24) *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 portal serving as the European electronic access point – should be funded from an appropriate budget line in the general budget of the Union. In order to supplement non-essential elements of this 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. This does not affect the possibility for the national registers to charge fees, but it may be an additional fee in order to co-finance the maintenance and functioning of the platform. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.*
- (25) *Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data¹ and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 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 data² govern the processing of personal data, including the electronic transmission of personal data carried out in the Member States. Any processing of personal data by the registers of Member States, by the Commission and, if applicable, by any third party involved in operating the platform should take place in compliance with those acts. The implementing acts to be adopted in relation to the system of interconnection of registers should, where appropriate, ensure such*

¹ *OJ L 281, 23.11.1995, p. 31.*

² *OJ L 8, 12.1.2001, p. 1.*

compliance, in particular by establishing the relevant tasks and responsibilities of all the participants concerned and the organisational and technical rules applicable to them.

- (26) *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, this Directive should provide 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 should follow the adoption by the Commission of all the implementing acts concerning the technical measures and specifications for the system of interconnection of registers. The time-limit for the transposition and application of the provisions of the Directive on the technical operation of the system of interconnection of registers should be sufficient to enable Member States to accomplish the required legal and technical adaptations in order to make that system fully operational within a reasonable time-frame.*
- (27) *In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents¹, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.*
- (28) *This Directive respects fundamental rights and observes the principles enshrined in the Charter of Fundamental Rights of the European Union, in particular Article 8 thereof, which states that everyone has the right to the protection of personal data concerning him or her.*
- (29) Since the objectives of this Directive, namely improving cross-border access to business information, ensuring 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, cannot be sufficiently achieved by Member States and can therefore, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures

¹ *OJ C 369, 17.12.2011, p. 14.*

in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty *on* European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(30) Directives 89/666/EEC, 2005/56/EC and 2009/101/EC should therefore be amended accordingly.

(31) *The European Data Protection Supervisor has been consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered an opinion on 6 May 2011¹,*

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Amendments to Directive 89/666/EEC

Directive 89/666/EEC is amended as follows:

(1) In Article 1, the following *paragraphs are* added:

'3. The documents and particulars referred to in Article 2(1) shall be publicly available through the system of interconnection of central, commercial and companies registers ("the system of interconnection of registers") established in accordance with Article 4a(2) of Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty, with a view to making such safeguards equivalent. Article 3b and Article 3c(1) of that Directive shall apply mutatis mutandis.*

4. Member States shall ensure that branches ■ have a unique identifier that allows for their unequivocal identification in communication between registers through the system of interconnection of registers established in accordance with Article 4a(2) of Directive 2009/101/EC. That unique identifier shall comprise, at least, elements enabling the identification of the Member State of the register, the domestic register of origin, the

¹ *OJ C 220, 26.7.2011, p. 1.*

branch number in that register and, where appropriate, features to avoid identification errors.

* *OJ L 258, 1.10.2009, p. 11.*

Editorial note: The title of Directive 2009/101/EC has been adjusted to take account of the renumbering of the articles of the Treaty establishing the European Community, in accordance with Article 5 of the Treaty of Lisbon; the original reference was to the second paragraph of Article 48 of the Treaty.'

(2) The following Article **I** is inserted:

'Article 5a

1. The register of the *company* shall, *through the system of interconnection of registers established in accordance with Article 4a(2) of Directive 2009/101/EC, make available*, without delay, *the 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 the Member State of that register.*
2. *The register of the branch shall, through the system referred to in paragraph 1, ensure the receipt, without delay, of the information referred to in paragraph 1.*
3. *The exchange of information referred to in paragraphs 1 and 2 shall be free of charge for the registers.*
4. *Member States shall determine the procedure to be followed upon receipt of the information referred to in paragraphs 1 and 2. Such procedures shall ensure that branches of companies that have been dissolved, or otherwise removed from the register, are removed from the register without undue delay.*
5. *The second sentence of paragraph 4 shall not apply to branches of companies that have been removed from the register as a consequence of any change in the legal form of the company, a merger or division, or a cross-border transfer of its registered office.'*

I

- (3) The following Section IIIA is inserted:

'SECTION IIIA

DATA PROTECTION

Article *11a*

The processing of personal data carried out in the context of this Directive shall be subject to Directive 95/46/EC of the European Parliament and of the Council *of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data**.

* OJ L 281, 23.11.1995, p. 31.'.

Article 2

Amendments to Directive 2005/56/EC

Directive 2005/56/EC is amended as follows:

- (1) Article 13 is replaced by the following:

'Article 13

Registration

■ The law of each of the Member States to whose jurisdiction the merging companies were subject shall determine, with respect to the territory of that State, the arrangements, in accordance with Article 3 of Directive 2009/101/EC of the European Parliament and of the Council *of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty, with a view to making such safeguards equivalent**, for publicising completion of the cross-border merger in the public register in which each of the companies is required to file documents.

The registry for the registration of the company resulting from the cross-border merger shall notify, *through the system of interconnection of central, commercial and companies registers, established in accordance with Article 4a(2) of Directive 2009/101/EC and without delay*, the registry in which each of the companies was required to file documents

that the cross-border merger has taken effect. Deletion of the old registration, if applicable, shall be effected on receipt of that notification, but not before.

■

* OJ L 258, 1.10.2009, p. 11.

Editorial note: The title of Directive 2009/101/EC has been adjusted to take account of the renumbering of the articles of the Treaty establishing the European Community, in accordance with Article 5 of the Treaty of Lisbon; the original reference was to the second paragraph of Article 48 of the Treaty.'.

(2) The following *Article* is inserted:

'Article 17a

■

Data protection

The processing of personal data carried out in the context of this Directive shall be subject to Directive 95/46/EC of the European Parliament and of the Council *of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data**.

* OJ L 281, 23.11.1995, p. 31'.

Article 3

Amendments to Directive 2009/101/EC

Directive 2009/101/EC is amended as follows:

(1) ■ The following *Article* is *inserted*:

'*Article 2a*

Member States shall take the measures required to ensure that any changes in the documents and particulars referred to in *Article 2 are entered in the competent register referred to in Article 3(1) and are disclosed, in accordance with Article 3(3) and (5), normally within 21 days from receipt of the complete documentation regarding those changes including, if applicable, the legality check as required under national law for entry in the file.*

This provision shall not apply to the accounting documents referred to in Article 2(f).'

- (2) In Article 3(1), the following subparagraph is added:

'Member States shall ensure that companies have a unique identifier that allows for their unequivocal identification in communication between registers through the system of interconnection of central, commercial and companies registers ("the system of interconnection of registers"). That unique identifier shall comprise, at least, elements enabling the identification of the Member State of the register, the domestic register of origin, the company number in that register and, where appropriate, features to avoid identification errors.'

- (3) The following *Articles are* inserted:

'Article 3a

1. Member States shall ensure that *up-to-date* information is *made available* explaining the provisions of national law according to which third parties can rely on ■ particulars *and each type of document referred to in Article 2*, in accordance with *Article 3(5), (6) and (7)*.

2. *Member States shall provide the information required for publication on the European e-Justice portal ("the portal") in accordance with the portal's rules and technical requirements.*

3. *The Commission shall publish that information on the portal in all the official languages of the Union.*

Article 3b

1. *Electronic copies of the documents and particulars referred to in Article 2 shall also be publicly available through the system of interconnection of registers.*

2. *Member States shall ensure that those documents and particulars are available through the system of interconnection of registers in a standard message format and accessible by electronic means. Member States shall also ensure that minimum security standards of data transmission are respected.*
3. *The Commission shall provide a search service in all the official languages of the Union in respect of companies registered in the Member States, in order to make available through the portal:*
 - (a) *the documents and particulars referred to in Article 2;*
 - (b) *the explanatory labels, available in all the official languages of the Union, listing those particulars and the types of those documents.*

Article 3c

1. *The fees charged for obtaining the documents and particulars referred to in Article 2 through the system of interconnection of registers shall not exceed the administrative costs thereof.*
2. *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.

Article 3d

1. *The register of the company shall, through the system of interconnection of registers, make available, without delay, the 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 the Member State of that register.*

2. *The register of the branch shall, through the system referred to in paragraph 1, ensure receipt, without delay, of the information referred to in paragraph 1.*

3. *The exchange of information referred to in paragraphs 1 and 2 shall be free of charge for the registers.'*

(4) The following *Articles are* inserted:

'Article 4a

1. *A European central platform ("the platform") shall be established.*

2. *The system of interconnection of registers shall be composed of:*

– *the registers of Member States,*

– *the platform,*

– *the portal serving as the European electronic access point.*

3. *The Member States shall ensure the interoperability of their registers within the system via the platform.*

4. *Member States 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.*

5. *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.*

6. *The establishment of the system of interconnection of registers shall not affect existing bilateral agreements concluded between Member States concerning exchange of information on companies.*

Article 4b

1. *The Commission shall decide to develop and/or operate the platform referred to in Article 4a(2) either by its own means or through a third party.*

In the latter case, the choice of the third party and the enforcement by the Commission of the agreement concluded with that third party shall be done in accordance with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities.*

2. Should the Commission decide to develop the platform through a third party, the Commission 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.

3. Should the Commission decide to operate the platform through a third party, the Commission shall, by means of implementing acts, adopt detailed rules on the operational management of the platform.

The operational management of the platform shall include in particular:

- supervision of the functioning of the platform;*
- security and protection of data distributed and exchanged using the platform;*
- coordination of relations between Member States' registers and the third party.*

The supervision of the functioning of the platform shall be carried out by the Commission.

4. The implementing acts referred to in paragraphs 2 and 3 shall be adopted in accordance with the examination procedure referred to in Article 4e.

Article 4c

By means of implementing acts, the Commission shall adopt the following:

- (a) the technical specification defining the methods of communication by electronic means for the purpose of the system of interconnection of registers;*
- (b) the technical specification of the communication protocols;*
- (c) the technical measures ensuring the minimum information technology security standards for communication and distribution of information within the system of interconnection of registers;*
- (d) the technical specification defining the methods of exchange of information between the register of the company and the register of the branch as referred to in Article*

*3b of this Directive and in Article 5a of Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State**;*

*(e) the detailed list of data to be transmitted for the purpose of exchange of information between registers, as referred to in Article 3b of this Directive, in Article 5a of Directive 89/666/EEC, and in Article 13 of Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies***;*

(f) the technical specification defining the structure of the standard message format for the purpose of the exchange of information between the registers, the platform and the portal;

(g) the technical specification defining the set of the data necessary for the platform to perform its functions as well as the method of storage, use and protection of such data;

(h) the technical specification defining the structure and use of the unique identifier for communication between registers;

(i) the specification defining the technical methods of operation of the system of interconnection of registers as regards the distribution and exchange of information, and the specification defining the information technology services, provided by the platform, ensuring the delivery of messages in the appropriate language version;

(j) the harmonised criteria for the search service provided by the portal;

(k) the modalities of payments, taking into account available payment facilities such as online payments;

(l) the details of the explanatory labels listing the particulars and the types of documents referred to in Article 2;

(m) the technical conditions of availability of services provided by the system of interconnection of registers;

(n) the procedure and technical requirements for the connection of the optional access points to the platform.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 4e.

The Commission shall adopt those implementing acts by [xxx] at the latest⁺.

Article 4d

- 1. The establishment and future development of the platform and the adjustments to the portal resulting from this Directive shall be financed from the general budget of the Union.*
- 2. The maintenance and functioning of the platform shall be financed from the general budget of the Union and may be co-financed by fees for access to the system of interconnection of registers charged to its individual users. Nothing in this paragraph shall affect fees at the national level.*
- 3. By means of delegated acts and in accordance with Article 13a, the Commission may adopt rules on whether to co-finance the platform by charging fees, and, in that case, the amount of the fees charged to individual users as referred to in paragraph 2.*
- 4. Any fees imposed in accordance with paragraph 2 shall be without prejudice to the fees, if any, charged by Member States for obtaining documents and particulars as referred to in Article 3c(1) of this directive.*
- 5. Any fees imposed in accordance with paragraph 2 shall not be charged for obtaining the particulars referred to in points (a), (b) and (c) of Article 3c(2).*
- 6. Each Member State shall bear the costs of adjusting its domestic registers, as well as their maintenance and functioning costs resulting from this Directive.*

Article 4e

*The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers****.*

Where reference is made to this Article, Article 5 of Regulation (EU) No 182/2011 shall apply.

⁺ *Three years following the entry into force of this Directive.*

* *OJ L 248, 16.9.2002, p. 1.*

** *OJ L 395, 30.12.1989, p. 36.*

*** *OJ L 310, 25.11.2005, p. 1.*

**** *OJ L 55, 28.2.2011, p. 13.'*

(5) The following Article **■** is inserted:

'Article 7a

The processing of personal data carried out in the context of this Directive shall be subject to Directive 95/46/EC of the European Parliament and of the Council *of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data**.

* OJ L 281, 23.11.1995, p. 31'.

(6) The following Chapter *4a* is inserted:

'CHAPTER 4A

DELEGATED ACTS

Article 13a

Exercise of the delegation

1. The power to adopt delegated acts *is* conferred on the Commission *subject to the conditions laid down in this Article.*

■

2. The power to adopt delegated acts *referred to in Article 4d(3) shall be conferred on the Commission for an indeterminate period of time.*

3. The delegation of *power* referred to in *Article 4d(3)* may be revoked at any time by the European Parliament or by the Council. *A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.*

4. *As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.*

5. *A delegated act adopted pursuant to Article 4d(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.'*

Article 4

Report and regular dialogue

1. *The Commission shall, not later than five years after the final date for application of the provisions referred to in Article 5(2), publish a report concerning the functioning of the system of interconnection of registers, in particular examining its technical operation and its financial aspects.*

2. *That report shall be accompanied, if appropriate, by proposals for amending this Directive.*

3. *The Commission and the representatives of the Member States shall regularly convene to discuss the matters covered by this Directive in any appropriate forum.*

Article 5

Transposition

1. Member States shall *adopt, publish and apply the laws, regulations and administrative provisions necessary to comply with this Directive by [xxx]*⁺.

⁺ *Two years following the entry into force of this Directive.*

2. *Notwithstanding paragraph 1, Member States shall adopt, publish and apply the provisions necessary to comply with:*

- *Article 1(3) and (4) and Article 5a of Directive 89/666/EEC,*
- *Article 13 of Directive 2005/56/EC,*
- *Article 3(1), second subparagraph, Article 3b, Article 3c, Article 3d and Article 4a(3) to (5) of Directive 2009/101/EC,*

two years following the adoption of the implementing acts referred to in Article 4c of Directive 2009/101/EC, at the latest.

Upon the adoption of those implementing acts, the Commission shall publish in the Official Journal of the European Union the final date for application of the provisions referred to in this paragraph.

3. *When* Member States adopt *the measures referred to in paragraph 1*, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. *The methods of making such references shall be laid down by* Member States .

4. Member States shall communicate to the Commission the text of the main provisions of *measures of* national law which they adopt in the field covered by this Directive.

Article 6
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 7
Addressees

This Directive is addressed to the Member States.

Done at ...,

For the European Parliament

The President

For the Council

The President