



Council of the
European Union

Brussels, 16 June 2016
(OR. en)

10249/16

Interinstitutional File:
2015/0283 (COD)

CODIF 29
CODEC 885
DRS 26
ETS 39
MI 453

NOTE

From:	General Secretariat of the Council
To:	Working Party on Codification of Legislation
No. prev. doc.:	5106/15 - COM (2015) 616 final
Subject:	Proposal for a Directive of the European Parliament and of the Council relating to certain aspects of company law (codification) - Opinion of the Consultative Working Party of Legal Services

Delegations will find attached the opinion of the Consultative Working Party of Legal Services regarding the above mentioned subject.



GRUPE CONSULTATIF
DES SERVICES JURIDIQUES

Brussels,

09 JUN 2016

OPINION

**FOR THE ATTENTION OF THE EUROPEAN PARLIAMENT
THE COUNCIL
THE COMMISSION**

Proposal for a Directive of the European Parliament and of the Council relating to certain aspects of company law (codification)

COM(2015) 616 final of 3.12.2015 - 2015/0283 (COD)

Having regard to the Inter-institutional Agreement of 20 December 1994 on an accelerated working method for official codification of legislative texts, and in particular to point 4 thereof, the Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission met on 3 February, 18 March and 13 April 2016 for the purpose of examining the aforementioned proposal submitted by the Commission.

At those meetings¹, an examination of the proposal for a Directive of the European Parliament and of the Council codifying Council Directive 82/891/EEC², Council Directive 89/666/EEC³, Directive 2005/56/EC of the European Parliament and of the Council⁴, Directive 2009/101/EC of the European Parliament and of the Council⁵, Directive 2011/35/EU of the European Parliament and of the Council⁶ and Directive 2012/30/EU of the European Parliament and of

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- ¹ The Consultative Working Party worked on the basis of the English language version of the proposal, being the master-copy language version of the text under discussion.
- ² Sixth Council Directive of 17 December 1982 based on Article 54(3)(g) of the Treaty, concerning the division of public limited liability companies (82/891/EEC) (OJ L 378, 31.12.1982, p. 47).
- ³ Eleventh Council Directive 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 (89/666/EEC) (OJ L 395, 30.12.1989, p. 36).
- ⁴ Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies (OJ L 310, 25.11.2005, p. 1).
- ⁵ 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 48 of the Treaty, with a view to making such safeguards equivalent (OJ L 258, 1.10.2009, p. 11).
- ⁶ Directive 2011/35/EU of the European Parliament and of the Council of 5 April 2011 concerning mergers of public limited liability companies (OJ L 110, 29.4.2011, p. 1).

the Council⁷ resulted in the Consultative Working Party's establishing, by common accord, as follows.

1) In recital 2, the words included between adaptation arrows (*facilitates the integration of the economies of the Member States. It'*) should be deleted.




2) In recital 79, the word '*undertakings*' should be replaced by '*companies*'.

3) Article 134 should be removed from the codified text. As a consequence thereof, Articles 135 to 168 should be renumbered.

4) In Article 160, paragraph 1 should be deleted. As a consequence thereof, the wording of the following paragraph should be adapted so as to read as follows: '*Member States need not apply Articles 145 and 146 as regards the holders of convertible debentures and other securities convertible into shares if, at the time when the provisions referred to in paragraph 1 or 2 of Article 26 of Council Directive 82/891/EEC came into force, the position of those holders in the event of a division had previously been determined by the conditions of issue*'.

5) A corrigendum should be published with regard to the entries corresponding to Hungary and Malta contained in Article 1(1) of Directive 2011/35/EU.

In consequence, examination of the proposal has enabled the Consultative Working Party to conclude, without dissent, that the proposal is a straightforward codification of existing texts, without any change in their substance.

		
F. DREXLER Jurisconsult	H. LEGAL Jurisconsult	L. ROMERO REQUENA Director General

⁷ Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (OJ L 315, 14.11.2012, p. 74).