Council of the European Union
General Secretariat

Interinstitutional files:
2026/0074 (COD)

Brussels, 07 September 2026

WK 13584/2026 INIT

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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Company Law
Subject:	Irish Presidency Flash 10 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 10 September 2026.

Company Law Working Party 10 September 2026

FLASH

Our fifth meeting will focus on the following items:

- The presentation and examination of the second compromise text (morning); and
- EU Employee Stock Option technical discussion, with Fiscal attachés (afternoon)

Morning session: Second Compromise text

The Presidency has prepared this text based on Member States' drafting suggestions, bilateral discussions, and contributions made at Working Party level.

Building on the first compromise text, the Presidency has carried out further technical work to improve the clarity and coherence of the proposal. The Presidency has further sought to reconcile the differing positions of Member States while maintaining the level of ambition of the EU Inc. proposal, in line with the calls of the European Council and the One Europe, One Market Roadmap.

The Presidency will provide an overview of the main amendments in the second compromise text and the rationale for the proposed changes. Member States are invited to provide initial comments following this presentation. A summary of the compromise text is in **Annex**.

A more detailed and in-depth discussion of the second compromise text will take place at the Working Party meeting on 17 September 2026, allowing delegations sufficient time to examine the text in advance of that session.

Afternoon session: EU Employee Stock Option Plan[1]

State of play

The Presidency understands that delegations hold divergent views regarding the EU-ESO scheme.

- On the one hand, several Delegations emphasise the importance of the EU-ESO scheme, including its prevention of the taxation of unrealised gains:
  - They are a crucial tool for early-stage and high-growth companies to offer employees a stake in the future success of the business. Such schemes

[1] Fiscal attachés are invited to attend this session.

may be particularly relevant where early-stage companies cannot compete with larger firms on salary levels alone.

- There is strong demand for such rules amongst the start-up and scale-up community. The impact assessment notes '*a strong majority of respondents considered that both startup and scaleup companies would need such rules (89% and 86%, respectively)*',[2] with '*the responding business associations stress[ing] that the fragmentation of tax regimes was the main barrier [to using ESOs], and in particular, that depending on the Member State, employees may be taxed on unrealised gains, there are valuation mismatches between startups and tax authorities, and employee risks [sic] double taxation across jurisdictions… making employee stock options unattractive.*'[3]
- Several Delegations have emphasised the importance of maintaining the EU Inc. proposal's ambition. When Coreper agreed to remove the insolvency part on 15 July 2026, several ambassadors underlined the importance of not '*amputating*' the proposal.

- On the other hand, several Delegations have raised questions about these provisions, and particular the principle of affecting any aspect of taxation in legislation not adopted under Articles 113 or 115 TFEU (which require unanimity):
  - Many of these Delegations have framed this as a legal basis issue. Delegations have now heard the views of the Council Legal Service in this respect.
  - Some Delegations oppose inclusion of any taxation provision in any QMV legislation as a matter of principle. They emphasise the risk of setting a political precedent.
  - Some emphasise the process aspect, notably the need to involve Fiscal attachés.
  - Finally, some Delegations have questions regarding the substantive policy of the tax provisions and their technical drafting.

As outlined at the 1 September Working Party, in the Presidency's view there are two separate issues in play:

- The principled question of whether to retain the taxation element of the employee stock option provisions. This is a political decision to be taken at Coreper level and will not be discussed at this Working Party.

[2] SWD(2026) 321 final, Part 2/3, Annexes accompanying the EU Inc. Impact Assessment, p.19 (Annex 2). See further p.37 (Annex 5).
[3] Ibid, p.20.

- The technical drafting of Articles 78-79. This requires technical work at Working Party level.

With a view to making progress on the second bullet point, this session has two purposes. First, to advance the substantive discussion on the key parameters so that delegations are in a position to engage at political level with a clear picture of the available options. Second, to ensure that Fiscal attachés are appropriately involved.

The compromise text

The second compromise text incorporates the following technical changes to Articles 78 and 79, as well as recitals 6a and 57-58:

Article 78

- Article 78(1a): the relationship with Article 68 (on warrants and other instruments entitling to new shares in general) is clarified. Article 78 builds on Article 68 but is a *lex specialis*, so that in case of conflict the more specific rules (Article 78) prevail.[4]
- Article 78(1a): The eligibility threshold has been amended in two ways:
    - First, it has been moved to Article 79. In practice, this means that companies remain free to issue EU-ESO warrants whatever their size, but that the warrants benefit from Article 79's taxation rules only where the EU Inc. was below the threshold at the time of issue; and
    - Second, the threshold has been lowered. Now, an EU Inc. that either exceeds the 450m EUR threshold or exceeds the 1,000 employee threshold is ineligible. This is also more consistent with Omnibus I (Directive 2026/470).
- Article 78(2)(c): The wording of the minimum wages/collective agreements provision has been revised to address legal concerns.
- Article 78(4)(c): The definition of the exercise consideration has been clarified to include its calculation basis, ensuring consistency with Article 2(27).
- Article 78(4)(e)(ii): Technical change for consistency with Article 74 (not using the phrase 'held in treasury').
- Article 78(4a): Technical change in light of the threshold being moved from Article 78 to Article 79.

[4] For instance, Article 68 only concerns instruments to be fulfilled by new shares, whereas Article 78 warrants could be satisfied by transferring own shares held by the company (Article 78(4)(c)). (Article 2(27) may require further technical changes in light of this).

- Article 78(7a): This provision (whereby warrants lapsed thirty days after an eligible person ceased to be a board member or employee) has been deleted in light of concerns expressed by Delegations and the Commission. It was seen as unnecessary and risking creating an undue dependency on continued employment as a condition for retaining warrants. Moreover, it did not in fact address the emigration taxation issue (see further below), because the point of taxation is the point of disposal of the shares, not the point that they are acquired. However, recital 57 now clarifies that companies are free, in designing their EU-ESO scheme, to include lapse provisions.

  Article 79

- Article 79(1): The scope of the taxation provisions is restricted (see above).
- Article 79(3): Qualified by an anti-avoidance fallback. Where the disposal price is manifestly undervalued so as to suggest fraud, fair market value may be substituted. This addresses concerns about artificial disposals at undervalue, whilst preserving simplicity for standard cases.
- Article 79(4): Clarified that this provision is without prejudice to paragraphs 2 and 3. The timing and valuation provisions apply even if another national provisions is (arguably) more favourable.

  Recitals

- Recital 6a: Strengthened language concerning Member States' competence regarding taxation. Explicit recognition of Member States' competence regarding the determination of tax residence, including under relevant double tax treaties.
- Recital 57: See change noted above under Article 78(7a).
- Recital 57a: New recital confirming the limited scope of the EU-ESO scheme. EU Inc. companies remain free to issue warrants outside of the scope of that scheme. Member States remain free to establish national employee stock option schemes. These are entirely independent of the EU-ESO provisions.
- Recital 58: Strengthened language concerning the limitations of the EU-ESO provisions. It is further underlined that Member States are free as to how income from disposal of the shares is characterised (e.g. as income or capital gains). The provisions do not affect social security or pension levies.

Questions for Delegations

The text outlined above has now been technically refined over two drafting rounds, with many thanks to Delegations for their input. The Presidency now wishes to settle, as far as possible, the substantive drafting of these provisions. This will enable Coreper to take its principled decision on whether or not to include them.

In light of this, the Presidency now invites delegations to address the following focused questions at Working Party level.

Question 1. What should the scope of the EU-ESO scheme's taxation provisions be:

A. Open to all EU Inc. companies;

B. Limit to the scope in the second Presidency compromise (≤450m EUR turnover and 1,000 employees); or

C. Reduce scope further to Small Mid-Caps as defined in Commission Recommendation (EU) 2025/1099, i.e. ≤150m EUR turnover and 129m EUR annual balance sheet, and <750 employees).

Question 2. How should the possibility of a change of tax residency after the issuing of the warrant be addressed?

A. Clarify in the recitals that double taxation treaties continue to apply (as in the second Presidency compromise);

B. Clarify further in the recitals that cross-border aspects not addressed in the Regulation, such as change of tax residency to a third state, are not affected by the Regulation; or

C. Any other technical changes (please propose specific wording).

Question 3. Which aspects should be included in Article 79?

A. All three elements in Article 79(2-4) (time of accrual; determination of value; and non-discrimination provision);

B. Only the first two elements in Articles 79(2-3) (time of accrual and determination of value).

Question 4. Are any other technical changes to Articles 78-79 necessary? If so, please propose specific wording.

<u>**Annex**</u>

EU Inc – second Presidency compromise – explanations

Summary

Major changes and policy choices in this second compromise text include the following:

- The **scope and interaction with national and sectoral law** have been clarified:
  - **Articles 1 and 4** and recitals 6-6b have been revised. They present a new 'third way' which provides legal certainty and brevity whilst avoiding the difficulties of Options 1 and 2, including the definition of 'corporate law'.
  - The **Annex** has been expanded. It now lists all matters that the Regulation expressly permits, not just requires, the articles of association to address. This provides further legal certainty as to where national law can 'fill the gaps'.
  - Recitals 41-42 have been tweaked to clarify that EU Inc. companies must comply with **all applicable law**, not only 'listing law', **in order to list**.
- The **scope and functioning** of the 'digital-only', online payment and 'once-only submission' principles have been limited and clarified (Articles 10, 11 and 20).
- Two options for **Article 12 (employee participation)** are presented (see also recital 16, Article 42a(6) and Article 103a). These options are adapted from the Option 1b and Option 2a discussed at the 1/9 Working Party. The Presidency intends to refine the drafting of each alternative at technical level, possibly at the 17/9 Working Party, with a view to a future decision, likely at Coreper level.
- The **preventive controls and checks** at the point of formation and throughout the EU Inc.'s lifecycle have been further strengthened and clarified, including with an obligation for EU Inc. companies to **declare their principal place of business and centre of administration** annually and for competent authorities to enforce this and other requirements (Articles 13, 14, 22, 27 and 27a).
- The **organisation** (Chapter V) has been further developed and strengthened.
- The **EU-ESO** schemes have been refined, as described in the body of this Flash.
- Article 103 on **non-discrimination** has been narrowed and refined. The general non-discrimination provision is now limited to cross-border cases and to the economic activities of the EU Inc. The narrow scope of the black-list is also clarified: see recitals 76-78.
- A new **Article 103a** on abuse (wholly artificial arrangements) has been added (see further recital 11).
- Finally, the **deadline for implementation** has been extended from 12 months to **27 months** from the Regulation's entry-into-force.

The changes to Chapters VI (shares), VII (financing) and IX (closure) are more limited.

Chapter-by-chapter explanation

Where a change is not listed below, this is because it is minor or purely technical changes (e.g. for coherence).

1. *Chapter I – General principles*

Article	Short name	Comments
1	Subject matter and scope	Article 1(2-3) revised and refined. First, it is clarified that the Regulation does not affect employment, taxation, social security or insolvency law. The list of exceptions is narrowed to Articles 12 and 79. (This is from an abundance of caution: Article 12 is arguably a corporate law, not employment law, provision). Recitals 6a now gives more detail on the areas of law not affected (including what was recital 83). Second, the provision on compliance with sectoral law is shortened. Recital 6b expands on this, including listing further examples of sectoral law. See, however, Article 103.
2	Definitions	Article 2(11): where the EU templates are used, no free text on the objects is possible. Otherwise, the translation of the objects would cause problems (see Article 7(5)). Compare recital 10. Article 2(30): 'regular liquidation' is now used instead of 'solvent liquidation'. This was suggested by one Delegation and COM confirmed that it was technically correct. Compare Chapter IX.
4	Rules applicable	Reworked text following a 'third way'. From the earlier text, 'Option 1' (distinguishing corporate from other law) had greater support than 'Option 2' (distinguishing matters in the scope of the Regulation from others). However, several Delegations and the Commission were concerned about defining 'corporate law', and also noted that some aspects of the Regulation go beyond corporate law on even a broad reading (e.g. civil law requirements regarding share transfers). A third way is proposed here, following the precedent of Article 9 of the *Societas Europae* (Reg 2157/2001). This simply provides that aspects not governed by the Regulation are left to 'national law', without determining which

		Member State's law applies.[5] The ordinary choice-of-law principles would therefore apply to the EU Inc. which operates across borders, just as they apply to any other national company: see recital 6. In practice, this will lead to the same result (the Member State of registration's law generally governs corporate law aspects) without requiring an exhaustive definition of the boundary between corporate and other matters. It remains clear that the EU Inc. must fully comply with other Union and national law, such as employment and sectoral law, under Article 1(2-3). The Presidency considers this a shorter, more elegant and clearer way of dealing with this issue. It also avoids inadvertently interfering with choice-of-law (e.g. insolvency may or may not be subject to the law of the registered office, depending on the circumstances). Delegations are invited to give their views.
6	Name	The changes in points (b) and (c) are reversed in light of Delegations' comments. A new point (d) is added, clarifying that Member States have an option (but no obligation) to refuse registration based on trademark. This helps provide clarity on the purpose of Article 15a. See similarly recital 8.
8	Templates	Some framing of the Commission empowerment is added. Recital 10 clarifies that these templates should be tailored to particular situations, including different sizes of EU Inc., either through several different templates or through options within an individual template. Recital 10a also clarifies that legal formalities relating to the transfer of property are not affected by the Regulation. Compare recital 49.
10	Digital-only procedures	Significant clarification of scope. First, the principle in paragraph 1 is limited to authorities, persons or bodies mandated under national law (e.g. state authorities). Second, recital 12 clarifies

[5] Article 9 of Regulation 2157/2001 provides for an SE to be governed by '*<u>the provisions of Member States' laws</u> which would apply to a public limited-liability company <u>formed in accordance with the law of the Member State in which the SE has its registered office</u>.*' Only the latter part – which identifies how the SE should be recognised, i.e. as a creature of the registered office's laws, refers to the registered office. The former part refers to all Member States' laws. It is agnostic, like the new drafting, as to *which* Member State's law governs any given question.

		its scope, including as regards video conferences and identity and legal capacity checks.
11	Payments	Scope limited to payments involving authorities, persons or bodies mandated under national law. Further clarifications of scope.
12	Employee participation	Further clarity that an EU Inc.'s transfer of registered office constitutes a cross-border conversion (compare recital 17). Two options presented here and in recital 16, Article 26 and Article 103a: • Option 1: Basic model of Article 12 (registered office's rules apply) retained. However, (i) Article 26(1)(b) obligation to publish employee numbers broken down by Member States; (ii) recital further clarifies that all employment law other than the choice-of-law regarding employee participation remains unaffected; and (iii) new abuse clause in Article 103a provides that circumventing employee participation rules through wholly artificial arrangements may constitute unlawful abuse. • Option 2: Adapted from the DE proposal, taking into account Member States' concerns about timing, optionality and burden. It also seeks to avoid pre-determining the outcome of the separation by division process which, under Chapter IV of Title II of Directive 2017/1132, involves various parties (including employees) and is ultimately a matter for the general meeting. The mechanism is entirely optional for Member States. Where an EU Inc.'s branch exceeds the host state's threshold in one financial year, in the next financial year it must either 'spin off' a subsidiary or take other steps. Further drafting to simplify the separation by division process could be added.

2. *Chapter II – EU central interface, formation and filing*

Article	Short name	Comments
13	Company application and application form	Electronic identification and signature's assurance and trust levels raised.

		Prospective directors must declare the location of the central of administration and the principal place of business of the EU, save where both are in the Member State of registration. Strengthened role of Member States in the drafting of the application form.
14	Procedure and preventive controls and checks	Preventive checks regarding prospective directors strengthened, including a check that at least one is resident in the EU.
15	EU central interface	Real-time tracking simplified to reduce burden (limited to the 'major steps' of registration).
15a	Trademark information	Clarified that Member States may (but are not obliged to) act on this information. See Article 6 and recital 8.
16	Fast-track formation	Reference to 'standard articles of association' (as in Article 7(5)) rather than the templates, for consistency with Articles 17-18. Clarification of Article 16(2a).
17	Standard formation	Deletion of reference to the EU templates for clarity and consistency with Article 16.
18	Formation with the business register	Article 18(2)(b): deleted as otiose (see para 2a).
20	Once-only submission for authorities	Reworded for clarity and to limit the scope. This is not a general power or obligation to exchange information. Nor does it interfere with the substantive requirements of VAT or other law. It is rather a specific requirement for business registers to share limited corporate information that they obtain at the point of registration (and updates thereto), together with a requirement for the relevant authorities not to ask for that information again. Recital 26 further clarifies this.
22	Directors	Expansion of this Article for clarity. There was confusion as to how far new Directors needed to comply with the Article 13(1)(e) obligations (e.g. acknowledging their duties), and how far this extended to other persons such as supervisory board members. Article 22 therefore consolidates all relevant requirements to ensure the same duties apply to all Directors (and supervisory board members) throughout the EU Inc.'s life.
23	Signature of filing	Signature trust level increased.
24	Electronic filing agent	Amended for consistency with Article 31.

3. *Chapter III – Accessibility and cross-border use of EU Inc. information*

Article	Headline	Comments
25	Business register documents	Disclosure obligations made consistent with Chapter VI and expanded. One Delegation considered 'universal effect' unclear – replaced with '*erga omnes* effect'
27	Filing and up-to-date register documents	EU Inc. companies' obligation to keep the business register up-to-date developed and made clearer. This includes an obligation to report any changes to the central administration and/or principal place of business annually.
27a	Enforcement of registration requirements	New explicit obligation for EU Inc. companies to fulfil their registration requirements throughout their lifecycle. New obligation for competent authorities to enforce this, including the possibility to strike non-compliant companies off where necessary. Recital 27 provides further detail.
29	Duty to disclose	New obligation for EU Inc. companies in liquidation to disclose that fact in their business related communication. Compare Article 25(1)(m).
31	Power of attorney	Clarification of scope of paragraph 1. Deletion of confusing redundant words in paragraph 2.
32	Exemption from legalisation	Authentication level raised to qualified.
35	Provisions related to BRIS	Implementing acts deadline extended to 12 months, given that comitology has been added to two of the acts and the Regulation will now apply after 27 months, not 12 months.

4. *Chapter IV – Cross-border branches and mobility*

Article	Headline	Comments
38	Branch application form	Here and throughout: wording of TIN and, where relevant, VAT number aligned with Article 13.
40	Availability of information	Article 40(2)(b)(ix): alignment with previous point.
41	Cross-border conversions	Clarification in line with Article 12 change.

5. *Chapter V – Organisation*

Article	Headline	Comments

42	Company bodies	Paragraph 3 amended to ensure that employee participation rules could require certain powers to be exercised by the general meeting or another company body.
42a	Supervisory body	Related party transactions limitations now also apply to supervisory board members (paragraph 3). Clarification that the articles of association may further develop the supervisory board's powers, functions and operation. New paragraph 5b ensures that employee participation rules may override this Article.
44	Directors' duties	Shadow and de facto directors are now subject to directors' duties and liability. Clarifications of directors' liability. First, the 'business judgment' rule is qualified, with the standard being raised to that of a 'professional', not a 'reasonably prudent person'. Second, the general meeting instructions exemption is limited. Third, further detail on joint and several liability and dissent are added.
45	Directors' conflicts of interest	Technical improvements.
47a	Convocation of general meetings	New requirement for annual meeting to approve accounts. Strengthening of shareholders' right to request general meeting. New right for a simple majority to require such a meeting.
47b	Participation rights, record date and agenda	No 'record date' now applies by default, although the articles of association may provide for one.
47c	Conduct of the general meeting	Strengthening of rules, including shareholder rights.
49	Quorum and majorities	Specific rules added where no quorum is met. The ordinary voting rule now cannot go below a simple majority of votes cast.
51	Protection of class rights	Class rights protection strengthened. The remedy if these rights are breached has not been specified – but see Article 106 below.
52	Withdrawal of a shareholder	New paragraph 5 clarifying that Article 52(1-4) are not exhaustive.
52a	Expulsion of a shareholder	Note to reader that this and Article 52 may require alignment.

6. *Chapter VI – Digital register, shares and share transfers*

Article	Headline	Comments
54	Digital register of shares	Tweaks to ensure compliance with data protection rights. Further work on right of access (paragraph 2) may be necessary. See also new recital 38aa. Paragraph 5a moved from Article 59(10). This should (and now does) cover all errors/fraud, not just errors arising from share transfers.
56	Exercise of shareholder rights	Para 3a: deleted. Moved to Article 47a. Para 4: deleted. See Article 47c(1)(b).
57	Voting rights	Limitation of voting rights in case of certain conflicts of interest.
59	Digital procedure for the transfer of shares	Paragraph 6(a): limitation to ensure respect for data protection rights. New paragraph 10a: requested requirement to ensure that the company notifies the tax authorities of share transfers. New paragraph 10b: clarification of the provision's scope.

7. *Chapter VII – Financing*

Article	Headline	Comments
62	Amount of capital	Changes for clarity. No substance change.
63	Maintenance of equity, including capital	Changes for clarity. No substance changes.
64	Consideration for shares	Limitation of pay-in period to three years (from five). Note that this only concerns consideration not contributed to capital.
67	Issuance of new shares	Here and throughout this Chapter: other company bodies may no longer be authorised to issue shares or take other financing decisions. Paragraph 3: clarified that a time-limit may be placed on the issuance of shares.
72	Distributions	Strengthened safeguards.
73	Subscription of own shares	Strengthened safeguards.
77	Capital reduction	Strengthened safeguards, including increased transparency.

8. *Chapter VIII – EU-ESO*

(Changes explained at length in the body of this Flash).

9. *Chapter IX – Closure*

Article	Headline	Comments
79a	Rules	Here and throughout: 'solvent liquidation' is now called 'regular liquidation'. See explanation in Article 2 above.
79b	Nullity	Paragraph 1 reworded for clarity: here as under Article 11 of Directive 2017/1132, courts have discretion as to whether to order nullity once a ground is fulfilled.
83	Fast-track liquidation	Paragraph 3: strengthening of creditors' rights. Paragraph 5: consistency with Article 84(2)(d).
86	Deadlines for closure	Reworded to reflect fact that two, not one, authorities are now involved. See also recital 62.
87	Removal from the business register	Rewording for accuracy regarding tax and social security clearance. Note recital 65 clarifying the scope of this: where the authorities do not object, the company may be dissolved, but this does not affect liability under tax or social security law.

10. *Chapter XI – Prohibited requirements*

Article	Headline	Comments
103	List of prohibited requirements	Paragraph 1 is now limited to cross-border cases, in line with the scope ((Article 1(1)(g)). Paragraph 2(a) is tweaked. Member States may require economic activity only as regards financial support. Recital 77 explains in detail. The scope of paragraph 1 and paragraph 2(c) is narrower than might appear. This is now clarified in recitals 76-78. New paragraph 3a clarifies the relationship with Article 1(3) (see further recitals 76-78). National sectoral law may not discriminate against EU Inc. companies or breach the black list.
103a	Wholly artificial arrangements	New abuse provision, based on the discussion at the 1/9 Working Party. See also recital 11. This could include wording regarding employee participation (see Article 12 above).

11. *Chapter XII – Final provisions (and annex)*

Article	Headline	Comments

106	Penalties	Article 106 is now expanded to cover the entire Regulation, in line with the usual approach. Recitals 80b and 80c provide further clarity here, including by underlining that national civil law governs the procedure and remedies in private disputes.
108	Committees	Consequential changes.
108a	Exercise of the delegation	Aligned with standard wording.
109	Entry into force and application	Application date delayed to 27 months after entry into force.
Annex	Content of the Articles	Significantly expanded. Section 1 now includes the mandatory minimum content. A new section 2 now lists all areas which the Regulation expressly permits the articles to address. This increases the certainty of Article 4. Delegations are invited to cross-reference this with the body of the text to ensure nothing has been missed.