

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and alteration of their capital, with a view to making such safeguards equivalent (Recast) (Text with EEA relevance) (repealed)

Article 11

1 Member States may decide not to apply Article 10(1), (2) and (3) of this Directive where, upon a decision of the administrative or management body, transferable securities as defined in point 18 of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments⁽¹⁾ or money-market instruments as defined in point 19 of Article 4(1) of that Directive are contributed as consideration other than in cash, and those securities or money-market instruments are valued at the weighted average price at which they have been traded on one or more regulated markets as defined in point 14 of Article 4(1) of that Directive during a sufficient period, to be determined by national law, preceding the effective date of the contribution of the respective consideration other than in cash.

However, where that price has been affected by exceptional circumstances that would significantly change the value of the asset at the effective date of its contribution, including situations where the market for such transferable securities or money-market instruments has become illiquid, a revaluation shall be carried out on the initiative and under the responsibility of the administrative or management body.

For the purposes of such revaluation, Article 10(1), (2) and (3) shall apply.

2 Member States may decide not to apply Article 10(1), (2) and (3) where, upon a decision of the administrative or management body, assets other than the transferable securities and money-market instruments referred to in paragraph 1 of this Article are contributed as consideration other than in cash which have already been subject to a fair value opinion by a recognised independent expert and where the following conditions are fulfilled:

- a the fair value is determined for a date not more than six months before the effective date of the asset contribution; and
- b the valuation has been performed in accordance with generally accepted valuation standards and principles in the Member State which are applicable to the kind of assets to be contributed.

In the case of new qualifying circumstances that would significantly change the fair value of the asset at the effective date of its contribution, a revaluation shall be carried out on the initiative and under the responsibility of the administrative or management body.

For the purposes of such revaluation, Article 10(1), (2) and (3) shall apply.

In the absence of such a revaluation, one or more shareholders holding an aggregate percentage of at least 5 % of the company's subscribed capital on the day the decision on the increase in the capital is taken may demand a valuation by an independent expert, in which case Article 10(1), (2) and (3) shall apply.

Such shareholder(s) may submit a demand up until the effective date of the asset contribution, provided that, at the date of the demand, the shareholder(s) in question

still hold(s) an aggregate percentage of at least 5 % of the company's subscribed capital as it was on the day the decision on the increase in the capital was taken.

3 Member States may decide not to apply Article 10(1), (2) and (3) where, upon a decision of the administrative or management body, assets other than the transferable securities and money-market instruments referred to in paragraph 1 of this Article are contributed as consideration other than in cash whose fair value is derived by individual asset from the statutory accounts of the previous financial year provided that the statutory accounts have been subject to an audit in accordance with Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts⁽²⁾.

The second to fifth subparagraphs of paragraph 2 of this Article shall apply *mutatis mutandis*.

Status: This is the original version (as it was originally adopted).

- (1) OJ L 145, 30.4.2004, p. 1.
- (2) OJ L 157, 9.6.2006, p. 87.