

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and alteration of their capital, with a view to making such safeguards equivalent (Recast) (Text with EEA relevance) (repealed)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 33

- 1 Whenever the capital is increased by consideration in cash, the shares must be offered on a pre-emptive basis to shareholders in proportion to the capital represented by their shares.
- 2 The laws of a Member State:
 - a need not apply paragraph 1 to shares which carry a limited right to participate in distributions within the meaning of Article 17 and/or in the company's assets in the event of liquidation; or
 - b may permit, where the subscribed capital of a company having several classes of shares carrying different rights with regard to voting, or participation in distributions within the meaning of Article 17 or in assets in the event of liquidation, is increased by issuing new shares in only one of these classes, the right of pre-emption of shareholders of the other classes to be exercised only after the exercise of that right by the shareholders of the class in which the new shares are being issued.
- 3 Any offer of subscription on a pre-emptive basis and the period within which that right must be exercised shall be published in the national gazette appointed in accordance with Directive 2009/101/EC. However, the laws of a Member State need not provide for such publication where all of a company's shares are registered. In such case, all the company's shareholders must be informed in writing. The right of pre-emption must be exercised within a period which shall not be less than 14 days from the date of publication of the offer or from the date of dispatch of the letters to the shareholders.
- 4 The right of pre-emption may not be restricted or withdrawn by the statutes or instrument of incorporation. This may, however, be done by decision of the general meeting. The administrative or management body shall be required to present to such a meeting a written report indicating the reasons for restriction or withdrawal of the right of pre-emption, and justifying the proposed issue price. The general meeting shall act in accordance with the rules for a quorum and a majority laid down in Article 44. Its decision shall be published in the manner laid down by the laws of each Member State, in accordance with Article 3 of Directive 2009/101/EC.
- 5 The laws of a Member State may provide that the statutes, the instrument of incorporation or the general meeting, acting in accordance with the rules for a quorum, a majority and publication set out in paragraph 4, may give the power to restrict or withdraw the right of pre-emption to the company body which is empowered to decide on an increase in subscribed capital within the limit of the authorised capital. That power may not be granted for a longer period than the power for which provision is made in Article 29(2).
- 6 Paragraphs 1 to 5 shall apply to the issue of all securities which are convertible into shares or which carry the right to subscribe for shares, but not to the conversion of such securities, nor to the exercise of the right to subscribe.

7 The right of pre-emption is not excluded for the purposes of paragraphs 4 and 5 where, in accordance with the decision to increase the subscribed capital, shares are issued to banks or other financial institutions with a view to their being offered to shareholders of the company in accordance with paragraphs 1 and 3.