

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and alteration of their capital, with a view to making such safeguards equivalent (Recast) (Text with EEA relevance) (repealed)

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(Text with EEA relevance) (repealed)

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(1) and (2) (g) 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 Committee⁽¹⁾,

Acting in accordance with the ordinary legislative procedure⁽²⁾,

Whereas:

- (1) Second Council Directive 77/91/EEC of 13 December 1976 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, 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⁽³⁾ has been substantially amended several times⁽⁴⁾. Since further amendments are to be made, it should be recast in the interests of clarity.
- (2) The coordination provided for in point (g) of Article 50(2) of the Treaty and in the General Programme for the abolition of restrictions on freedom of establishment, which was begun by First Council Directive 68/151/EEC of 9 March 1968 on co-

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ordination 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 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community⁽⁵⁾, is especially important in relation to public limited liability companies, because their activities predominate in the economy of the Member States and frequently extend beyond their national boundaries.

- (3) In order to ensure minimum equivalent protection for both shareholders and creditors of public limited liability companies, the coordination of national provisions relating to their formation and to the maintenance, increase or reduction of their capital is particularly important.
- (4) In the Union, the statutes or instrument of incorporation of a public limited liability company must make it possible for any interested person to acquaint himself with the basic particulars of the company, including the exact composition of its capital.
- (5) Union provisions are necessary for maintaining the capital, which constitutes the creditors' security, in particular by prohibiting any reduction thereof by distribution to shareholders where the latter are not entitled to it and by imposing limits on the company's right to acquire its own shares.
- (6) The restrictions on a company's acquisition of its own shares should apply not only to acquisitions made by a company itself but also to those made by any person acting in his own name but on the company's behalf.
- (7) In order to prevent a public limited liability company from using another company in which it holds a majority of the voting rights or on which it can exercise a dominant influence to make such acquisitions without complying with the restrictions imposed in that respect, the arrangements governing a company's acquisition of its own shares should be extended to cover the most important and most frequent cases of the acquisition of shares by such other companies. Those arrangements should be extended to cover subscription for shares in the public limited liability company.
- (8) In order to prevent the circumvention of this Directive, companies governed by 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⁽⁶⁾ and companies governed by the laws of third countries and having comparable legal forms should also be covered by the arrangements referred to in recital 7.
- (9) Where the relationship between a public limited liability company and another company such as referred to in recital 7 is only indirect, it would appear to be justified to relax the provisions applicable when that relationship is direct by providing for the suspension of voting rights as a minimum measure for the purpose of achieving the aims of this Directive.

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- (10) Furthermore, it is justifiable to exempt cases in which the specific nature of a professional activity rules out the possibility that the attainment of the objectives of this Directive may be endangered.
- (11) It is necessary, having regard to the objectives of point (g) of Article 50(2) of the Treaty, that the Member States' laws relating to the increase or reduction of capital ensure that the principles of equal treatment of shareholders in the same position and of protection of creditors whose claims exist prior to the decision on reduction are observed and harmonised.
- (12) In order to enhance standardised creditor protection in all Member States, creditors should be able to resort, under certain conditions, to judicial or administrative proceedings where their claims are at stake as a consequence of a reduction in the capital of a public limited liability company.
- (13) In order to ensure that market abuse is prevented, Member States should take into account, for the purpose of implementation of this Directive, the provisions of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)⁽⁷⁾, Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments⁽⁸⁾ and Commission Directive 2004/72/EC of 29 April 2004 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions⁽⁹⁾.
- (14) In the light of the judgment of the Court of Justice of 6 May 2008 in Case C-133/06 *Parliament v Council*⁽¹⁰⁾, it is considered necessary to redraft the wording of Article 6(3) of Directive 77/91/EEC in order to remove an existing secondary legal basis and to provide for the examination and, if need be, the revision of the amount referred to in paragraph 1 of that Article by both the European Parliament and the Council.
- (15) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex II, Part B,

HAVE ADOPTED THIS DIRECTIVE:

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- (1) [OJ C 132, 3.5.2011, p. 113.](#)
- (2) Position of the European Parliament of 15 November 2011 (not yet published in the Official Journal) and decision of the Council of 10 October 2012.
- (3) [OJ L 26, 31.1.1977, p. 1.](#) Editorial note: The title of Directive 77/91/EEC 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 58 of the Treaty.
- (4) See Annex II, Part A.
- (5) [OJ L 65, 14.3.1968, p. 8.](#)
- (6) [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.
- (7) [OJ L 96, 12.4.2003, p. 16.](#)
- (8) [OJ L 336, 23.12.2003, p. 33.](#)
- (9) [OJ L 162, 30.4.2004, p. 70.](#)
- (10) [2008] ECR I-3189.