

Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification) (Text with EEA relevance)

TITLE II

[<sup>F1</sup>CONVERSIONS, MERGERS AND DIVISIONS OF LIMITED LIABILITY COMPANIES]

CHAPTER III

*Divisions of public limited liability companies*

*Section 2*

*Division by acquisition*

*Article 153*

**Conditions for nullity of a division**

- 1 The laws of Member States may lay down nullity rules for divisions in accordance with the following conditions only:
- a nullity must be ordered in a court judgment;
  - b divisions which have taken effect pursuant to Article 149 are declared void only if there has been no judicial or administrative preventive supervision of their legality, or if they have not been drawn up and certified in due legal form, or if it is shown that the decision of the general meeting is void or voidable under national law;
  - c nullification proceedings are not initiated more than six months after the date on which the division becomes effective as against the person alleging nullity or if the situation has been rectified;
  - d where it is possible to remedy a defect liable to render a division void, the competent court grants the companies involved a period of time within which to rectify the situation;
  - e a judgment declaring a division void is published in the manner prescribed by the laws of each Member State in accordance with Article 16;
  - f where the laws of a Member State permit a third party to challenge such a judgment, he does so only within six months of publication of the judgment in the manner prescribed by Chapter III of Title I;
  - g a judgment declaring a division void does not of itself affect the validity of obligations owed by or in relation to the recipient companies which arose before the judgment was published and after the date referred to in Article 149;
  - h each of the recipient companies is liable for its obligations arising after the date on which the division took effect and before the date on which the decision pronouncing the nullity of the division was published. The company being divided shall also be liable for

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such obligations; Member States may provide that this liability be limited to the share of net assets transferred to the recipient company on whose account such obligations arose.

2 By way of derogation from point (a) of paragraph 1 of this Article, the laws of a Member State may also provide for the nullity of a division to be ordered by an administrative authority if an appeal against such a decision lies to a court. Point (b) and points (d) to (h) of paragraph 1 of this Article shall apply by analogy to the administrative authority. Such nullification proceedings may not be initiated more than six months after the date referred to in Article 149.

3 The foregoing shall not affect the laws of the Member States on the nullity of a division pronounced following any supervision of legality.