

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

MERGERS AND DIVISIONS OF LIMITED LIABILITY COMPANIES

CHAPTER I

Mergers of public limited liability companies

Section 2

Merger by acquisition

Article 99

Protection of the interests of creditors of the merging companies

1 The laws of the Member States shall provide for an adequate system of protection of the interests of creditors of the merging companies whose claims antedate the publication of the draft terms of merger and have not fallen due at the time of such publication.

2 For the purposes of paragraph 1, the laws of the Member States shall at least provide that such creditors shall be entitled to obtain adequate safeguards where the financial situation of the merging companies makes such protection necessary and where those creditors do not already have such safeguards.

Member States shall lay down the conditions for the protection provided for in paragraph 1 and in the first subparagraph of this paragraph. In any event, Member States shall ensure that the creditors are authorised to apply to the appropriate administrative or judicial authority for adequate safeguards provided that they can credibly demonstrate that due to the merger the satisfaction of their claims is at stake and that no adequate safeguards have been obtained from the company.

3 Such protection may be different for the creditors of the acquiring company and for those of the company being acquired.