

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 I

GENERAL PROVISIONS AND THE ESTABLISHMENT AND FUNCTIONING OF LIMITED LIABILITY COMPANIES

CHAPTER IV

Capital maintenance and alteration

Section 4

Rules on companies' acquisitions of their own shares

Article 59

No subscription of own shares

- 1 The shares of a company may not be subscribed for by the company itself.
- 2 If the shares of a company have been subscribed for by a person acting in his or her own name, but on behalf of the company, the subscriber shall be deemed to have subscribed for them for his or her own account.
- 3 The persons or companies or firms referred to in point (i) of Article 4 or, in cases of an increase in subscribed capital, the members of the administrative or management body shall be liable to pay for shares subscribed in contravention of this Article.

However, the laws of a Member State may provide that any such person may be released from his or her obligation if they prove that no fault is attributable to them personally.

Article 60

Acquisition of own shares

1 Without prejudice to the principle of equal treatment of all shareholders who are in the same position, and to Regulation (EU) No 596/2014, Member States may permit a company to acquire its own shares, either itself or through a person acting in his or her own name but on the company's behalf. To the extent that the acquisitions are permitted, Member States shall make such acquisitions subject to the following conditions:

- a authorisation is given by the general meeting, which shall determine the terms and conditions of such acquisitions, and, in particular, the maximum number of shares to be acquired, the duration of the period for which the authorisation is given, the maximum length of which shall be determined by national law without, however, exceeding five years, and, in the case of acquisition for value, the maximum and

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minimum consideration. Members of the administrative or management body shall satisfy themselves that, at the time when each authorised acquisition is effected, the conditions referred to in points (b) and (c) are respected;

- b the acquisitions, including shares previously acquired by the company and held by it, and shares acquired by a person acting in his or her own name but on the company's behalf, cannot have the effect of reducing the net assets below the amount referred to in Article 56(1) and (2); and
- c only fully paid-up shares can be included in the transaction.

Furthermore, Member States may subject acquisitions within the meaning of the first subparagraph to any of the following conditions:

- a the nominal value or, in the absence thereof, the accountable par of the acquired shares, including shares previously acquired by the company and held by it, and shares acquired by a person acting in his own name but on the company's behalf, does not exceed a limit to be determined by Member States; this limit may not be lower than 10 % of the subscribed capital;
- b the power of the company to acquire its own shares within the meaning of the first subparagraph, the maximum number of shares to be acquired, the duration of the period for which the power is given and the maximum or minimum consideration are laid down in the statutes or in the instrument of incorporation of the company;
- c the company complies with appropriate reporting and notification requirements;
- d certain companies, as determined by Member States, can be required to cancel the acquired shares provided that an amount equal to the nominal value of the shares cancelled is included in a reserve which cannot be distributed to the shareholders, except in the event of a reduction in the subscribed capital; this reserve may be used only for the purposes of increasing the subscribed capital by the capitalisation of reserves;
- e the acquisition does not prejudice the satisfaction of creditors' claims.

2 The laws of a Member State may provide for derogations from the first sentence of point (a) of the first subparagraph of paragraph 1 where the acquisition of a company's own shares is necessary to prevent serious and imminent harm to the company. In such a case, the next general meeting shall be informed by the administrative or management body of the reasons for and nature of the acquisitions effected, of the number and nominal value or, in the absence of a nominal value, the accountable par, of the shares acquired, of the proportion of the subscribed capital which they represent, and of the consideration for those shares.

3 Member States may decide not to apply the first sentence of point (a) of the first subparagraph of paragraph 1 to shares acquired by either the company itself or by a person acting in his or her own name but on the company's behalf, for distribution to that company's employees or to the employees of an associate company. Such shares shall be distributed within 12 months of their acquisition.

Article 61

Derogation from rules on acquisition of own shares

- 1 Member States may decide not to apply Article 60 to:
 - a shares acquired in carrying out a decision to reduce capital, or in the circumstances referred to in Article 82;
 - b shares acquired as a result of a universal transfer of assets;
 - c fully paid-up shares acquired free of charge or by banks and other financial institutions as purchasing commission;

- d shares acquired by virtue of a legal obligation or resulting from a court ruling for the protection of minority shareholders in the event, particularly, of a merger, a change in the company's object or form, transfer abroad of the registered office, or the introduction of restrictions on the transfer of shares;
- e shares acquired from a shareholder in the event of failure to pay them up;
- f shares acquired in order to indemnify minority shareholders in associated companies;
- g fully paid-up shares acquired under a sale enforced by a court order for the payment of a debt owed to the company by the owner of the shares; and
- h fully paid-up shares issued by an investment company with fixed capital, as defined in the second subparagraph of Article 56(7), and acquired at the investor's request by that company or by an associate company. Point (a) of the third subparagraph of Article 56(7) shall apply. Such acquisitions may not have the effect of reducing the net assets below the amount of the subscribed capital plus any reserves the distribution of which is forbidden by law.

2 Shares acquired in the cases listed in points (b) to (g) of paragraph 1 shall, however, be disposed of within not more than three years of their acquisition unless the nominal value or, in the absence of a nominal value, the accountable par of the shares acquired, including shares which the company may have acquired through a person acting in his own name but on the company's behalf, does not exceed 10 % of the subscribed capital.

3 If the shares are not disposed of within the period laid down in paragraph 2, they shall be cancelled. The laws of a Member State may make this cancellation subject to a corresponding reduction in the subscribed capital. Such a reduction shall be prescribed where the acquisition of shares to be cancelled results in the net assets having fallen below the amount specified in Article 56(1) and (2).

Article 62

Consequences of illegal acquisition of own shares

Shares acquired in contravention of Articles 60 and 61 shall be disposed of within one year of their acquisition. If they are not disposed of within that period, Article 61(3) shall apply.

Article 63

Holding of own shares and annual report in case of acquisition of own shares

1 Where the laws of a Member State permit a company to acquire its own shares, either itself or through a person acting in his or her own name but on the company's behalf, they shall make the holding of these shares at all times subject to at least the following conditions:

- a among the rights attaching to the shares, the right to vote attaching to the company's own shares must in any event be suspended;
- b if the shares are included among the assets shown in the balance sheet, a reserve of the same amount, unavailable for distribution, shall be included among the liabilities.

2 Where the laws of a Member State permit a company to acquire its own shares, either itself or through a person acting in his or her own name but on the company's behalf, they shall require the annual report to state at least:

- a the reasons for acquisitions made during the financial year;

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- b the number and nominal value or, in the absence of a nominal value, the accountable par of the shares acquired and disposed of during the financial year and the proportion of the subscribed capital which they represent;
- c in the case of acquisition or disposal for a value, the consideration for the shares;
- d the number and nominal value or, in the absence of a nominal value, the accountable par of all the shares acquired and held by the company and the proportion of the subscribed capital which they represent.

Article 64

Financial assistance by a company for acquisition of its shares by a third party

1 Where Member States permit a company to, either directly or indirectly, advance funds or make loans or provide security, with a view to the acquisition of its shares by a third party, they shall make such transactions subject to the conditions set out in paragraphs 2 to 5.

2 The transactions shall take place under the responsibility of the administrative or management body at fair market conditions, especially with regard to interest received by the company and with regard to security provided to the company for the loans and advances referred to in paragraph 1.

The credit standing of the third party or, in the case of multiparty transactions, of each counterparty thereto shall have been duly investigated.

3 The transactions shall be submitted by the administrative or management body to the general meeting for prior approval, whereby the general meeting shall act in accordance with the rules for a quorum and a majority laid down in Article 83.

The administrative or management body shall present a written report to the general meeting, indicating:

- a the reasons for the transaction;
- b the interest of the company in entering into such a transaction;
- c the conditions on which the transaction is entered into;
- d the risks involved in the transaction for the liquidity and solvency of the company; and
- e the price at which the third party is to acquire the shares.

This report shall be submitted to the register for publication in accordance with Article 16.

4 The aggregate financial assistance granted to third parties shall at no time result in the reduction of the net assets below the amount specified in Article 56(1) and (2), taking into account also any reduction of the net assets that may have occurred through the acquisition, by the company or on behalf of the company, of its own shares in accordance with Article 60(1).

The company shall include, among the liabilities in the balance sheet, a reserve, unavailable for distribution, of the amount of the aggregate financial assistance.

5 Where a third party by means of financial assistance from a company acquires that company's own shares within the meaning of Article 60(1) or subscribes for shares issued in the course of an increase in the subscribed capital, such acquisition or subscription shall be made at a fair price.

6 Paragraphs 1 to 5 shall not apply to transactions concluded by banks and other financial institutions in the normal course of business, nor to transactions effected with a view to the

acquisition of shares by or for the company's employees or the employees of an associate company.

However, these transactions may not have the effect of reducing the net assets below the amount specified in Article 56(1).

7 Paragraphs 1 to 5 shall not apply to transactions effected with a view to acquisition of shares as described in of Article 61(1)(h).

Article 65

Additional safeguards in case of related party transactions

In cases where individual members of the administrative or management body of the company being party to a transaction referred to in Article 64(1) of this Directive, or of the administrative or management body of a parent undertaking within the meaning of Article 22 of Directive 2013/34/EU or such parent undertaking itself, or individuals acting in their own name, but on behalf of the members of such bodies or on behalf of such undertaking, are counterparties to such a transaction, Member States shall ensure through adequate safeguards that such transaction does not conflict with the company's best interests.

Article 66

Acceptance of the company's own shares as security

1 The acceptance of the company's own shares as security, either by the company itself or through a person acting in his own name but on the company's behalf, shall be treated as an acquisition for the purposes of Article 60, Article 61(1), and Articles 63 and 64.

2 The Member States may decide not to apply paragraph 1 to transactions concluded by banks and other financial institutions in the normal course of business.

Article 67

Subscription, acquisition or holding of shares by a company in which the public limited liability company holds a majority of the voting rights or on which it can exercise a dominant influence

1 The subscription, acquisition or holding of shares in a public limited liability company by another company of a type listed in Annex II in which the public limited liability company directly or indirectly holds a majority of the voting rights or on which it can directly or indirectly exercise a dominant influence shall be regarded as having been effected by the public limited liability company itself.

The first subparagraph shall also apply where the other company is governed by the law of a third country and has a legal form comparable to those listed in Annex II.

However, where the public limited liability company holds a majority of the voting rights indirectly or can exercise a dominant influence indirectly, Member States need not apply the first and the second subparagraphs if they provide for the suspension of the voting rights attached to the shares in the public limited liability company held by the other company.

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2 In the absence of coordination of national legislation on groups of companies, Member States may:

- a define the cases in which a public limited liability company shall be regarded as being able to exercise a dominant influence on another company; if a Member State exercises this option, its national law shall in any event provide that a dominant influence can be exercised if a public limited liability company:
 - (i) has the right to appoint or dismiss a majority of the members of the administrative organ, of the management organ or of the supervisory organ, and is at the same time a shareholder or member of the other company; or
 - (ii) is a shareholder or member of the other company and has sole control of a majority of the voting rights of its shareholders or members under an agreement concluded with other shareholders or members of that company.

Member States shall not be obliged to make provision for any cases other than those referred to in points (i) and (ii) of the first subparagraph;

- b define the cases in which a public limited liability company shall be regarded as indirectly holding voting rights or as able indirectly to exercise a dominant influence;
- c specify the circumstances in which a public limited liability company shall be regarded as holding voting rights.

3 Member States need not apply the first and second subparagraphs of paragraph 1 where the subscription, acquisition or holding is effected on behalf of a person other than the person subscribing, acquiring or holding the shares, who is neither the public limited liability company referred to in paragraph 1 nor another company in which the public limited liability company directly or indirectly holds a majority of the voting rights or on which it can directly or indirectly exercise a dominant influence.

4 Member States need not apply the first and second subparagraphs of paragraph 1 where the subscription, acquisition or holding is effected by the other company in its capacity and in the context of its activities as a professional dealer in securities, provided that it is a member of a stock exchange situated or operating within a Member State, or is approved or supervised by an authority of a Member State competent to supervise professional dealers in securities which, within the meaning of this Directive, may include credit institutions.

5 Member States need not apply the first and second subparagraphs of paragraph 1 where shares in a public limited liability company held by another company were acquired before the relationship between the two companies corresponded to the criteria laid down in paragraph 1.

However, the voting rights attached to those shares shall be suspended and the shares shall be taken into account when it is determined whether the condition laid down in Article 60(1)(b) is fulfilled.

6 Member States need not apply Article 61(2) or (3) or Article 62 where shares in a public limited liability company are acquired by another company on condition that they provide for:

- a the suspension of the voting rights attached to the shares in the public limited liability company held by the other company; and
- b the members of the administrative or the management organ of the public limited liability company to be obliged to buy back from the other company the shares referred to in Article 61(2) and (3) and Article 62 at the price at which the other company acquired them; this sanction shall be inapplicable only where the members of the administrative or the management organ of the public limited liability company prove

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that that company played no part whatsoever in the subscription for or acquisition of the shares in question.