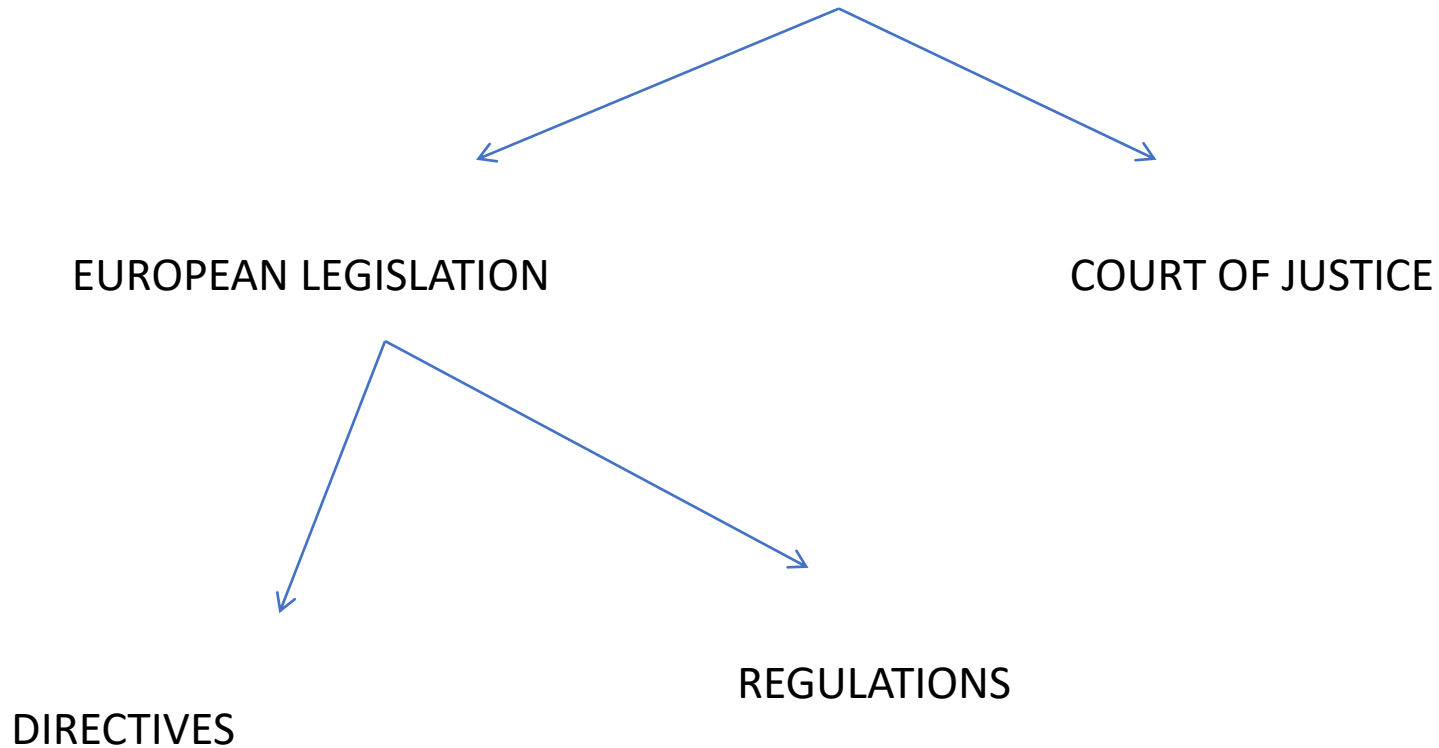


# EUROPEAN COMPANY LAW

LEGISLATION

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## SOVEREIGNTY

- **approximation of laws**
- ***freedom of establishment***

***harmonisation***

# LEGISLATION - DIRECTIVES

- MAIN TOPICS

- Publicity of the companies
- Safeguard of third parties, creditors and shareholders
- Shareholders' rights
- Capital
- Accounts and audit
- Mergers and demergers
  - Internal/external
- UNIFORM MODELS

# LEGISLATION

- BASIS

- Article 50 TFEU (ex Article 44 TEC): *In order to attain **freedom of establishment** as regards a particular activity, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall act by means of directives ...*
- Article 54 TFEU (ex Article 48 TEC): *Companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Union shall, for the purposes of this Chapter, be treated in the same way as natural persons who are nationals of Member States*
- Article 352 TFEU (ex Article 308 TEC) : s.c. flexibility clause

# LEGISLATION - COMPANIES

- **FIRST DIRECTIVE**
- DIR. 68/151/CEE of 9 March 1968 on co-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**
- Directive **2003/58/EC** of 15 July 2003 **amending** Council Directive 68/151/EEC, as regards **disclosure requirements** in respect of certain types of companies

# LEGISLATION - COMPANIES

- FIRST DIRECTIVE **repealed by**
- DIRECTIVE 2009/101/EC 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 48 of the Treaty, with a view to making such safeguards equivalent
- **repealed by**
- DIRECTIVE (EU) 2017/1132 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 June 2017 relating to certain aspects of company law (codification)

# LEGISLATION - COMPANIES

- SECOND DIRECTIVE
- DIR. 77/91/CEE 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 58 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
- DIR. **2006/68/EC** of 6 September 2006 amending Council Directive 77/91/EEC as regards the **formation** of public limited liability companies and the maintenance and alteration of their **capital**



# LEGISLATION - COMPANIES

- SECOND DIRECTIVE **REPEALED BY**
- DIRECTIVE 2012/30/EU 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

- **repealed by**

- DIRECTIVE (EU) 2017/1132 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 June 2017 relating to certain aspects of company law (codification)

# LEGISLATION - COMPANIES

- ELEVENTH DIRECTIVE
- DIR. 89/666/EEC of 21 December 1989 concerning **disclosure requirements in respect of branches opened** in a Member State by certain types of company governed by the law of another State
- **repealed by**
- DIRECTIVE (EU) 2017/1132 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 June 2017 relating to certain aspects of company law (codification)

# LEGISLATION - COMPANIES

- TWELFTH DIRECTIVE
- DIR. 89/667/EEC of 21 December 1989 on **single-member private limited-liability companies**

**repealed by**

- DIR. 2009/102/EC of 16 September 2009 in the area of company law on single-member private limited liability companies (codified version)

# LEGISLATION - COMPANIES

- **DIRECTIVE 2007/36/EC of 11 July 2007 on the exercise of certain rights of shareholders in listed companies**
- **DIRECTIVE (EU) 2017/828 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 May 2017 *amending* Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement**

# LEGISLATION – ACCOUNTS AND AUDIT

- FOURTH DIRECTIVE
- DIR. 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the **annual accounts** of certain types of companies
- SEVENTH DIRECTIVE
- DIR. 83/349/EEC of 13 June 1983 based on the Article 54 (3) (g) of the Treaty on **consolidated accounts**
- DIRECTIVE 2009/49/EC of 18 June 2009 amending Council Directives 78/660/EEC and 83/349/EEC as regards certain disclosure requirements for medium-sized companies and the obligation to draw up consolidated accounts

# LEGISLATION - ACCOUNTS AND AUDIT

- EIGHT DIRECTIVE
- DIR. 84/253/EEC of 10 April 1984 based on Article 54 (3) (g) of the Treaty on the approval of persons responsible for carrying out the **statutory audits of accounting documents**
- DIR. 2006/43/EC of 17 May 2006 on statutory audits of **annual accounts and consolidated accounts**, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC

# LEGISLATION – ACCOUNTS AND AUDIT

- **DIRECTIVE 2013/34/EU of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EE**



# LEGISLATION - ACCOUNTS AND AUDIT

- DIRECTIVE 2014/56/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014 amending Directive 2006/43/EC on **statutory audits of annual accounts and consolidated accounts**

# LEGISLATION - ACCOUNTS AND AUDIT

- **REGULATION (EU) No. 537/2014 of 16 April 2014 on specific requirements regarding statutory **audit of public-interest entities** and repealing Commission Decision 2005/909/EC**

# LEGISLATION – MERGERS AND DEMERGERS

- THIRD DIRECTIVE
- DIR. 78/855/EEC of 9 October 1978 based on Article 54 (3) (g) of the Treaty concerning **mergers** of public limited liability companies
  - REPEALED...
- SIXTH DIRECTIVE
- DIR. 82/891/EEC of 17 December 1982 based on Article 54 (3) (g) of the Treaty, concerning the **division** of public limited liability companies
  - REPEALED...

# LEGISLATION – MERGERS AND DEMERGERS

- DIRECTIVE 2005/56/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 October 2005 on **cross-border mergers** of limited liability companies
- **repealed by**
- DIRECTIVE (EU) 2017/1132 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 June 2017 relating to certain aspects of company law (codification)

# LEGISLATION – MERGERS AND DEMERGERS

- DIRECTIVE 2009/109/EC of 16 September 2009 amending Council Directives 77/91/EEC, 78/855/EEC and 82/891/EEC, and Directive 2005/56/EC as regards reporting and documentation requirements in the case of mergers and divisions
- **repealed by**
- DIRECTIVE (EU) 2017/1132 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 June 2017 relating to certain aspects of company law (codification)

# LEGISLATION – MERGERS AND DEMERGERS

- THIRD DIRECTIVE **REPEALED BY**
- DIRECTIVE 2011/35/EU of 5 April 2011 concerning mergers of public limited liability companies (codification)
- **repealed by**
- DIRECTIVE (EU) 2017/1132 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 June 2017 relating to certain aspects of company law (codification)

- (dir. 2017/1132) For the purposes of this Chapter, '**merger by the formation of a new company**' shall mean the operation whereby several companies are wound up without going into liquidation and transfer to a company that they set up all their assets and liabilities in exchange for the issue to their shareholders of shares in the new company and a cash payment, if any, not exceeding 10 % of the nominal value of the shares so issued or, where they have no nominal value, of their accounting par value.
- (dir. 2017/1132) For the purposes of this Chapter, '**merger by acquisition**' shall mean the operation whereby one or more companies are wound up without going into liquidation and transfer to another all their assets and liabilities in exchange for the issue to the shareholders of the company or companies being acquired of shares in the acquiring company and a cash payment, if any, not exceeding 10 % of the nominal value of the shares so issued or, where they have no nominal value, of their accounting par value

- (dir. 2017/1132) For the purposes of this Chapter, **‘division by acquisition’** shall mean the operation whereby, after being wound up without going into liquidation, a company transfers to more than one company all its assets and liabilities in exchange for the allocation to the shareholders of the company being divided of shares in the companies receiving contributions as a result of the division (hereinafter referred to as ‘recipient companies’) and possibly a cash payment not exceeding 10 % of the nominal value of the shares allocated or, where they have no nominal value, of their accounting par value



# LEGISLATION

- DIRECTIVE 2004/25/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 April 2004  
on takeover bids

# LEGISLATION - digital tools and processes in company law

- DIRECTIVE (EU) 2019/1151 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 June 2019 amending Directive (EU) 2017/1132 as regards the use of **digital tools and processes** in company law
- Whereas:
  - 2) The use of digital tools and processes to more easily, rapidly and time- and cost-effectively initiate economic activity by setting up a company or by opening a branch of that company in another Member State, and to provide comprehensive and accessible information on companies, is one of the prerequisites for the effective functioning, modernisation and administrative streamlining of a competitive internal market and for ensuring the competitiveness and trustworthiness of companies

DIRECTIVE (EU) 2017/1132 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 June 2017 relating to certain aspects of company law (codification)

- TITLE I GENERAL PROVISIONS AND THE ESTABLISHMENT AND FUNCTIONING OF LIMITED LIABILITY COMPANIES
  - Chapter I Subject matter
  - Chapter II **Incorporation and nullity** of the company and validity of its obligations
  - Chapter III **Disclosure** and interconnection of central, commercial and companies registers
  - Chapter IV **Capital** maintenance and alteration
- TITLE II MERGERS AND DIVISIONS OF LIMITED LIABILITY COMPANIES
  - Chapter I Mergers of public limited liability companies
  - Chapter II Cross-border mergers of limited liability companies
  - Chapter III Divisions of public limited liability companies
- TITLE III FINAL PROVISIONS

# Whereas:

- (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 the formation of such companies 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 oneself with the basic particulars of the company**, including the exact composition of its capital

# Whereas:

- (5) The protection of third parties should be ensured by provisions which **restrict to the greatest possible extent the grounds on which obligations entered into in the name of companies limited by shares or otherwise having limited liability are not valid.**
- (6) It is necessary, in order to ensure certainty in the law as regards relations between companies and third parties, and also between members, to **limit the cases in which nullity can arise and the retroactive effect of a declaration of nullity**, and to fix a **short time limit within which third parties may enter an objection to any such declaration.**
- (7) The coordination of national provisions concerning disclosure, the validity of obligations entered into by, and the nullity of, companies limited by shares or otherwise having limited liability, is of special importance, particularly for the purpose of **protecting the interests of third parties.**

# Whereas:

- (12) **Cross-border access to company information** should be facilitated by allowing, in addition to the compulsory disclosure made in one of the languages permitted in the company's Member State, the voluntary registration in additional languages of the required documents and particulars. Third parties acting in good faith should be able to rely on the translations thereof.
- (15) **In respect of branches**, the lack of coordination, in particular concerning **disclosure**, gives rise to some disparities, in the protection of shareholders and third parties, between companies which operate in other Member States by opening branches and those which operate there by creating subsidiaries.
- (16) To ensure the protection of persons who deal with companies through the intermediary of branches, **measures in respect of disclosure are required in the Member State in which a branch is situated**. In certain respects, the economic and social influence of a branch can be comparable to that of a subsidiary company, so that there is public interest in disclosure of the company at the branch. To effect such disclosure, it is necessary to make use of the procedure already instituted for companies with share capital within the Union.

# Whereas:

- (23) **The interconnection of central, commercial and companies registers is a measure required to create a more business-friendly legal and fiscal environment.** It should contribute to fostering the competitiveness of European business by **reducing administrative burdens and increasing legal certainty** and thus contributing to an exit from the global economic and financial crisis, which is one of the priorities of the agenda of Europe 2020. It should also improve cross-border communication between registers by using innovations in information and communication technology.

# Whereas:

- (40) 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 right of public limited liability companies to acquire their own shares.
- (41) The **restrictions on a public limited liability company's acquisition of its own shares** 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.



# Whereas:

- (46) It is necessary, having regard to the objectives of Article 50(2)(g) 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.
- (47) 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.

# Whereas:

- (49) The protection of the interests of members and third parties requires that **the laws of the Member States relating to mergers of public limited liability companies be coordinated**, and that provision for mergers be made in the laws of all the Member States.
- (56) In order to **facilitate cross-border merger operations**, it should be specified that, unless this Directive provides otherwise, each company taking part in a cross-border merger, and each third party concerned, remains subject to the provisions and formalities of the national law which would be applicable in the case of a national merger. None of the provisions and formalities of national law, to which reference is made in this Directive, should introduce restrictions on freedom of establishment or on the free movement of capital, save where these can be justified in accordance with the case-law of the Court of Justice of the European Union and in particular, by requirements of the general interest and are both necessary for, and proportionate to, the attainment of such overriding requirements.

# Whereas:

- (66) If **employees have participation rights** in one of the merging companies under the circumstances set out in this Directive and, if the national law of the Member State in which the company resulting from the cross-border merger has its registered office does not provide for the same level of participation as operated in the relevant merging companies, including in committees of the supervisory board that have decision-making powers, or does not provide for the same entitlement to exercise rights for employees of establishments resulting from the cross- border merger, the participation of employees in the company resulting from the cross-border merger and their involvement in the definition of such rights should be regulated. To that end, the principles and procedures provided for in Council Regulation (EC) No 2157/2001 (1) and in Council Directive 2001/86/EC (2), should be taken as a basis, subject, however, to modifications that are deemed necessary because the resulting company will be subject to the national laws of the Member State where it has its registered office. A prompt start to negotiations under Article 133 of this Directive, with a view to not unnecessarily delaying mergers, may be ensured by Member States in accordance with Article 3(2)(b) of Directive 2001/86/EC.

## Article 1 Subject matter

- This Directive lays down measures concerning the following:
  - the **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,
  - the **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, in **respect of disclosure, the validity of obligations entered into by, and the nullity of, companies limited by shares or otherwise having limited liability**, with a view to making such safeguards equivalent,
  - the **disclosure requirements** in respect of branches opened in a Member State by certain types of company governed by the law of another State,
  - **mergers** of public limited liability companies,
  - **cross-border mergers** of limited liability companies,
  - the **division** of public limited liability companies.

# Incorporation

- Compulsory information to be provided in the statutes or instruments of incorporation *or separate documents*
- Authorisation for commencing business and liabilities incurred by or on behalf of the company during the period before such authorisation is granted or refused
- Acts of the organs of a company and its representation

# Nullity

- Conditions for nullity of a company and consequences (11-12)

# Disclosure

- Documents and particulars to be disclosed by companies
- Disclosure of documents and particulars relating to a branch

# Capital maintenance and alteration

- Minimum capital
- Subscribed capital may be formed only of assets capable of economic assessment. However, an undertaking to perform work or supply services may not form part of those assets
- Experts' report on consideration other than in cash
- Rules on distribution



# Acquisition of its own shares

- [DIR. 77/91/CEE (second directive) as amended by dir. 2006/68/CE repealed by dir. 2012/30/UE and lastly repealed by dir. 2017/1132/UE; REGULATION (EU) No 596/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC]
- Artt. 2357ss. c.c.

# Acquisition of its own shares

- The company can purchase its own shares except to the extent of profits available and available reserves
- Only shares entirely paid up
- Authorization of the shareholders' meeting
  - Maximum amount
  - Time limit
  - Share price (minimum/maximum)
- Quantity limits: for companies which resort to risk capital market = 1/5 of the capital
- The rules apply also to purchases executed by fiduciary

# Acquisition of its own shares

- What happens in case of violation?
  - The purchase is valid but:
    - The shares must be sold within one year
    - If not, they must be cancelled and the capital must be reduced
- Exceptions (2357-bis)
  - Reduction of the capital
  - Without consideration (but totally paid up)
  - Universal succession
  - Enforcement of civil judgement

# Acquisition of its own shares

- Rules

- The directors cannot dispose of the purchased shares without previous authorization of the shareholders' meeting
- The right to receive dividends and the option right are proportionally allocated to the other shares
- The voting right is suspended
  - Companies which not resort to risk capital market: calculated for the constitution/resolution quorum
  - Companies which resort to risk capital market: calculated only for the constitution quorum
- Not available reserve

# Prohibition to subscribe

## **Direct**

- The subscription is valid but
  - The shares shall be fully paid up by the founders or the promoting members or by the directors, in case of increase of the capital

## **Indirect**

- The subscription is valid but
  - The third party which subscribed in its own name and on behalf of the company shall be considered as subscriber
  - + liability of founders/promoting members/directors

# Other transactions (2358 c.c.)

- Prohibition to grant loan or give guarantees for the purchase or subscription of its own shares, unless conditions required by art. 2358 c.c.
  - Authorization of the extraordinary shareholders' meeting
  - Report of the directors
  - Limit of the profits available for distribution and available reserves
- Prohibition to accept its own shares as security

# RIGHTS OF THE SHAREHOLDERS IN LISTED COMPANIES

- **DIRECTIVE 2007/36/EC of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (c.d. directive Shareholders' rights)**
- Amended by
  - Dir. 2014/59/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council
  - DIRECTIVE (EU) 2017/828 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement

- Transposed in Italy by
  - DECRETO LEGISLATIVO 27 gennaio 2010, n. 27 Attuazione della direttiva 2007/36/CE, relativa all'esercizio di alcuni diritti degli azionisti di società quotate.
  - Amended by
    - DECRETO LEGISLATIVO 18 giugno 2012, n. 91 Modifiche ed integrazioni al decreto legislativo 27 gennaio 2010, n. 27, recante attuazione della direttiva 2007/36/CE, relativa all'esercizio di alcuni diritti degli azionisti di società quotate
- CONSOB, Regolamento emittenti, adottato con delibera n. 11971 del 14 maggio 1999



## DIR. 2007/36/EC *Whereas*:

- (1)... new tailored initiatives should be taken with a view to enhancing shareholders' rights in listed companies and that problems relating to crossborder voting should be solved as a matter of urgency
- (2) intention to strengthen shareholders' rights, in particular through the **extension of the rules on transparency, proxy voting rights, the possibility of participating in general meetings via electronic means and ensuring that cross-border voting rights are able to be exercised**
- (3) Holders of shares carrying voting rights should be able to exercise those rights given that they are reflected in the price that has to be paid at the acquisition of the shares. Furthermore, effective shareholder control is a prerequisite to sound corporate governance and should, therefore, be facilitated and encouraged. It is therefore necessary to adopt measures to approximate the laws of the Member States to this end. **Obstacles which deter shareholders from voting**, such as making the exercise of voting rights subject to the blocking of shares during a certain period before the general meeting, **should be removed**. However, this Directive does not affect existing Community legislation on units issued by collective investment undertakings or on units acquired or disposed of in such undertakings.

DIR. 2007/36/EC *Whereas*:

- (5) Significant proportions of shares in listed companies are held by shareholders who do not reside in the Member State in which the company has its registered office. **Non-resident shareholders should be able to exercise their rights in relation to the general meeting** as easily as shareholders who reside in the Member State in which the company has its registered office. This requires that existing obstacles which hinder the access of non-resident shareholders to the information relevant to the general meeting and the exercise of voting rights without physically attending the general meeting be removed. The removal of these obstacles should also benefit resident shareholders who do not or cannot attend the general meeting

## DIR. 2007/36/EC Whereas:

- (6) ... All shareholders should have **sufficient time to consider the documents intended to be submitted to the general meeting and determine how they will vote their shares**. To this end, **timely notice** should be given of the general meeting, and shareholders should be provided with the complete information intended to be submitted to the general meeting...
- (7) ...Shareholders should, in principle, have **the possibility to put items on the agenda** of the general meeting and to table draft resolutions for items on the agenda...
- (8) Every shareholder should, in principle, have the possibility to **ask questions** related to items on the agenda of the general meeting and to have them answered...

DIR. 2007/36/EC Whereas:

- (9) Companies should face no legal obstacles in offering to their shareholders any **means of electronic participation in the general meeting**. Voting without attending the general meeting in person, whether by correspondence or by electronic means, should not be subject to constraints other than those necessary for the verification of identity and the security of electronic communications...
- (10) Good corporate governance requires a **smooth and effective process of proxy voting**...But good corporate governance also requires **adequate safeguards against a possible abuse of proxy voting**...

# DIRECTIVE (EU) 2017/828 Whereas:

- (2) The financial crisis has revealed that shareholders in many cases supported managers' excessive short-term risk taking. Moreover, there is clear evidence that the current level of 'monitoring' of investee companies and engagement by institutional investors and asset managers is often inadequate and focuses too much on short-term returns, which may lead to suboptimal corporate governance and performance
- (4) **Shares of listed companies are often held through complex chains of intermediaries** which render the exercise of shareholder rights more difficult and may act as an obstacle to shareholder engagement. **Companies are often unable to identify their shareholders.** The **identification of shareholders is a prerequisite to direct communication between the shareholders and the company** and therefore essential to facilitating the exercise of shareholder rights and shareholder engagement. This is particularly relevant in cross-border situations and when using electronic means. **Listed companies should therefore have the right to identify their shareholders in order to be able to communicate with them directly.** Intermediaries should be required, upon the request of the company, to communicate to the company the information regarding shareholder identity. However, Member States should be allowed to exclude from the identification requirement shareholders holding only a small number of shares
- (5) In order to achieve that objective, a certain level of information on shareholder identity needs to be transmitted to the company...

# DECRETO LEGISLATIVO 10 maggio 2019, n. 49

Attuazione della direttiva 2017/828 del Parlamento europeo e del Consiglio, del 17 maggio 2017, che modifica la direttiva 2007/36/CE per quanto riguarda l'incoraggiamento dell'impegno a lungo termine degli azionisti.

# European directives

- **GOALS:**

- **Participation of the shareholders**
  - Call of the meeting
  - Vote by proxy
  - Vote by correspondence
  - Right to put items on the agenda
  - Right to table draft resolutions

- GOALS:

- Information of the shareholders
  - Reports
  - Right to ask quaestions
  - Transparency and approval of related party transactions
  - Direct communication between the shareholders and the company



# National transposition/legislation

- Testo Unico della Finanza (T.U.F., d.lgs. N. 58 del 1998) and some articles of the Civil Code
- Tit. III «Emittenti», sez. II «Diritti dei soci»
  - Shareholders' meeting call: 1/20 of the capital
  - Specific rules about the notice of calling of the meeting (125bis TUF)
  - Report on the matters in the agenda (125ter TUF)

# National transposition/legislation

- Constitution quorum of the extraordinary shareholders' meeting:  $\frac{1}{2}$  capital (2368 c.c.) [1/5 from the third convocation]
- Resolution quorum of the extraordinary shareholders' meeting:  $\frac{2}{3}$  capital represented (2368 c.c.)
- BUT it is possible to have a **single call** and then..
  - Ordinary: resol. 50% of the capital represented
  - Extraordinary: const.  $\frac{1}{5}$  of the capital/ resol.  $\frac{2}{3}$  capital represented
- increasable

# National transposition/legislation

- Record date
- Proxy:
  - No limits for listed companies
  - Transparency of the existence of a conflict of interests
  - Solicitation of proxies
  - Representative appointed by the company

(Avviso di convocazione dell'assemblea)

1. L'assemblea è convocata mediante avviso pubblicato sul sito Internet della società entro il trentesimo giorno precedente la data dell'assemblea, nonché con le altre modalità ed entro i termini previsti dalla Consob con regolamento emanato ai sensi dell'articolo 113-ter, comma 3, ivi inclusa la pubblicazione per estratto sui giornali quotidiani.
2. Nel caso di assemblea convocata per l'elezione mediante voto di lista dei componenti degli organi di amministrazione e controllo, il termine per la pubblicazione dell'avviso di convocazione è anticipato al quarantesimo giorno precedente la data dell'assemblea.
3. Per le assemblee previste dagli articoli 2446, 2447 e 2487 del codice civile, il termine indicato nel comma 1 è posticipato al ventesimo giorno precedente la data dell'assemblea.
4. L'avviso di convocazione reca:
  - a) l'indicazione del giorno, dell'ora e del luogo dell'adunanza nonché l'elenco delle materie da trattare;
  - b) una descrizione chiara e precisa delle procedure da rispettare per poter partecipare e votare in assemblea, ivi comprese le informazioni riguardanti:
    - 1) i termini per l'esercizio del diritto di porre domande prima dell'assemblea e del diritto di integrare l'ordine del giorno o di presentare ulteriori proposte su materie già all'ordine del giorno, nonché, anche mediante riferimento al sito Internet della società, le eventuali ulteriori modalità per l'esercizio di tali diritti;
    - 2) la procedura per l'esercizio del voto per delega e, in particolare, le modalità per il reperimento dei moduli utilizzabili in via facoltativa per il voto per delega nonché le modalità per l'eventuale notifica, anche elettronica, delle deleghe di voto;
    - 3) la procedura per il conferimento delle deleghe al soggetto eventualmente designato dalla società ai sensi dell'articolo 135-undecies, con la precisazione che la delega non ha effetto con riguardo alle proposte per le quali non siano state conferite istruzioni di voto;
    - 4) le procedure di voto per corrispondenza o con mezzi elettronici, se previsto dallo statuto;
  - c) la data indicata nell'articolo 83-sexies, comma 2, con la precisazione che coloro che diventeranno titolari delle azioni solo successivamente a tale data non avranno il diritto di intervenire e votare in assemblea;
  - d) le modalità e i termini di reperibilità del testo integrale delle proposte di deliberazione, unitamente alle relazioni illustrative, e dei documenti che saranno sottoposti all'assemblea;
  - d-bis) le modalità e i termini di presentazione delle liste per l'elezione dei componenti del consiglio di amministrazione e del componente di minoranza del collegio sindacale o del consiglio di sorveglianza;
  - e) l'indirizzo del sito Internet indicato nell'articolo 125-quater;
  - f) le altre informazioni la cui indicazione nell'avviso di convocazione è richiesta da altre disposizioni

## Art. 125-ter TUF

(Relazioni sulle materie all'ordine del giorno)

1. Ove già non richiesto da altre disposizioni di legge, l'organo di amministrazione entro il termine di pubblicazione dell'avviso di convocazione dell'assemblea previsto in ragione di ciascuna delle materia all'ordine del giorno, mette a disposizione del pubblico presso la sede sociale, sul sito Internet della società, e con le altre modalità previste dalla Consob con regolamento, una relazione su ciascuna delle materie all'ordine del giorno.

2. Le relazioni predisposte ai sensi di altre norme di legge sono messe a disposizione del pubblico nei termini indicati dalle medesime norme, con le modalità previste dal comma 1. La relazione di cui all'articolo 2446, primo comma, del codice civile è messa a disposizione del pubblico almeno ventuno giorni prima dell'assemblea. Resta fermo quanto previsto dall'articolo 154-ter, commi 1, 1-bis e 1-ter.

3. Nel caso di convocazione dell'assemblea ai sensi dell'articolo 2367 del codice civile, la relazione sulle materie da trattare è predisposta dai soci che richiedono la convocazione dell'assemblea. L'organo di amministrazione ovvero i sindaci o il consiglio di sorveglianza o il comitato per il controllo sulla gestione, ove abbiano provveduto alla convocazione ai sensi dell'articolo 2367, secondo comma, primo periodo, del codice civile, mettono a disposizione del pubblico la relazione, accompagnata dalle proprie eventuali valutazioni, contestualmente alla pubblicazione dell'avviso di convocazione dell'assemblea con le modalità di cui al comma 1.

(Integrazione dell'ordine del giorno dell'assemblea e presentazione di nuove proposte di delibera)

1. I soci che, anche congiuntamente, rappresentino almeno un quarantesimo del capitale sociale possono chiedere, entro dieci giorni dalla pubblicazione dell'avviso di convocazione dell'assemblea, ovvero entro cinque giorni nel caso di convocazione ai sensi dell'articolo 125-bis, comma 3 o dell'articolo 104, comma 2, l'integrazione dell'elenco delle materie da trattare, indicando nella domanda gli ulteriori argomenti da essi proposti ovvero presentare proposte di deliberazione su materie già all'ordine del giorno. Le domande, unitamente alla certificazione attestante la titolarità della partecipazione, sono presentate per iscritto, anche per corrispondenza ovvero in via elettronica, nel rispetto degli eventuali requisiti strettamente necessari per l'identificazione dei richiedenti indicati dalla società. Colui al quel spetta il diritto di voto può presentare individualmente proposte di deliberazione in assemblea. Per le società cooperative la misura del capitale è determinata dagli statuti anche in deroga all'articolo 135.
2. Delle integrazioni all'ordine del giorno o della presentazione di ulteriori proposte di deliberazione su materie già all'ordine del giorno, ai sensi del comma 1, è data notizia, nelle stesse forme prescritte per la pubblicazione dell'avviso di convocazione, almeno quindici giorni prima di quello fissato per l'assemblea. Le ulteriori preposte di deliberazione su materie già all'ordine del giorno sono messe a disposizione del pubblico con le modalità di cui all'articolo 125-ter, comma1, contestualmente alla pubblicazione della notizia della presentazione. Il termine è ridotto a sette giorni nel caso di assemblea convocata ai sensi dell'articolo 104, comma 2, ovvero nel caso di assemblea convocata ai sensi dell'articolo 125-bis, comma 3.
3. L'integrazione dell'ordine del giorno non è ammessa per gli argomenti sui quali l'assemblea delibera, a norma di legge, su proposta dell'organo di amministrazione o sulla base di un progetto o di una relazione da essi predisposta, diversa da quelle indicate all'articolo 125-ter, comma 1.
4. I soci che richiedono l'integrazione ai sensi del comma 1 predispongono una relazione che riporti la motivazione delle proposte di deliberazione sulle nuove materie di cui essi propongono la trattazione ovvero la motivazione relativa alle ulteriori proposte di deliberazione presentate su materie già all'ordine del giorno. La relazione è trasmessa all'organo di amministrazione entro il termine ultimo per la presentazione della richiesta di integrazione. L'organo di amministrazione mette a disposizione del pubblico la relazione, accompagnata dalle proprie eventuali valutazioni, contestualmente alla pubblicazione della notizia dell'integrazione o della presentazione, con le modalità di cui all'articolo 125-ter, comma 1.
5. Se l'organo di amministrazione, ovvero, in caso di inerzia di questo, il collegio sindacale, o il consiglio di sorveglianza o il comitato per il controllo sulla gestione, non provvedono all'integrazione dell'ordine del giorno con le nuove materie o proposte presentate ai sensi del comma 1, il tribunale, sentiti i componenti degli organi di amministrazione e di controllo, ove il rifiuto di provvedere risulti ingiustificato, ordina con decreto l'integrazione. Il decreto è pubblicato con le modalità previste dall'articolo 125-ter, comma 1.