



ADOPTION OF THE DIRECTIVE (UE) 2017/1132, A FIRST STEP TOWARDS A EUROPEAN CORPORATE CODE.

The directive (UE) 2017/1132 of the European Parliament and of the Council dated 14 June 2017 (Directive) relating to certain aspects of Company Law was published in the European Union Gazette (JOUE) on 30 June 2017. By bringing together six different directives, the Directive represents a first step towards a European corporate Code and a real effort to make the European corporate law more accessible.

A new directive for a long-standing goal

Simplifying and clarifying the legal framework applicable to companies in the EU is not a new intention. Thus, the European Commission previously launched two public consultations regarding corporate governance and the future of European corporate law - respectively in 2011 and 2012 - which lead to the Action Plan for European corporate law and corporate governance.

The new Directive gathers six founding texts relating to corporate life and various corporate transactions, including:

- Division of public limited companies.¹
- Disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State.²
- Cross-border mergers of limited liability companies.³
- Coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies.⁴
- Mergers of public limited liability companies.⁵
- Coordination of safeguards required by Member States regarding the incorporation of public limited companies and the maintenance and alteration of their share capital.⁶

Thanks to the Directive, rules regarding incorporation, functioning,

disclosure requirements, merger and division can now be found in a single directive.

Scope and content of the Directive

The scope of the Directive appears to be wide as it covers texts relating to corporate law, along with those relating to the public limited liability companies. However, the Directive does not cover all areas of corporate law. As a matter of fact, the companies listed on a regulated market and the single-member private limited liability companies are not covered by the scope of the Directive. Moreover, the directives regarding accounting and tax issues remain in force as they are not part of the six directives compiled in the new Directive.

The Directive is divided into two main titles. The first one refers to the general provisions and establishment and functioning of limited liability companies. The second one refers to mergers and divisions of limited liability companies. In line with the purpose of clarifying the legal provisions for companies, a correlation table is annexed to the Directive.

What will change with the adoption of the Directive ?

The adoption of the Directive will not have a substantial impact on French corporate law. Actually, all legal provisions compiled have been transposed into French law before. As a consequence, the French Commercial Code will not be amended (except in order to change some references to former directives).

Otherwise, the process of codification is not an unusual one. Indeed, under

European Law, codification is a classic legislative practice because of the law-making process. Legal rules are never directly amended, each amendment implies an amended directive. As a result, there are numerous directives related to the same issues and being sure to refer to the one still in force is never easy.

Nevertheless, by bringing together six directives regarding different issues of corporate law, the Directive represents a new important step in the construction of the European corporate law.

Moreover, by adopting a single directive for the main provisions ruling European corporate law, the European authorities grant a better readability and a better access to European corporate law.

Accessibility is very important for companies. Indeed, Member States are required to transpose directives to their national law. It implies that the national judge has to interpret the national provisions in the light of the European provisions which can be significant in regard to litigation.

Finally, the Directive represents a new step toward the establishment of a future European corporate Code.

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1 Dir. 82/891/CEE, December 17, 1982

2 Dir. 89/666/CEE, December 21, 1989

3 Dir. 2005/56/CE, October 26, 2005

4 Dir. 2009/101, September 16, 2009

5 Dir. 2011/35/UE, April 2011

6 Dir. 2012/30/UE, October 25, 2012

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