



Explanatory meeting

Chapter 6 – Company law and corporate governance

Brussels, 21 October 2019

European Commission, Directorate-General for Justice and Consumers

These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union.

Company law and corporate governance: general

- Objectives of EU rules in this area are to:
 - **enable businesses to be set up and carry out operations across the EU**
 - **provide protection for shareholders and other parties with a particular interest in companies, such as employees and creditors**
 - **make business more efficient, competitive and sustainable in the long term**
- Scope: limited liability companies (in some cases only public limited liability or only listed public limited liability companies)
- Directive (EU) 2017/1132 codified Directives: Council Directives 82/891/EEC and 89/666/EEC, and Directives 2005/56/EC, 2009/101/EC, 2011/35/EU and 2012/30/EU

Domestic and cross-border operations of limited liability companies

- EU acquis currently in force (Directive (EU) 2017/1132, Title II):
 - **Domestic mergers of public limited liability companies**
 - **Domestic divisions of public limited liability companies**
 - **Cross-border mergers of limited liability companies**
- Recently negotiated, and still to be adopted, EU new rules on cross-border conversions and divisions as well as amended rules on cross-border mergers

Domestic mergers of public limited liability companies: outline

- Objective: to facilitate mergers, to simplify and harmonise requirements
- Scope: public limited liability companies
 - ❖ **companies subject to resolution tools under Directive 2014/59/EU excluded**
 - ❖ **cooperative societies can be excluded**
 - ❖ **companies under bankruptcy proceedings, winding up of insolvent companies can be excluded**
- References to national law but key aspects harmonised
- Separate requirements of competition law (national and EU) for mergers (e.g. Merger Regulation)

Domestic mergers: mergers by acquisition

- Mergers by acquisition: key aspects
 - ❖ **draft terms (minimum requirements: type, name, registered office, information on shares, dates, advantages granted)**
 - ❖ **publication (in the register, unless electronically)**
 - ❖ **report explaining the merger to members and employees**
 - ❖ **independent expert/experts report**
 - ❖ **access of shareholders to documents before the general meeting**
 - ❖ **approval by the general meeting**

Domestic mergers: mergers by acquisition

- Mergers by acquisition: key aspects
 - ❖ **protection of rights of employees**
 - ❖ **protection of interests of creditors**
 - ❖ **registration**
 - ❖ **consequences of the merger**
 - ❖ **civil liability of members of administrative/management bodies and experts**
 - ❖ **nullity of mergers**

Domestic mergers: other operations considered as mergers

- Merger by formation of a new company
- Acquisition of one company by another which holds all or 90% or more but not all of its shares
- Other operations considered as mergers

Domestic divisions of public limited liability companies: divisions by acquisition

- Same scope as for domestic mergers (public limited liability companies and same exemptions)
- Divisions by acquisition: key aspects
 - ❖ **draft terms - but also, description and allocation of assets and liabilities and rules when those are not allocated in the draft terms**
 - ❖ **publication, report by administration or management bodies and by independent expert(s), access of shareholders to documents**
 - ❖ **approval by general meeting; a case where shares allocated not proportionately to shareholders of the company being divided**

Domestic divisions: divisions by acquisition

- Divisions by acquisition: key aspects
 - ❖ **protection of employees' rights**
 - ❖ **protection of interests of creditors as for domestic mergers but joint and several liability of the recipient companies**
 - ❖ **registration, consequences of the division, civil liability of members of administrative/management bodies and experts, nullity of divisions**

Domestic divisions: other operations considered as divisions

- Division by formation of a new company
- Division under the supervision of a judicial authority
- Other operations considered as divisions

Cross-border mergers of limited liability companies

- Objective: to facilitate mergers, to simplify, to harmonise requirements
- Scope: private and public limited liability companies
 - ❖ **companies subject to resolution tools under Directive 2014/59/EU excluded**
 - ❖ **cross-border mergers of companies whose object is collective investment of capital not covered**
 - ❖ **cooperative societies can be excluded**
- References to national law but key aspects harmonised
- Separate requirements of competition law (national and EU) for mergers (e.g. Merger Regulation)

Cross-border mergers

Key aspects:

- ❖ **common draft terms (minimum requirements: form, name, registered office, information on shares, dates, advantages granted, likely repercussions of CBM on employment)**
- ❖ **publication (in the register, unless electronically)**
- ❖ **report explaining the cross-border merger to members and employees**
- ❖ **independent expert/experts report**
- ❖ **approval by the general meeting**

Cross-border mergers

Key aspects:

- ❖ **Pre-merger certificate (court, notary, other competent authority)**
- ❖ **Scrutiny of the legality of cross-border merger**
- ❖ **Entry into effect of the merger**
- ❖ **Registration and exchange of notifications between registers**
- ❖ **Consequences of the merger**
- ❖ **Simplified formalities**
- ❖ **Validity: CBM cannot be declared null and void**

Cross-border mergers

Key aspects:

❖ **Employee participation:**

- generally, the rules of the Member State of company resulting from CBM
- but if employees previously subject to employee participation rules, specific provisions for negotiations between the company management and employee representatives on employee participation in the resulting company, based on rules in Directive 2001/86 (accompanying the Statute for a European Company)
- additional provisions for cross-border mergers

New rules on cross-border mergers, divisions and conversions: outline

- State of play: new rules being finalised following the negotiations in the Parliament and the Council
- Reasons for the proposal:
 - ❖ **difficult and costly to carry out cross-border conversions/divisions due to patchwork of national rules and Court's case law**
 - ❖ **2005 cross-border merger Directive successful but improvements needed**

New rules on cross-border mergers, divisions and conversions: outline

- Objective: to enable companies to restructure and move cross-border, while providing strong safeguards against fraud and to protect stakeholders
- Scope:
 - **private and public limited liability companies**
 - **cross-border conversions, mergers and divisions**
- Procedural rules aligned for all three cross-border operations

New rules on cross-border mergers, divisions and conversions: content

- Harmonised procedures; main steps:
 - ❖ **draft terms**
 - ❖ **disclosure + possibility for stakeholders to comment**
 - ❖ **report explaining the operation to members and employees**
 - ❖ **independent expert/experts report**
 - ❖ **approval by the general meeting**
 - ❖ **assessment in the departure Member State (pre-operation certificate)**
 - ❖ **scrutiny of legality in the destination Member State**
 - ❖ **registration and exchange of notifications between registers**

New rules on cross-border mergers, divisions and conversions: content

- Main elements:
 - ❖ anti-abuse control
 - ❖ information/consultation of employees
 - ❖ employees' rights to participation
 - ❖ minority shareholders' rights
 - ❖ creditors' rights
 - ❖ fully online submission of documents (in line with Directive 2019/1151)

Questions?

EU legal forms: European Company (SE): outline

- Council Regulation (EC) No 2157/2001
- Single EU legal form for public limited liability companies
- SEs governed by the SE Regulation but also national provisions for SEs and national provisions for public limited liability companies
- Objectives:
 - ❖ **a simpler way to run business in the EU under a single European brand name**
 - ❖ **greater mobility in the single market (transfer of registered office)**
 - ❖ **framework for involving employees.**
- Overall number of SEs: more than 3200 as of October 2019

European Company (SE): content

- Rules on formation of an SE (by merger, holding, subsidiary, conversion, generally at least two companies from two Member States)
- Minimum capital requirement: 120,000 euro
- Registration in national registers; abbreviation of "SE"
- Registered office and head office in the same Member State
- Rules on transfer of registered office to another Member State

European Company (SE): content

- Rules on internal governance:
 - ❖ **one-tier (with administrative body) or two-tier system (with a management and a supervisory body)**
 - ❖ **rules on the statutes of an SE**
 - ❖ **rules on general meetings of an SE**
- Rules on employee involvement: Directive 2001/86/EC and no registration unless decision reached on employee involvement
- Conversion of SEs into public limited liability companies

EU legal forms: European Economic Interest Grouping (EEIG): outline

- Council Regulation (EEC) No 2137/85
- Single EU legal form, same in all Member States
- A grouping of companies or legal bodies and/or natural persons carrying out an activity or providing services, with characteristics of partnerships and companies
- Objective: help to develop economic activities of its members (and not to make profits for EEIG itself)
- More than 2000 EEIGs created as of August 2018
- Examples of sectors/activities

European Economic Interest Grouping (EEIG): content

- Rules on formation of an EEIG (at least 2 partners from 2 different Member States)
- No start-up capital required; all forms of contributions possible
- By drawing up a contract and registration in national registries in Member State where it has its official address; abbreviation of "EEIG"
- Rules on transfer of official address to another Member State

European Economic Interest Grouping (EEIG): content

- Rules on internal governance
- Unlimited joint and several liability of members for EEIG's debts
- Profits taxable at the level of EEIG members

Questions?

Formation and capital requirements

- Directive (EU) 2017/1132, Title I, chapters II and IV
- Main rules:
 - ❖ **rules on formation of a public limited liability company, in particular on the content of the statutes**
 - ❖ **rules on nullity of a limited liability company and validity of its obligations**
 - ❖ **minimum capital requirement for public limited liability companies (25 000 €)**
 - ❖ **rules on capital formation, including rules on valuation of contributions in kind**

Formation and capital requirements

- Main rules:
 - ❖ rules on distributions to shareholders
 - ❖ limits on acquisition of own shares by company
 - ❖ rules on capital increase, including pre-emption right to shareholders in case of capital increase
 - ❖ rules on capital reduction, including redemption of shares
 - ❖ principle of equal treatment of all shareholders in the same position

Questions?

Disclosure and digital tools in company law

Disclosure requirements in respect of companies and branches

[Directive \(EU\) 2017/1132](#) of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (Official Journal L 169, 30.6.2017, p. 46–127), chapter III

Use of 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 (Official Journal L 186, 11.7.2019, p. 80–104)

I. Background

Directive (EU) 2019/1151 as regards the use of digital tools and processes in company law amended Directive (EU) 2017/1132

- Partly new rules on disclosure
- Introduction of online formation of companies, online registration of branches and online filing
- Other changes, e.g. exchange of information on disqualified directors

Structure of the provisions in the amended Directive (EU) 2017/1132 - 1

CHAPTER III - Online procedures (formation, registration and filing), disclosure and registers

Section 1 General provisions and Section 1A online formation, online filing and disclosure

- **Scope**
- **Definitions**
- **Identification means**
- **General provisions (national requirements)**
- **Fees, payments, information requirements**
- **Online formation of companies, templates, filing**
- **Disqualified directors**
- **Disclosure, fees chargeable**

Structure of the provisions in the amended Directive (EU) 2017/1132 - 2

CHAPTER III - Online procedures (formation, registration and filing), disclosure and registers

Section 2 Registration and disclosure rules applicable to branches of companies from other Member States

- **Online registration of branches and filing**
- **Closure of branches**
- **Disclosure**

Structure of the provisions in the amended Directive (EU) 2017/1132 - 3

CHAPTER III - Online procedures (formation, registration and filing), disclosure and registers

Section 3 Disclosure rules applicable to branches of companies from third countries

- **Disclosure**

General provisions - Scope and definitions

Scope – limited liability companies

- Both public and private limited companies (unless otherwise indicated, e.g. online formation, templates)

Definitions

- formation
- registration of a branch
- templates

Identification means

Electronic identification means of Union citizens

- Issued by the given Member State
- eIDAS identification means

Exceptional rule where Member States can require **physical presence**:
reason of the public interest in preventing identity misuse or alteration, on a case-by-case basis where there are reasons to suspect identity falsification

General provisions (national requirements)

National laws can be maintained/not affected

- **designating any authority or person or body mandated under national law to deal with any aspect** of online formation of companies, online registration of branches and online filing of documents and information.
- On the **procedures and requirements** including those relating to legal **procedures for the drawing up of instruments of constitution**,
- concerning the **authenticity, accuracy, reliability, trustworthiness and the appropriate legal form** of documents or information that are submitted,
- ***provided that online formation of a company, online registration of branches and online filing is possible***

Fees, payments, information requirements

Fees: The national rules on fees applicable to the online procedures shall be transparent and are applied in a non-discriminatory manner.

Fees for online procedures charged by the registers shall not exceed the recovery of the costs of providing such services.

Payments payment can be made by means of a widely available online payment service that can be used for cross-border payments, that permits identification of the person that made the payment and is provided by a financial institution or payment service provider established in a Member State.

Information requirements: Member States shall make information on the main elements of their national company law free of charge –

- *language, Single Digital Gateway*

Online formation of companies, templates, filing

- Member States shall provide the possibility of **fully online formation** of companies
 - **Physical presence only in exceptional cases**
- **Templates** for articles of constitution
- Companies shall be allowed to provide information and documents to the register throughout the company's lifecycle (**filing**)

Disqualified directors

- Member States shall ensure that they **have rules on disqualification of directors**. Those rules shall include **providing for the possibility to take into account any disqualification that is in force, or information relevant for disqualification, in another Member State**.
- Member States **may refuse the appointment** of a person as a director of a company where that person is currently disqualified from acting as a director in another Member State.
- **Exchange of information**

Disclosure, fees chargeable

- List of documents and particulars to be disclosed by companies
- Disclosure in the register
 - **Disclosure is effected by making them publicly available in the register.** In addition, Member States may also require that some or all of those documents and information are published in a national gazette designated for that purpose, or by equally effective means.
 - **documents and information are sent electronically by the register** to the national gazette or to a central electronic platform (once-only principle)
- **Accessibility to information in the register**
- **Information to be provided free of charge**

Branches of companies from other Member States

Section 2 Registration and disclosure rules applicable to branches of companies from other Member States

- **Online registration of branches and filing**
 - Fully online as companies' registration
 - Physical presence in exceptional cases
- **Closure of branches** – exchange of information
- **Changes in the company's data** – exchange of information
- **Disclosure** – documents and particulars to be disclosed

Branches of companies from third countries

Section 3 Disclosure rules applicable to branches of companies from third countries

- **Disclosure of documents and particulars relating to a branch**
- **Compulsory documents and particulars to be disclosed**

Questions?

Business Registers Interconnection System (BRIS)

Legal basis

[Directive \(EU\) 2017/1132](#) of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (Official Journal L 169, 30.6.2017, p. 46–127), chapter III, provisions related to BRIS

[Commission Implementing Regulation \(EU\) 2015/884](#) of 8 June 2015 establishing technical specifications and procedures required for the system of interconnection of registers established by Directive 2009/101/EC of the European Parliament and of the Council (Official Journal L 144, 10.6.2015, p. 1–9)

[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 (OJ L 186, 11.7.2019, p. 80–104), provisions related to BRIS

Business Registers Interconnection System (BRIS)

BRIS is:

- An interconnection of business registers via a central European platform
 - Currently 26 Member States + Norway connected.
 - Remaining Member States + Iceland and Liechtenstein to join soon
- Set up by the Commission in cooperation with EU/EEA business registers
- Access to data on more than 20 million limited liability companies
- Operational since 8 June 2017

Business Registers Interconnection System (BRIS)

BRIS currently offers:

- A central access point to information on companies registered in the EU/EEA countries
 - Access via the European e-Justice portal
 - Search interface available in EU official languages
 - No requirement for registration – access for everyone
 - All company data comes from the national registers
- Communication between registers on:
 - cross-border mergers and
 - foreign branches

Business Registers Interconnection System (BRIS)

Company information to be provided free of charge through BRIS – Article 19, Directive (EU) 2017/1132:

- The name and legal form of the company;
- The registered office of the company and the Member State where it is registered; and
- The registration number of the company.

Business Registers Interconnection System (BRIS)

Additional company information to be provided free of charge through BRIS – Directive (EU) 2019/1151:

- EUID number;
- Legal status of the company (e.g. closed, struck off)
- Persons authorised to represent the company
- Information on branches
- Object of the company (where available, for authorities of other Member States)
- Company website (where available, for authorities of other Member States)

Business Registers Interconnection System (BRIS)

Company and branch information to be made available through BRIS (fee must not exceed administrative cost) – Articles 18 and 29, Directive (EU) 2017/1132:

- Documents and particulars to be disclosed by companies, according to Article 14 of Directive (EU) 2017/1132
- Documents and particulars on branches to be disclosed by companies, according to Article 30(1) of Directive (EU) 2017/1132
- The e-Justice Portal is planning the adoption of a payment system, to allow users to purchase documents and particulars for which the connected countries charge a fee.

Business Registers Interconnection System (BRIS)

Exchange of information between registers on cross-border branches– Article 20, Directive (EU) 2017/1132:

- Information on the opening and termination of any
 - winding-up or insolvency proceedings
 - on the striking-off of the company from the register
- If this entails legal consequences in the Member State of the register of the company
- The register of the branch must ensure receipt

Business Registers Interconnection System (BRIS)

Exchange of information between registers on cross-border mergers– Article 130, Directive (EU) 2017/1132:

- The registry for the registration of the company resulting from the cross-border merger must notify the registry in which each of the companies was required to file documents that the cross-border merger has taken effect.
- Deletion of the old registration, if applicable, must be effected on receipt of that notification, and not before.
- The new rules on cross-border mergers, divisions and conversions will include also exchanges on cross-border conversions and divisions

Business Registers Interconnection System (BRIS)

Extended exchange of information between registers – Directive (EU) 2019/1151:

- Disqualified directors
 - Information about whether a given person is disqualified or recorded in registers
 - Optional exchange of further information such as period and ground of disqualification
- Registration of branches
- Closure of branches

Questions?

Single-member private limited liability companies

- Directive 2009/102/EC
- Objective: to ensure transparency for companies where all shares are held by a single shareholder
- Scope: private limited liability companies; Member State option to also apply the rules to public limited liability companies

Single-member private limited liability companies

- Transparency is ensured by e.g.:
 - ❖ Registration/disclosure of the character of single-member company and the identity of the sole member
 - ❖ Decisions of the sole member exercising the power of the general assembly recorded in minutes/drawn up in writing
 - ❖ Contracts between the sole member and his company recorded in minutes or drawn up in writing

Questions?

Shareholders' rights

[Directive 2007/36/EC](#) on the exercise of certain rights of shareholders in listed companies (Shareholder Rights Directive, SRD1)

[Directive \(EU\) 2017/828](#) amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement (SRD2, revision of SRD)

[Commission Implementing Regulation \(EU\) 2018/1212](#) laying down minimum requirements implementing the provisions of Directive 2007/36/EC as regards shareholder identification, the transmission of information and the facilitation of the exercise of shareholders rights

+2 former (pre-SRD2) recommendations on directors' pay:

[Commission Recommendation 2004/913/EC of 14.12.2004](#) on fostering an appropriate regime for the remuneration of directors of listed companies

[Commission Recommendation of 30.04.2009](#) complementing Recommendations 2004/913/EC and 2005/162/EC as regards the regime for the remuneration of directors of listed companies

SRD1

- 2007 Directive → applies since 2009

Objectives:

- To ensure that shareholders can effectively exercise their rights related to general meetings of EU listed companies, in particular their right to vote, in a cross-border context
- To improve corporate governance of such companies by strengthening the role of shareholders in holding the management accountable for their actions

Main features/provisions:

- Scope: voting shares of EU listed companies (registered office in the EU and shares admitted to trading on a regulated market in the EU) (Art. 1)
- Shareholder: as recognised under national law, i.e. definition not harmonised (Art. 2)
- Minimum harmonisation directive (Art. 3)
- Companies must ensure equal treatment of all shareholders in the same position (Art. 4).

SRD1 (con't)

Main provisions (con't):

- Convocation of general meeting and prior information requirements harmonised (Art. 5):
 - minimum content of the notice,
 - deadlines and methods for dissemination/publication of the convocation and other relevant information (incl. on internet);
- Shareholders' right to ask questions at GMs and have them answered (Art. 9);
- Shareholders' (poss. $\geq 5\%$) individual and collective right to put items on the agenda of the GM (or call a GM) and to table draft resolutions (Art. 6);
- Record date system for shareholder participation and voting in GM – to be set by Member States (Art. 7(2)-(3));
- Removing obstacles to participation and voting in GMs, including obstacles to:
 - using electronic means (Art. 8), proxy voting (Art. 11); voting by correspondence (Art. 12),
 - other obstacles, e.g. requirements to block shares (Art. 7(1)) and obstacles with regard to shareholders acting on behalf of a client (Art. 13).
- Voting results for each resolution to be published on internet (Art. 14).

SRD2

- 2017 Directive → applies since June 2019 (except Art.3a-3c → will apply as from Sept 2020)
- Addresses the problem of insufficient and inappropriate shareholder engagement (shareholder "absenteeism"), based on evidence from 2008-9 financial crisis showing that institutional investors and asset managers did not exercise sufficient control or even supported excessive short-term risk taking.
- Objective is to improve long-term financial and non-financial (ESG) performance of companies by facilitating the exercise of shareholder rights and encouraging long-term engagement of – in particular systematically important – shareholders with the companies.

Main elements (amendments to SRD1):

- Financial intermediaries obliged: • to help improve company-shareholders *communication* • to facilitate the exercise of shareholder rights actively: identification of shareholders (poss. $\geq 0.5\%$), transmission of information along the chain of intermediaries, arrangements for voting and confirmation of electronic votes (Art. 3a-3c)
 - **Commission Implementing Regulation** setting out minimum requirements for standardisation of data formats and message structures (self-regulation, straight-through processing) and deadlines
- Intermediaries' costs must be transparent, non-discriminatory and proportionate (Art. 3d)

SRD2 (con't)

- Institutional investors, asset managers to publish – on a *comply or explain* basis (Art. 3g):
 - *engagement policy* on how they integrate shareholder engagement in their investment strategy, incl. monitoring investee companies' performance, risks, impacts (incl. ESG); dialogue with company, voting; cooperation with other shareholders, communication with other stakeholders; conflicts of interest;
 - an annual report on its *implementation* (incl. most significant votes);
- Institutional investors obliged to publish (Art. 3h):
 - description of how their *equity investment strategy* is consistent with long-term liabilities (pensions, life assurance policies) and how it contributes to longer-term performance of their assets (annually);
 - details of *arrangements with their asset managers*, if used, incl. incentives, remuneration, evaluation of performance, incl. long-term, monitoring of turnover;
- Asset manager obliged to disclose to the institutional investor (Art. 3i):
how their *investment strategy and its implementation* complies with their arrangements and how it contributes to the longer-term performance of the assets of the institutional investor (annually).
- Proxy advisors obliged to publish (Art. 3j):
 - how they *apply a code of conduct* or explain why they do not apply any; and *key information* on preparation of their research, advice or voting recommendations (*annually*);
 - conflicts of interest (without delay)

SRD2 (con't)

- *Say on pay of directors (Art. 9a): companies to establish and publish a remuneration policy:*
 - must contribute to long-term interests of the company and sustainability,
 - describes different components of fixed and variable remuneration, financial and non-financial performance criteria used for awarding variable part (incl. shared-based), other contract details
 - Voted on by shareholders (at every material change / 4 years),
- *Say on pay of directors (Art. 9b): companies to prepare and publish a remuneration report:*
 - details on individual directors' remuneration awarded or due during previous financial year;
 - advisory vote by shareholders (SME's: discussed at GM)
 - Commission guidelines on standardised presentation (in the pipeline)
- *Material transactions with related parties (Art. 9c):*
 - materiality to be defined by Member States
 - to be publicly announced no later than time of conclusion with information necessary to assess if transaction is fair and reasonable for company and other – including minority – shareholders;
 - to be approved by administrative/supervisory body and/or general meeting (with safeguards).

Questions?

Recommendation on independent directors and board committees

Commission Recommendation 2005/162/EC of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board (OJ L 52, 25.02.2005, p. 51)

Summary

*The main objective of the 2005 Recommendation is to **protect shareholders, creditors, employees and the public against potential conflicts of interest within listed companies.***

*Non-executive or supervisory **independent directors** (i.e. free of any material conflict of interest) have a particular role in **overseeing executive or managing directors** and dealing with situations involving conflict of interests.*

Summary (cont.)

*The (supervisory) boards should comprise a **sufficient number of committed non-executive or supervisory directors** who play no role in the management of the company or its group and are free of any material conflict of interest.*

The supervisory role of these independent directors is crucial, particularly in the three areas where the potential for conflict of interest of management is high, i.e. nomination of directors, remuneration of directors and audit. It is appropriate to foster the role of supervisory directors in these areas and encourage the creation of specific committees.

Member States should take all appropriate measures (either on the basis of the 'comply or explain' approach or pursuant to legislation) in order to ensure that listed companies having their registered office in their territory or having their primary listing on a regulated market established in their territory have regard to this Recommendation.

Main provisions

Minimum standards for the qualifications, commitment and independence of non-executive or supervisory directors.

The **administrative, managerial and supervisory bodies** should include an **appropriate balance** of executive/managing and non-executive/supervisory directors so that no individual or small group can dominate decision-making.

Boards should be organized so that a **sufficient number of independent non-executive or supervisory directors play an effective role** in dealing with potential conflicts of interest.

Nomination, remuneration and audit committees should be created within the (supervisory) board. The Annex I in the Recommendation defines minimum standards for the creation, composition and role of those committees.

Main provisions (cont.)

*The **nomination committee** should be composed of at least a majority of independent non-executive or supervisory directors, whereas the **remuneration** and **audit** committee should be composed exclusively of non-executive or supervisory directors at least a majority of which should be independent.*

If the board is small, the functions of the committee may be performed by the board as a whole.

*Every year the (supervisory) board should carry out an **evaluation of its performance**. It should make public at least once a year adequate information about its internal organization and the procedures applicable to its activities.*

Main provisions (end)

A **director** is considered **independent** when free from any business, family or other relationship – with the company, its controlling shareholder or the management – which might jeopardise his or her judgement. A number of **criteria of assessment** of the independence of directors should be adopted at national level, taking into account the guidance set out in Annex II of the Recommendation.

The (supervisory) board should be composed of members who, taken together, have the **diversity of knowledge, judgement and experience to properly complete their tasks**.

All directors should **devote the necessary time and attention** to their tasks. When the appointment of a director is proposed, his or her other significant professional commitments should be disclosed.

Recommendation on the quality of corporate governance reporting

*Commission Recommendation 2014/208/EU of 9 April 2014
on the quality of corporate governance reporting ('comply or
explain') (OJ L 109/43 12.04.2014)*

Summary

The main objective of the 2014 Recommendation is to provide guidance to Member States, bodies responsible for national corporate governance codes, companies and other concerned parties to improve the overall quality of corporate governance statements published by companies.

It applies to companies which are required to submit a corporate governance statement in accordance with Article 20 of Directive 2013/34/EU (listed companies) and which need to provide explanations in case of departure from the recommendations of the corporate governance codes. Other entities preparing a corporate government statement might also benefit from this guidance as well.

Appropriate disclosure of departures from the relevant codes and the reasons for such departures is very important to ensure that stakeholders can make informed decisions about companies.

Main provisions

Listed companies should describe in their corporate governance statement **how they have applied the relevant corporate governance code**, showing the information (available on their websites) required by the Directive 2013/34/EU in a sufficiently **clear, accurate and comprehensive manner** to enable shareholders, investors and other stakeholders to gain a good understanding on the manner the company is governed.

The information should refer to the **company's specific characteristics and situation**, such as size, company structure or ownership or other features.

Main provisions (end)

*When the company **departs from the recommendation** of the relevant or applicable code, it should state clearly in the corporate governance statement the specific recommendations it has departed from, and **explain the manner, reasons for the departure and how that decision was taken**, or, where applicable, the measure taken instead of compliance and how that meets the same objective.*

***Efficient monitoring** needs to be carried out at national level in order to motivate the companies to comply with the relevant corporate governance code or to better explain the departures from it.*

Questions?

"Takeover Bids" Directive (2004/25/EC)

Takeover Bids Directive contains minimum requirements for the conduct of takeover bids, including disclosure, involving securities with voting rights of companies governed by the laws of Member States, where all or some of these shares are admitted to trading on a regulated market in one or more Member States.

“Takeover bids” Directive: objectives

- Legal certainty, clarity and transparency in respect of takeover bids
- Protection of the interests of shareholders, in particular minority shareholders, and of employees and other stakeholders
- Facilitation of takeover bids
- Reinforcing the single market

The "Takeover Bids" Directive: General principles (Article 3)

- Equal treatment of shareholders
 - Protection of minority shareholders on change of control
 - Prohibition of market manipulation or abuse
 - Shareholders must have sufficient time and information to make a properly informed decision on the bid.
- *These principles should be complied with by Member States when transposing the Directive; any national derogations must still comply with these principles.*

The "Takeover Bids" Directive: Supervisory authority and applicable law

Member States are to designate the authority or authorities competent to supervise bids (Article 4):

- The authorities must be either public authorities, associations or private bodies recognised by national law or by public authorities expressly empowered for that purpose by national law.
- Impartiality and independence from all parties to a bid; professional secrecy.
- Rules on competence in individual cases;
- Cooperation and exchange of information.

The "Takeover Bids" Directive: Main provisions

Mandatory Bid Rule (Article 5)

- Where a person, as a result of acquisition of securities of a company, holds securities directly or indirectly conferring a specified percentage of voting rights, giving control, Member States shall ensure that such a person is required to make a bid for all securities as a means of protecting minority shareholders;
- Control defined at national level, but normally around 30%;
- Bid to be made at 'equitable price'.
- Squeeze-out Rule (Article 15)
- Sell-out Rule (Article 16)

The "Takeover Bids" Directive: Optional rules on defensive measures

- Board Neutrality Rule (Article 9)
- Breakthrough Rule (Article 11)
- Reciprocity (Article 12(3))

Questions?

Thank you for your attention