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2.- EU Internal Market and Company Law

The European Union has competences related to Company Law, mostly in the realm of achieving a fully integrated Internal Market. **The EU Freedoms involved in Company Law are mainly the freedom to provide Services** (both cross-border and with a permanent establishment) **and the free movement of Capital**. Free movement of Workers/Persons and Free movement of Goods are also involved to a lesser degree.

EU instruments in Company Law

Sanabria

Treaties.

- **Articles 56 and others related to the free movement of capital and right of establishment and the creation of an Internal Market**; Article 54 TFEU, second paragraph; Articles 114, 115 and 352 TFEU, are of great relevance in the regulation of EU Company Law

Directives

- **The first/older harmonization Directives** developed main aspects of EU Company Law (publicity, branches, accounts among others)
- **Following earlier legislative works the Consolidation Directive unifies older**

harmonization Directives. The Consolidation Directive is Directive (EU) 2017/1132 that codifies certain aspects of Company Law concerning limited liability companies Thus, it repealed some older Directives and replaced them without changing their content. **Specifically, it deals with different questions for the protection of members (such as shareholders) and creditors**: This **consolidation Directive, now in force:**

- Defines a p**ublic liability company(PLC)** as one which *has offered shares to the general public and whose shareholders have limited liability,* usually only in relation to the amount paid for their shares and securities.
    - Please note that Securities are transferable shares which give the owner voting rights in a company, usually, a **listed company admitted to a Regulated Market,** for example, The London Stock Exchange). Not all PLCs are listed companies.
- It also coordinates national rules for **creating and running companies and increasing or reducing their capital**: It mandates that the **minimum capital** required in the EU to register a public limited company (PLC) is of **25 000EUR**. (in Spain, our Ley de Sociedades de Capital raises such minimum as it requires 60,000€ of issued capital for the formation of a Spanish PLC: a Sociedad Anónima or SA)
- It further sets **minimum information requirements for companies.** The instrument of incorporation (constitución) and the statues (estatutos) or bye-laws (reglamentos internos) of one PLC must contain (at least) the following information:
    - the type and name of the company;
    - the objectives of the company;
    - the rules governing appointing Directors responsible for managing, running and supervising the company;
    - the duration of the company.
    - the registered office;
    - the value, number and form of the subscribed (company-issued) shares;
    - the amount of subscribed (company-issued) capital; the identity of those who sign the instrument of incorporation or the bye-laws. **The mandatory disclosure of the information is implemented by filling it in the national business registers** (for example Registro Mercantil in Spain, Companies House in UK, etc).;
- In relation with the **validity of the obligations entered into by the company and liabilities derived thereof**: this Directive makes mandatory that, if an

action has been carried out on behalf of a Company before it has acquired legal personality, *the persons who acted shall be deemed liable therefor and not the company itself.* However, *once a company has acquired legal personality, acts performed by the organs of the company shall be binding upon it , its members and third parties, including such acts that go beyond the limitations of the objects of the company (ultra vires).*

- **Nullity of the company.** The Member States shall provide for the nullity of companies **only by decision of a court of law**. The nullity of a company may **only be ordered in the cases established in the Directiv**e
- In relation with **branches of Companies from other Member State**, this Directive harmonizes compulsory disclosure requirements.
    - Such Branches must be registered in the Host Country business Registry and must make **publicly available, through the interconnection system of central, commercial and companies registers,** at least the following information:
        - Address, activity, name (if different from the Company), particulars, appointment and discharge of the person or persons representing and managing the Branch.
        - Company's place of registration and registration number; name and legal form of the company; winding-up of the company, appointment and particulars of liquidators; accounting documents;
        - Closing of the branch.
        - The Directive allows the Member States to require additional disclosures.

◦ The directive addresses different types of mergers, and merger **by acquisition***and **merger by the formation of a new company.** It also differentiates domestic mergers and cross-border mergers. We underline here some basic features:

- Merger is an operation whereby:
    - one or more companies, being dissolved without going into liquidation, transfer all their assets and liabilities to another existing company, the acquiring company, in exchange for the issue to their members of securities or shares representing the capital of that other company and, if applicable, a cash payment (within the limits of the Directive
    - two or more companies, being dissolved without going into liquidation, transfer all their assets and liabilities to a company

that they form, the “new company”, in exchange for the issue to their members of securities or shares representing the capital of that new company and, if applicable, a cash payment (within the limits of the Directive)
    - a company, on being dissolved without going into liquidation, transfers all its assets and liabilities to the company holding all the securities or shares representing its capital, this is, to its parent company

2. the draft terms of merger must be drawn up by the administrative or management board and must contain specific information including:
    - the type, name and registered office of the companies;
    - the share exchange ratio (that is, the relative number of new shares that will be given to existing shareholders of a company that has been acquired or merged with another);
    - terms relating to the allotment of shares in the acquiring company (and or in the new company to be formed);
    - the rights granted by the acquiring (or the new) company.

and this information must be made public at least one month before the date fixed for the general meeting that makes a decision on the merger.

3. Mergers require (with some exceptions established in the Directive) the **approval of the general meeting** of each of the merging companies.

4. The employees and creditors are protected with safeguards with regards to information and financial situation

5. The Directive establishes the involvement of experts for each company, appointed by and independent Authority (in Spain by the Registro Mercantil)

1. Following a merger, its **results** include:
    - transfer of all assets and liabilities;
    - the shareholders of the company being acquired (or of all companies) become shareholders of the acquiring company (or of the new company); and
    - the company being acquired ceases to exist.

Margaret’s Ox.

Other Harmonization Directives include:

- **the Shareholders Directive 2017/828, amending Directive 2007/36/EC**
  - Under this Directive, the personal data of shareholders (in listed companies) is processed to enable the company to identify its existing shareholders in order to communicate directly with them, with a view to facilitating the exercise of shareholder rights and shareholder engagement with the company.
- **Take Over Bids, Directive 2004/25/EC.**
  - A take over bid is a public offer to acquire all or part of the securities of a company.
  - to protect minority shareholders of listed companies, anyone gaining control of a company (30/-35% of its securities) must make a bid at an equitable price at the earliest opportunity to all holders of securities.
  - The equitable price is the highest price the offeror paid for the securities during a 6- to 12-month period prior to the bid. In specific circumstances, national supervisory authorities may adjust this price.
  - A decision to launch a bid should be made public as soon as possible and ensure market transparency and integrity of offeree company securities.
  - The offer document containing a bid must provide basic information such as the terms involved and identity of the company or person launching the initiative and of persons acting together.
  - National authorities determine the time allowed to accept a bid. This runs between 2 and 10 weeks.
  - Before engaging in actions that could block the bid, the board of the offeree company must (subject to an EU country opt-out) obtain prior authorisation from a general shareholders’ meeting.

        - Employee representatives must be informed of any takeover bid.
        - National rules exist for issues such as the lapsing or revision of bids or disclosure of the result of a planned takeover.

Other Directives

    - Connectivity among Companies Registries Directive 2012/17/UE. Creates a system to link all EU National Registries that deal with companies. It does not create a single registry but makes it mandatory that National Registries share information with each other

Regulations

- On specific subjects such as accounts, auditing
- The **European Societas Regulation is (relevant link with study materials)**

Case Law

- **Case Law was** especially relevant in the transfer of company seat (now a Directive is in force)

Soft Law

- EU Recommendations (for instance in relation to Company Director's remuneration, etc)

Other Projects

- Societas Unius Personae
- ....