II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE 92/101/EEC

of 23 November 1992

amending Directive 77/91/EEC on the formation of public limited-liability companies and the maintenance and alteration of their capital

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 thereof,

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas in order to maintain the subscribed capital and ensure equal treatment of shareholders, Directive 77/91/EEC (4) restricts a public limited-liability company's right to acquire its own shares;

Whereas the restrictions on a 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 in order to prevent a public limited-liability company from using another company in which it holds a majority of the voting rights or on which it can exercise a dominant influence to make such acquisitions without complying with the restrictions imposed in that respect, the arrangements governing a company's acquisition of its own shares should be extended to cover the most important and most frequent cases of the acquisition of shares by such other companies; whereas those arrangements should be extended to cover subscription for shares in the public limited-liability company;

Whereas in order to prevent the circumvention of Directive 77/91/EEC companies governed by Directive 68/151/EEC (5) and companies governed by the laws of third countries and having comparable legal forms should also be covered;

Whereas, where the relationship between a public limited-liability company and another company such as referred to in the third recital is only indirect, it would appear to be justified to relax the provisions applicable when that relationship is direct by providing for the suspension of voting rights as a minimum measure for the purpose of achieving the aims of this Directive;

Whereas, where a Member State provides for a system of penalties equivalent to those laid down in Directive 77/91/EEC and for the suspension of voting rights, it may be considered that such legislation already meets the objectives of this Directive;

Whereas, furthermore, it is justifiable to exempt cases in which the specific nature of a professional activity rules out the possibility that the objectives of this Directive may be endangered;

Whereas, in order to avoid the disturbance of a Member State's financial market as a result of that country's economic structure and excessively abrupt consequences as regards the rules for self-regulation, provision should be made for an appropriate adaptation period,

(1) OJ No C 8, 12. 1. 1991, p. 5 and OJ No C 317, 7. 12. 1991, p. 13.
(2) OJ No C 240, 16. 9. 1991, p. 103 and Decision of 28 October 1992 (not yet published in the Official Journal).
(3) OJ No C 269, 14. 10. 1991, p. 21.
(4) OJ No L 26, 31. 1. 1977, p. 1. Directive last amended by the Act of Accession of Spain and Portugal.
(5) OJ No L 65, 14. 3. 1968, p. 8.