An overview of dividend distribution restrictions for public limited companies: Member Sates' Practices

6 April 2022

Prof. Anne Le Manh

alemanh@escp.eu

EUROPEAN LAW INSTITUTE

ESCP BUSINESS SCHOOL

Content

1. Financial statements applied for profit distribution

2. The legal bases of dividend distribution

3. The requirement of a legal reserve

4. Unrealised gains and restrictions on dividend distribution

5. Financial transactions that impact shareholders'equity

I. Financial statements applied for profit distribution: individual financial statements

Local GAAP are mandatory for all companies	**6**	**Austria, France, Germany, Hungary, Spain, Sweden**
IFRS are mandatory for all companies	**1**	**Cyprus**
Either Local GAAP or IFRS can be applied	**4**	**Ireland, Luxembourg, Netherlands, United Kingdom**
IFRS are mandatory for some specific* companies and can be applied by others	**8**	**Bulgaria, Denmark, Estonia, Finland, Greece, Lithuania, Malta, Slovenia**
IFRS are mandatory for some specific* companies and cannot be applied by others.	**2**	**Belgium, Romania**
IFRS are mandatory for some specific* companies, can be applied by other specific companies and cannot be applied by others	**5**	**Croatia, Italy, Latvia, Portugal, Slovakia**
IFRS can be applied by some specific* companies and local GAAP are mandatory for other specific* companies	**2**	**Czech Republic, Poland**
Total	28	

*Depending on countries, specific companies encompass companies from a specific industry (the banking industry for example), companies of a certain size or subsidiaries of a parent company applying IFRS in its financial statements

2. The legal bases of dividend distribution

- General rules provided by the 2017/1132 European Directive:
  - (§56): the amount of a distribution to shareholders may not exceed the amount of the profits at the end of the last financial year plus any profit brought forward and sums drawn from reserves available for this purpose, less any losses brought forward and sums placed to reserve in accordance with the law or statutes"
  - no distribution may be made when the net assets of the company following the distribution would become lower than the total made of share capital and the reserves which may not be distributed under the law and/or the statutes of the company

2. The legal bases of dividend distribution

(1) Existence of Distributable Profit or Distributable Reserves and (2) After distribution: shareholders' equity must equal at least share capital + undistributable reserves	10	Bulgaria, Cyprus, France, Greece, Luxembourg, Malta, Portugal, Slovakia, Spain, United Kingdom
(1)Existence of Distributable Profit or Distributable Reserves	8	Czech Republic, Denmark, Germany, Ireland, Italy, Poland, Slovenia, Sweden,
(1)After distribution: shareholders' equity must equal at least share capital and (2) undistributable reserves	4	Belgium, Estonia, Latvia, Netherlands
(1)Existence of Distributable Profit or Distributable Reserves and (2)other specific conditions	4	Austria, Croatia, Finland, Hungary
(1) Existence of Distributable Profit or Distributable Reserves and (2) After distribution: shareholders' equity must equal at least share capital + undistributable reserves and (3) other specific condition	1	Lithuania
Not explicitly mentioned	1	Romania
Total	28	

ELI
EUROPEAN LAW INSTITUTE

ESCP BUSINESS SCHOOL

3. The requirement of a legal reserve

- Not required by the European regulation, but 16 countries out of 28 require a legal reserve (from 5% to 33,33% of share capital)

Yes for all companies	**16**	**Belgium, Bulgaria, Croatia, Estonia, France, Germany, Greece, Italy, Lithuania, Luxembourg, Poland, Portugal, Romania, Slovakia, Slovenia, Spain**
No	11	Cyprus, Czech Republic, Denmark, Finland, Hungary, Ireland, Latvia, Netherlands, Poland, Sweden, United Kingdom
Yes for some companies	**1**	**Austria**
Total	28	

ESCP BUSINESS SCHOOL

EUROPEAN LAW INSTITUTE

4. Unrealised gains and restrictions on dividend distribution

- The 2013/34 Directive refers to 4 optional accounting treatments (in individual financial statements) for which it recommends limitations on dividend distribution:
  - Capitalisation of development costs
  - Capitalisation of start-up costs
  - Revaluation of fixed assets (intangible, tangible and financial)
  - Equity method to measure investments in subsidiaries
- 4 other cases of unrealised gains for which the European directive is silent as regards restrictions on dividend distribution:
  - Mentioned by the 2013/34 Directive: fair value option for financial instruments
  - Not mentioned by the 2013/34 Directive:
    - Deferred tax assets
    - Actuarial gains on pension plan benefits
    - Measurement at fair value of investment properties

4. Unrealised gains and restrictions on dividend distribution

Accounting treatments accepted under Local GAAP and or under IFRS	% of member states imposing DDRs when the accounting treatment can explicitly be used
Capitalisation of start-up costs * (not allowed under IFRS)	100%
Capitalisation of development costs (mandatory under IFRS)	82%
Revaluation of tangible/intangible assets (optional under IFRS)	75%
Revaluation of financial assets through equity (mandatory under IFRS for specific financial assets)	69%
Equity method to measure investments in subsidiaries (optional under IFRS)	46%

% of countries complying with the AD recommendations in terms of dividend distribution restrictions

ESCP BUSINESS SCHOOL

ELI EUROPEAN LAW INSTITUTE

4. Unrealised gains and restrictions on dividend distribution

Accounting treatments accepted under Local GAAP and or under IFRS	% of member states imposing DDRs when the accounting treatment can explicitly be used
Measurement of financial assets at fair value through net income (mandatory under IFRS)	25%
Measurement of investment properties at fair value through net income (preferred option under IFRS)	59%
Gains arising from the recognition of deferred tax assets (mandatory under IFRS)	26%
Recognition of actuarial gains on benefit pension plans (mandatory under IFRS)	30%

% of countries imposing limitations on dividend distribution on accounting treatments for which the AD do not require any restriction on dividend distribution

EUROPEAN LAW INSTITUTE

ESCP BUSINESS SCHOOL

4. Unrealised gains and restrictions on dividend distribution

Conservative countries (DDRs=9)	6	Austria, Germany, Ireland, Italy, Luxembourg, The United Kingdom
Relatively conservative countries (DDRs = 6 to 8)	5	Belgium, France, Spain, Sweden, The Netherlands
Moderately conservative countries (DDRs= 4 to 5)	9	Croatia, Denmark, Finland, Latvia, Malta, Poland, Portugal, Romania, Slovenia
Not very conservative countries (DDRs =0 to 3)	8	Bulgaria, Cyprus, Czech Republic, Estonia, Greece, Hungary, Lithuania, Slovakia

Classification of countries regarding the level of Dividend Distribution Restrictions (DDRs)

5. Financial transactions that impact shareholders'equity

- Increase in capital: restriction on the distribution of the share premium (not specified by the European Regulation)

Is the share premium reserve distributable?		
No	10	Bulgaria, Estonia, Germany, Greece, Lithuania, Malta, Portugal, Romania, Slovenia, United Kingdom,
Not specified	10	Croatia, Cyprus, Czech Republic, Hungary, Ireland, Latvia, Luxembourg, Netherlands, Slovakia, Spain,
Yes	7	Austria, Belgium, Denmark, Finland, France, Poland, Sweden
Yes under conditions	1	Italy
Total	28	

5. Financial transactions that impact shareholders'equity

- Restrictions when a company holds its own shares

The 2017/1132 Directive specifies that member states may require a maximum holding rate for own shares, knowing that this holding rate cannot be below 10%. It also stipulates that member states may impose restriction on dividends distribution when a company holds its own shares. (i.e: the amount paid for held own shares must be kept in equity)

Dividend Distribution Restrictions	**23**
Dividend distribution restrictions in some specific cases	1 (Spain)
Not specified	4 (Estonia, Greece, Latvia and Sweden)
Total	28

Can the reserves for own shares be distributed?