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THE PROTECTION OF MINORITY SHAREHOLDERS IN THE EUROPEAN UNION

Master thesis

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INTRODUCTION

Scientific research problem. The rights of minority shareholders at the EU level are not enshrined in a single document. And it is hardly possible to do this, since the protection of the rights of minority shareholders is part of a broader concept - the protection of the rights of shareholders in general. We separate the rights of minority shareholders separately only for the reason that this category is one of the most vulnerable due to the inability to significantly influence the company's decision-making. Provisions concerning the interests of minority shareholders are contained in various EU documents regulating situations in which there is a potential threat of violation of the rights of minority shareholders (for example, Directive 2004/25 / EC of the European Parliament and of the Council of 21 April 2004 on takeover bids and so on), but practice shows that these methods are far from always able to work effectively to protect the rights of minority shareholders in reality, and sometimes raise questions from the point of view of human rights.[1]

Therefore, it makes sense to conduct a study among the ways to protect the rights of minority shareholders that currently exist in the hard and soft law of the European Union. We also need to pay attention to the fact that member states (as well as third states) may have their own, special ways of protecting the interests of a vulnerable category of shareholders, therefore we consider it necessary to cover them in the study in order to be able to carry out a comparative analysis and find out an important question: does the European Union law provide sufficient and reliable protection of the rights of minority shareholders?

Relevance of the final thesis. Article 3 (3, § 1) of the Treaty on European Union states: "the Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance".[2]

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[1] Krohn, Mads. "Minority Squeeze-Outs and the European Convention on Human Rights." *European Business Law Review* 15, no. 2 (March 2004): 159–82. https://search-ebscohost-com.skaitykla.mruni.eu/login.aspx?direct=true&db=bsu&AN=12948414&site=ehost-live.

[2] Consolidated version of the Treaty on European Union. EUR- Lex. Accessed 4 May 2021, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M%2FTXT

The creation of a common internal market has been proclaimed one of the goals of the European Union, and, as we see from the wording of the above-mentioned article, many functions are assigned to it, designed to contribute to the economic and social development of society.

Achieving the stated goals, namely economic growth, price stability, a competitive market economy and stable economic development, are impossible without an efficiently functioning business, which, in turn, implies proper corporate governance of companies.

Until the beginning of the 21st century, shareholder rights did not receive much attention at the EU level, but there were still references to it. Thus, in the Second Council Directive 77/91 / EEC of 13 December 1976, the issue of shareholders' rights is raised in Article 42, which stipulates: “For the purposes of the implementation of this Directive, the laws of the Member States shall ensure equal treatment to all shareholders who are in the same position"[3]. Since 2000, interest in this issue has increased significantly. Quite a lot of legislative initiatives were announced in this area, mainly aimed at ensuring and protecting the rights of shareholders, ensuring effective management, as well as information transparency.

In 2001 a High Level Group of Company law Experts (HLG) was created to review the need for the modernization of company law in Europe. Han mentions that the main impetuses of this activity were several corporate scandals and collapses (Enron in the US, collapse of «Parmalat» in Italy), which damaged the investors’ confidence, also the accession of the Member States and in general worldwide globalization of trade and cross-border economic activity[4]

In 2003 the European Commission presented an Action Plane for Company Law, where it has indicated some main points and directions of the reforms. Also in 2003, the Green Paper was adopted, which later became the basis for the adoption of such legislative acts as Directive 2004/109 / EC of the European Parliament and of the Council of 15 December 2004 on the harmonization of transparency requirements in relation to information about issuers whose securi-

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[3] Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent. EUR- Lex. Accessed 4 May 2021, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31977L0091

[4] Dean, Janice. “A. Dignam and J. Lowry, Company Law B. Hannigan, Company Law.” *Law Teacher* 47, no. 2 (July 2013): 281–84. doi:10.1080/03069400.2013.790162.

ties are admitted to trading on a regulated market and Directive 2007/36 / EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (as amended by Directive (EU) 2017/828) (Shareholder Rights Directive).[5] The last mentioned Directive significantly contributed to issue of minority shareholders' rights protection, first of all by concentration on the issue of providing the opportunity to vote and to participate in the general meeting to every single shareholder, and also made a contribution to increasing transparency in the relations arising in the process of corporate governance between the company and shareholders, company and directors, as well as directors and shareholders. The amendments introduced by this Directive make it possible to effectively control the amount of directors' remuneration, as well as to regulate interested-party transactions.

Nowadays European Union legislation does not provide a definition of "minority shareholder". However, although there is no single legal definition of this term, in scientific papers and reports of international organizations and working groups, it most often means a shareholder who owns less than 50% of the votes in a company and cannot directly or indirectly control management.[6] Based on this definition, the position of minority shareholders in the company can be characterized as vulnerable.

Novelty of the final thesis. The problem has been widely discussed and explored by the scholars all over the world. There is a lot of scientific literature, including those covering the issues of directly protecting the rights of minority shareholders. However, despite this, this area cannot be considered fully studied and totally clear. So, first of all, it is important that the main attention in the works of scientists is paid to the issue of protecting the rights of minority shareholders within the framework of national legal systems of different EU member states (often the legal systems of third countries are also covered), their assessment and comparison. However, little attention has been paid to the regulation of this problem at the EU level. In addition, scientists regularly raise questions about the ethics of some aspects of the problem of protecting the rights of minority shareholders, for example, the question of how much the right to squeeze out

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[5] Dallas, George, Pitt-Watson, David "Corporate Governance Policy in the European Union through an Investor's Lens," CFA Institute. Accessed 4 May 2021. https://www.cfainstitute.org/-/media/documents/article/position-paper/corp-gov-policy-in-european-union-through-investor-lens.ashx

[6] Rights & Benefits to minority shareholders under Companies Act. InGovern Research Services Pvt. Ltd. ("InGovern"). Accessed 4 May 2021, http://www.ingovern.com/wp-content/uploads/2018/01/Minority-Shareholders-under-Companies-Act-2013.pdf

minority shareholders when acquiring a dominant part of shares by majority shareholders complies with the European Convention on Human Rights. In our opinion, conducting additional research will be useful for clarifying the above points of doubt, and will also allow us to approach a more extensive and systematic study of the problem of protecting the rights of minority shareholders and equality in the corporate governance environment.

Level of the analysis of a researched problem of the final thesis. This problem has been actively studied by scientists from different angles. For example, Angelika Gorak in her article gives a brief overview of the rights of minority and majority shareholders[7], Edvinas Bakanauskas considers the issue of minority shareholders' rights in groups of companies[8], Jonathan Mukwiri in his article examines the issue of protecting minority shareholders during takeover bid[9]. I also consider it necessary to mention the work of Tamás Szabados, who investigates the above issue based on the case law of the European Union Court of Justice[10]. In addition, a comprehensive study on minority shareholders protection was published in 2018, which provides a broad overview of the issue of protecting minority shareholders' rights in the internal law of EU member states[11].

Significance of the final thesis. This master's work can be useful to scholars and practicing lawyers in the field of corporate law who deal with issues of corporate governance, mergers and acquisitions, and so on, and who specializes in resolving internal corporate disputes or even directly on the protection of the rights of minority shareholders.

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[7] Gorak, Angelika . “The Interests of Minority and Majority Shareholders in the EU”. Interstate - Journal of international affairs, vol. 2013/2014 no.1, (2014) http://www.inquiriesjournal.com/articles/1086/2/the-interests-of-minority-and-majority-shareholders-in-the-eu

[8] Bakanauskas, Edvinas. 2020. “Protection of Minority shareholders’ Rights in Group of Companies: Lithuania and EU Company Law Perspectives”. *Vilnius University Open Series*, no. 6 (December), 7-17. https://doi.org/10.15388/OS.LAW.2020.1.

[9] Mukwiri, Jonathan. “Takeovers and Incidental Protection of Minority Shareholders.” *European Company & Financial Law Review* 10, no. 3 (September 2013): 432–60. doi:10.1515/ecfr-2013-0432.

[10] Szabados, Tamás. “Shareholder Protection in the Case Law of the Court of Justice of the European Union.” *Current Issues of Business & Law* 5, no. 2 (December 2010): 442–57. doi:10.5200/1822-9530.2010.22.

[11] European Commission, Directorate-General for Justice and Consumers, Study on minority shareholders protection : final report, Publications Office, 2018, **https://data.europa.eu/doi/10.2838/658269**

This master's thesis may also be useful for law students who wish to have a deeper understanding of narrow corporate governance issues at the European Union level than is able to provide a general course on corporate law at a university.

For European legislators, this work can be useful in the sense of providing several fresh ideas for improving European legislation in the field of protecting the rights of minority shareholders, perhaps for filling gaps in the existing system of regulation of these issues. Since we conduct a comparative analysis in the research process, European legislators may adopt some of the ideas and methods that exist and are successfully used in the framework of national legal systems, but are absent in European Union law.

Aim of research. To conduct a comprehensive analysis and assess to what extent the issue of protecting of minority shareholders is regulated at the EU level, identify problems and gaps in this area, as well as find possible solutions and provide proposals for improving the approach to solving this problem at the level of the European Union.

Objectives of research. In order to achieve established aim of this master thesis the following tasks have to be carried out:

1) to analyze the existing methods of protecting the rights of minority shareholders, known to the law of the European Union, to assess their effectiveness, to identify the advantages and disadvantages of each approach;

2) to analyze the national approach to solving this problem at the level of the member states, to conduct a comparative analysis, to highlight the most relevant and effective methods unknown to EU law;

3) to identify gaps and shortcomings in the security of minority shareholders at the EU level, to propose solutions to this problem, based on the results of the study.

Research methodology. In the process of writing this master thesis, we use the following methods:

1. Comparative analysis. As already indicated earlier, to reveal the existence and seriousness of the problem, the comparative analysis is needed. First of all, it is comparison of different jurisdictions, and sometimes - comparison of national and European legislation, or approach to solving the problem.

2. Data collection method. Research of the problem, which the master thesis is devoted to, requires a careful study of a wide range of sources, which includes both the legislation of the European Union, Member States and third countries, and scientific literature, research of the EU Commission, international organizations, the work of famous scientists. After studying, all the information received should be subjected to careful analysis, so that in the end we have the opportunity to come to reasonable and logical conclusions.

3. Linguistic method. Since in the course of this study we conduct a comparative analysis of methods for solving the problem of protecting the rights of minority shareholders in various national legal systems, the risk of confusion between certain concepts that are used by legislators in different jurisdictions is inevitable. Thus, we resort to a linguistic method that allows us to correctly interpret all concepts and make the perception of this master thesis as easy as possible for a reader who is not a specialist in the field of corporate law of each individual state, involved in the research.

4. Logical method. This method allows us to combine all of the above methods into a solid system, thus structure the master thesis, make it logically correct and understandable. Using this method allows us to conduct a complete study, identify specific problems and consequences arising from them, and on this basis draw informed conclusions.

Structure of research. This master's thesis is divided into two parts.

In the first part, we consider the very concept of "minority shareholder" and the main characteristics of the position of minority shareholders in the European legal system, as well as identify the main problems and reasons why it becomes possible to violate the rights of this category of persons.

In the second part, we consider the problem in the context of certain categories of shareholder rights. We also conduct a comparative analysis of approaches to solving this problem of the EU member states, as well as some third countries and the European Union. We also investigate EU soft law and jurisprudence in this part.

Defence statements. 1. The level of protection for minority shareholders at the level of the European Union is insufficient, for the most part it is enshrined in framework legislation, so this area is mainly regulated by the internal legislation of the member states;

2. Different groups of rights of minority shareholders are protected unevenly, although they are closely interconnected;

3. Minority shareholders in public and private companies require the protection of their specific rights (due to the status of a minority shareholder) to varying degrees, as they are in different positions.

LIST OF ABBREVIATIONS

EU - European Union

EC - European Council/Commission

ECHR - European Convention/Court on Human Rights

EMCA - European Model Company Act

OECD - Organisation for Economic Co-operation and Development

1. THE CONCEPT OF MINORITY SHAREHOLDER IN EU LAW

1.1. The Concept of Minority Shareholder in EU law

First of all, we need to define what is meant by the term "minority shareholder". Thus, the Cambridge Dictionary gives the following definition of this concept: "A minority shareholder is a person or organization that owns fewer shares in a company than the controlling shareholder".[12] Joseph Lee provides one more definition of the term "minority shareholder", namely: "Minority shareholders are those board members that possess less than 50 per cent of the shareholdings in a company".[13]

In European Union law, the definition of the concept of "shareholder" is contained in Article 2 of the Directive 2007/36/EC and reads as follows: "shareholder' means the natural or legal person that is recognized as a shareholder under the applicable law".[14] Thus, the Directive does not give a clear definition of the concept of "shareholder", leaving this task to each individual state. However, the concept of "minority shareholder", as well as "majority shareholder", is not included in the text of the Directive at all. Any other legal act of EU also doesn't contain it. So, we can conclude, that this concept is not defined in the EU legislation.

In the absence of an official definition, let's return to the definition given by Joseph Lee. What is meant by the term "board members that possess less than 50 per cent of the shareholdings in a company"? In the opinion of Daniel Szentkuti, it means the following: "There are two approaches to identifying this group. Firstly, the quantitative approach depends on the percentage of capital owned, though this is often regarded as outdated. Secondly, the qualitative approach considers that control is of the utmost importance, an approach often regarded as more realistic". For the purposes of this article, the author prefers the approach according to which the objective

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[12] Meaning of the term "minority shareholder". Cambridge Dictionary. Accessed February 2, 2022. https://dictionary.cambridge.org/ru/%D1%81%D0%BB%D0%BE%D0%B2%D0%B0%D1%80%D1%8C/%D0%B0%D0%BD%D0%B3%D0%BB%D0%B8%D0%B9%D1%81%D0%BA%D0%B8%D0%B9/minority-shareholder

[13] Lee, Joseph. "Four Models of Minority Shareholder Protection in Takeovers," European Business Law Review 16, no. 4 (2005): 803-830

[14] Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies. EUR-Lex. Accessed January 29, 2022. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32007L0036

numerical disadvantage of minority shareholders naturally results in decision making impotency within the business organization.[15]

Most often, the number of shareholder rights increases or decreases in direct proportion to how many shares he owns. For example, 10% of the shares may be required in order to be eligible to vote at the general meeting, and so on.

In most cases, a minority shareholder can be anyone: for example, it can be the director of the company, its employees, former employees, outsiders, banks, investment funds, or even the founders of the company who sold most of its shares to other shareholders.

1.2. Concept and General Characteristics of the Position of Minority Shareholders

As we have found out earlier, minority shareholders are in many cases a vulnerable group, since there is a great temptation for controlling shareholders to abuse their influence to the detriment of minority shareholders. There are many techniques to protect them, but they are not always effective, and some of them are difficult for minority shareholders to apply (for example, in order to use any remedy, a certain number of shares owned by this shareholder may be required).

Often, minority shareholders also become the target of so-called corporate blackmail[16]: for example, controlling shareholders can force them to sell their shares at a lower price (sometimes at a significantly lower price). There are various ways to do this, for example, simply not paying dividends for a fairly long period of time can achieve this goal, or the so-called "share dilution" (reducing the percentage of shares owned by a shareholder of the total number of securities).

[15] Szentkuti, Daniel. Minority Shareholder Protection: Germany, France, and the United Kingdom: A Comparative Overview. Saarbricken: VDM Verlag Dr. Miller, 2008.

[16] Koh, Alan K. "Shareholder Protection in Close Corporations and the Curious Case of Japan: The Enigmatic Past and Present of Withdrawal in a Leading Economy." *Vanderbilt Journal of Transnational Law* 53, no. 4 (October 2020): 1207–64. https://search-ebscohost-com.skaitykla.mruni.eu/login.aspx?direct=true&db=asn&AN=147799026&site=ehost-live.

In his paper, Mark Blair Barta proposes the classification of violations of their fiduciary duties by company managers: (1) when the management's decision to maximize the return of the controlling shareholders does not affect the overall economic return of the corporation, but only transfers part of the income from minority shareholders to the controlling ones, (2) when the such decision also maximizes the overall profit of the corporation, but the controlling shareholders benefit excessively disproportionately, and (3) when such decision has a negative impact on the overall income of the corporation.[17]

It should be noted, however, that the disadvantaged position of minority shareholders is not always caused by the dishonesty of controlling shareholders and their desire for personal gain. Quite often, controlling shareholders actually act in the best interests of the business. Let us mention, for example, the situation when the majority shareholders decide to invest all the profits they receive in the development of the company instead of payment of dividends, while the minority shareholder is only interested in making a profit from their investments, and, of course, dissatisfied with such a way of disposing profit.

Despite all of the above, it would be wrong to present minority shareholders as an unambiguously "suffering" group, which is constantly at risk of being discriminated by majority shareholders. Minority shareholders are also able to deliver a lot of problems to the company, controlling shareholders, managers. For example, corporate blackmail is also possible on the part of minority shareholders (the so-called greenmail[18]). Through greenmail practices, they can force majority shareholders to buy back their shares at a grossly inflated price. As we can see, this situation is a mirror image of corporate blackmail by the majority shareholders.

2. GENERAL OVERVIEW OF THE EXISTING RIGHTS OF SHAREHOLDERS IN THE EU LEGISLATION, WAYS OF THEIR EXERCISING AND PROTECTION

[17] Barta, Mark Blair. "Is the Imposition of Fiduciary Responsibilities Running from Managers, Directors, and Majority Shareholders to Minority Shareholders Economically Efficient?", 38 Clev. St. L. Rev. 559 (1990) https://engagedscholarship.csuohio.edu/clevstlrev/vol38/iss4/5

[18] Macey, Jonathan R., and Fred S. McChesney. "A Theoretical Analysis of Corporate Greenmail." *The Yale Law Journal* 95, no. 1 (1985): 13–61. https://doi.org/10.2307/796120.

In this chapter, we will consider the main rights of shareholders in companies, and also pay attention to the peculiarities of the use of these rights by minority shareholders.

There are many different classifications of shareholder rights. Many authors in their writings have proposed various options for systematizing the rights of shareholders. Back in the 19th-20th centuries, German lawyers paid attention to this issue in their writings. For example, it was proposed to divide the rights into those that are inalienable from the share and those that can be used separately from it, as well as the rights that are exercised within the company and in relation to the company, and so on.[19]

Having delved a little into the study of this issue, we can find many classifications of the rights of shareholders on various grounds, in particular, they are divided into absolute (a high level of free will of the right holder, the obligation of others to refrain from violating these rights) and relative (imply the presence of an authorized entity, can be limited) , general (due only to the fact of owning a share and only on this basis can be realized) and special (imply the need for certain external factors for their implementation), property (related to property relations) and non-property (not related to property relations) and so on.[20]

For the convenience of reviewing each right in detail, we are going to systematize all rights into groups, after which we will consider in detail each group one by one, paying close attention to each individual shareholder right, while considering the specifics of the exercise of this right by minority shareholders and the difficulties that may arise in the course of its implementation. First of all, we need to classify all existing rights according to some criterion. In our opinion, the classification of shareholders' rights according to their type, which was proposed by TGS Baltic in its final report[21], looks very convenient. In its study on the protection of the rights of minority shareholders, which was later presented to the European Commission, TGS Baltic uses the following classification of shareholder rights: economic rights, control rights, information rights, litigation rights and equality rights. In our opinion, this classification is the most clear

[19] Dolinskaya, Vladimira, Joint stock law: main provisions and trends, Moscow: Wolters Kluver, 2006. URL: https://ru.pb1lib.org/book/3151025/d36a40

[20] Ibid

[21] Supra note 11

and understandable even for a reader who is not related to jurisprudence, so we will use it in this thesis.

It is also important for us to point out that the rights that we will discuss in this section are not only the rights of minority shareholders.[22] All shareholders of the company, whether they are minority or majority, have these rights (albeit to a different extent). In this case, since minority shareholders are the most vulnerable category, the protection of their interests is necessary in order to provide them with more equality in relation to the majority shareholders.

The legal doctrine[23] says that the need to protect the rights of minority shareholders is consistent with such principles as the principle of good corporate governance, the principles of fairness, transparency, accountability and responsibility. In the long term, good corporate governance and respect for the rights of shareholders, regardless of the number of shares they own, will serve the benefit of the company and help achieve certain strategic goals, like, for example, increasing the value of the company, increasing the discipline and responsibility of the company's bodies, improving national/international investments.

Thus, companies, in our opinion, should be interested in ensuring that the interests of their minority shareholders are not infringed.[24]

2.1. Peculiarities and Protection of the Economic Rights of Minority Shareholders.

The generally accepted point of view is that the property interest is decisive at the time of making the decision to become a shareholder. By investing his own capital in the shares of a company, a newly minted shareholder expects to preserve and increase it, namely, to make a profit. Julian Velasco is of the opinion that the economic rights that will be discussed below (the right to receive a share of profits in the form of dividends and the right to sell shares) directly

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[22] Grantham, Ross. "The Doctrinal Basis of the Rights of Company Shareholders." *The Cambridge Law Journal* 57, no. 3 (1998): 554–88. http://www.jstor.org/stable/4508493.

[23] Ahmad Aswar Rowa; Anwar Borahima; A. Badriyah Rifai; Abdullang Marlang, "The Rights of the Shareholders Minority in a Company: A Critical Analysis," Journal of Law, Policy and Globalization 62 (2017): 13-19 https://heinonline-org.skaitykla.mruni.eu/HOL/Page?public=true&handle=hein.journals/jawpglob62&div=4&start_page=13&collection=journals&set_as_cursor=0&men_tab=srchresults

[24] Supra note 25

reflect the two main ways in which, in his opinion, shareholders can profit from a corporation: by participating in the distribution of the profits of the company or by selling all or part of his share in the company.[25]

2.1.1. Right to Dividends and Asset Allocation

First of all, in our opinion, attention should be paid to the right to receive dividends. According to some scholars, the right to receive a dividend is the oldest and, undoubtedly, the most significant right of a shareholder.[26] What are dividends? In simple terms, dividends are the profit received by a shareholder from his shares. Dividends are paid at the time of the decision to pay dividends. Again, in simple terms, when a company makes a profit, it can make the following decisions: invest all profits in business development (reinvest), distribute among its shareholders in the form of dividends, or, if the amount of profit is sufficient, reinvest part of them, and part is distributed between shareholders in the form of dividends.[27]

Dividend policy and its role in the life of companies and their shareholders has been the subject of debate among scholars for many years. What is more important for shareholders (in the light of this work - for minority shareholders) - the development of the company (as a result, the growth in the price of its shares) or the regular receipt of dividends? There are many different opinions on this matter. For example, Merton Miller and Franco Modigliani in their study deduced 2 conditions under which a dividend policy does not matter to a company: (i) the firm operates in ideal capital markets and (ii) operating cash flows are independent of financial choices.[28] That is, subject to these two conditions, investors do not care whether profits are distributed or reinvested. The authors say that it is possible to finance the company's investment projects and its further development not only by reinvesting retained earnings, but also by, for example, issuing new shares, debt securities, and so on. However, the problem is that such a co-

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[25] Julian Velasco, "The Fundamental Rights of the Shareholder," U.C. Davis Law Review 40, no. 2 (December 2006): 407-468. https://heinonline-org.skaitykla.mruni.eu/HOL/Page?public=true&handle=hein.journals/davlr40&div=17&start_page=407&collection=journals&set_as_cursor=0&men_tab=srchresults

[26] Sead Omerhodzic, 2014. "Identification and Evaluation of Factors of Dividend Policy," Economic Analysis, Institute of Economic Sciences, vol. 47(1-2), pages 42-58. URL: https://core.ac.uk/download/pdf/33812229.pdf

[27] Adam Hayes. Dividend definition. Investopedia. Accessed February 3, 2022. https://www.investopedia.com/terms/d/dividend.asp

[28] Miller, Merton H., and Franco Modigliani. “Dividend Policy, Growth, and the Valuation of Shares.” *The Journal of Business* 34, no. 4 (1961): 411–33. http://www.jstor.org/stable/2351143.

incidence of these conditions are quite utopian, so scientists come to the conclusion that a well-thought-out dividend policy is very important for the company's development.

This theory is discussed, interpreted and commented on by scientists to this day. The main subject of these discussions is the role of the timely payment of dividends for shareholders and managers. There is a rather unexpected opinion that the dividend policy is very important not only for shareholders, but for managers.[29] In this study, the point of view appears that managers "…alter the dividend payout ratio so as to smooth dividends and make dividends less volatile than earnings per share, and…are very reluctant to cut dividends" In addition, there is an assumption that there is a positive correlation between regular initiation and payment of dividends (as well as their increase) and an increase in the market value of shares, while announcements about the reduction or refusal to pay dividends, respectively, are accompanied by its decrease.[30] Another study among US companies found that firms with higher dividend payout ratios tend to be larger, older, and more profitable, but have less growth potential.[31]

Continuing the discussion about the importance of dividend policy in the process of corporate governance, we can recall Rafael La Porta, Florencio Lopez de Silanes, Andrei Shleifer and Robert Vishny, who believe that a guaranteed opportunity for shareholders to receive their dividends is an important marker of the degree of protection of their rights. Their opponents argue in their research in favor of the opposite point of view, which denies the importance of dividend policy as an element of effective corporate governance. For example, they report that, according to their research, better-managed firms in the US have lower payout ratios. This fits in perfectly with the idea that better management ensures that retained earnings are used optimally within the firm and therefore no high dividends need to be paid.[32]

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[29]Lintner, John. "Distribution of Incomes of Corporations Among Dividends, Retained Earnings, and Taxes." *The American Economic Review* 46, no. 2 (1956): 97–113. http://www.jstor.org/stable/1910664.

[30] Allen, Franklin, and Roni Michaely. "Payout Policy." *Working Papers -- Financial Institutions Center at The Wharton School*, January 2001, 1. https://search-ebscohost-com.skaitykla.mruni.eu/login.aspx?direct=true&db=bsu&AN=9294701&site=ehost-live.

[31] Banerjee, Suman, Vladimir A. Gatchev, and Paul A. Spindt. "Stock Market Liquidity and Firm Dividend Policy." *Journal of Financial and Quantitative Analysis* 42, no. 2 (2007): 369–97. doi:10.1017/S0022109000003318.

[32] John, Kose and Knyazeva, Anzhela, Payout Policy, Agency Conflicts, and Corporate Governance (May 2006). Available at SSRN: https://ssrn.com/abstract=841064 or http://dx.doi.org/10.2139/ssrn.841064

In any case, the right to receive dividends is one of the first rights that comes to mind when answering a question about shareholder rights (one cans come to that conclusion even by asking law students this question). In the author's opinion, this right has become so entrenched in the minds of people as a part of normal practice that it does not occur to most people to question its importance.

Speaking about the violation of the rights of minority shareholders, the very first thought is usually about the non-payment of dividends. This is absolutely logical, because this area really implies a wide scope for possible abuse by the so-called insiders - those who decide on the payment of dividends. In most cases, insiders are directors or controlling majority shareholders, and sometimes these two roles are embodied in one person, that is, the director is also the controlling shareholder of the company. Thus, the decision to pay/non-pay dividends is usually made by managers at their discretion, while no one can guarantee that managers will follow an investment policy that maximizes the value of equity capital, and not pursue their personal interests[33] (such abuses are quite common, especially if the directors are also controlling shareholders).[34] It should be noted that the situation when directors are controlling shareholders is one of the most unfavorable, because formally, under such circumstances, the element of agency relations disappears - after all, the decision to pay dividends is made in fact by the main owner himself, and not by an agent (director) on his behalf . Among the scholars who hold this view is Jeremy Stein, who in his research shows that managers who are also majority shareholders often seek private gain, reduce risk and prefer short-term projects over long-term ones, and therefore perceive the idea of regular payments dividend without enthusiasm.[35] In general, according to some scholars,[36] "…the dispersed ownership structure does not encourage directors to take into account the views of minority shareholders - in fact, more than half of corporate managers say that

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[33] Easterbrook, Frank H. "Two Agency-Cost Explanations of Dividends." *The American Economic Review* 74, no. 4 (1984): 650–59. http://www.jstor.org/stable/1805130.

[34] Maribel Saez; Maria Gutierrez, "Dividend Policy with Controlling Shareholders," Theoretical Inquiries in Law 16, no. 1 (2015): 107-130. https://heinonline-org.skaitykla.mruni.eu/HOL/Page?public=true&handle=hein.journals/thinla16&div=6&start_page=107&collection=journals&set_as_cursor=0&men_tab=srchresults

[35] Stein, Jeremy C. 2003. "Agency, Information and Corporate Investment." Handbook of the Economics of Finance. Edited by George Constantinides, Milt Harris, and Rene Stulz. Amsterdam: North Holland. https://scholar.harvard.edu/files/stein/files/agency-2003.pdf

[36] Abrutyn, Stephanie, and Robert W. Turner. "Taxes and Firms' Dividend Policies: Survey Results." *National Tax Journal* 43, no. 4 (1990): 491–96. http://www.jstor.org/stable/41788868.

they do not know who their shareholders are. A more recent survey also shows that about half of managers do not consider the interests of minority shareholders when making payout decisions".[37]

While pursuing good intentions, European Union legislation also expands the opportunities for majority shareholders to abuse their rights. For example, in accordance with Art. 56(1) Directives 2017/1132[38], relating to certain aspects of company law, "except in the event of a reduction in subscribed capital, no distribution to shareholders may be made if, at the closing date of the last financial year, the net assets, as stated in the company's annual report, are or after such distribution become lower than the amount subscribed capital plus such reserves as may not be distributed by law or by the company's articles of association." Thus, EU law seriously limits the possibility of paying dividends. This idea, in our opinion, is absolutely correct, since such an approach works in the interests of the company and it's creditors, preventing the possibility of bankruptcy and insolvency. However, despite these positive aspects, it is difficult to deny the fact that the majority shareholders have a fairly wide scope for abusing their powers. This provision of the Directive can be used by unscrupulous controllers as a tool to limit the rights of minority shareholders to receive dividends.

This happens because, as mentioned earlier, the payment of dividends is not guaranteed, but depends on whether the decision to pay them is made. Such a decision is usually made by the general meeting of shareholders or the directors (usually this is indicated in the company's charter).[39] In such conditions, minority shareholders are a conditionally vulnerable group, because due to the small number of shares, and therefore insignificant influence in the company, they cannot ensure the decision to pay dividends, which means they can become the object of abuse by management or majority shareholders. It is generally accepted that dividends are paid when, based on the income received, the company can afford to pay them. The same requirements are

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[37] Brav, Alon, John R. Graham, Campbell R. Harvey, and Roni Michaely. "Payout Policy in the 21st Century." *SSRN Electronic Journal*, 2004. https://doi.org/10.2139/ssrn.571046.

[38] Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies. EUR-lex. Accessed March 25, 2022. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32007L0036

[39] Al-Najjar, Basil, and Yacine Belghitar. "Corporate Cash Holdings and Dividend Payments: Evidence from Simultaneous Analysis." *Managerial and Decision Economics* 32, no. 4 (2011): 231–41. http://www.jstor.org/stable/23012460.

contained in the Directive[40], which also contains sufficiently clear criteria for capital adequacy for the distribution of profits (that is, the payment of dividends (in accordance with Article 56(4) of the Directive) between shareholders. However, what will prevent unscrupulous directors or controlling shareholders from hiding the real the amount of profits and report in the official report smaller numbers that are not enough to pay dividends? Using this, the company can avoid paying dividends indefinitely, citing insufficient profits and the need to invest in business development, and in most cases, minority shareholders have a very limited amount means to influence this situation and protect their rights.

In addition, even if minority shareholders, in accordance with the company's charter or law, have the right to challenge the decision of the directors not to pay dividends in court, there are doubts about whether success is likely. According to scientists, rather no than yes, at least in countries where the “business judgment rule” is in effect.[41] The idea is that the courts should not question a manager's dividend policy decision because it is presumed that they acted in the best interests of the company in making such a decision. That is, in the absence of fraud or gross abuse of power, the directors may, at their discretion, initiate the payment of dividends or refrain from doing so.

If such problems exist with the right to challenge non-payment of dividends in court, then is there a way for shareholders to achieve payment of dividends? Can a shareholder demand the payment of dividends in an imperative manner if he suspects that he is being deceived by the controlling shareholders? There is currently no clear answer to this question. At the level of the European Union, this issue has not been resolved, which means that individual countries can independently decide on the possibility of such a requirement. According to data obtained by TGS Baltic as a result of extensive research, there are not many countries in the world that have enshrined in their legislation the right of shareholders to demand distribution of profits (among them, for example, Finland and Sweden). And Portuguese law even enshrines the requirement to distribute 50% of the company's profits among shareholders. [42]

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[40] Supra note 41

[41] Armour, John, Henry Hansmann, and Reinier Kraakman. “The Essential Elements of Corporate Law.” *Working Papers -- Yale School of Management’s Legal Scholarship Network*, July 2009, 1–32. https://search-ebscohost-com.skaitykla.mruni.eu/login.aspx?direct=true&db=bsu&AN=47483773&site=ehost-live.

[42] Supra note 11

Other countries in the European Union also provide protection to minority shareholders, but to a lesser extent. For example, the case law of Germany and Poland also recognizes this right, but the legislation of these countries does not contain such provisions. Ireland and Malta require that the right to claim dividends be clearly stated in the company's articles of association, otherwise it is not recognized. In Spain, this right is not directly recognized at all, but at the same time, a shareholder has the right to withdraw from the company in case of non-payment of dividends (this is provided as a separate basis for withdrawal).[43]

At the level of the European Union, the right of shareholders to demand the distribution of profits in the form of dividend payments is not provided. Is this a mistake? In author's opinion on the basis of the above, no. Although granting such a right looks promising as a way to protect the rights of minority shareholders, its effectiveness from an economic point of view is highly questionable. Indeed, in fact, the main task of business development is to contribute to the economy. The ability of the company's management to freely decide on the payment or non-payment of dividends, of course, creates some scope for abuse, but at the same time contributes to the development of the company - after all, profits not distributed among minority shareholders will not necessarily "sink" into the pockets of majority shareholders and dishonest directors. It can be used for the benefit of the company, reinvested in future projects, in business expansion. It is unlikely that a company for which profit distribution is mandatory, regardless of the stage of business development (this is an important indicator, since, according to some scientists, "…mature firms pay more dividends than do young firms due to their high profitability and few growth opportunities"[44]), its size, profit this year and so on has great potential for development. Rather, the management of such a company will most of the time be concerned with how to keep it from bankruptcy and at the same time not break the law by not paying dividends on time.

If we take a look at the statistics collected by scientists regarding the payment of dividends, we can trace the influence of various factors on the payment and size of dividends. For

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[43] Ibid

[44] DeAngelo, Harry, Linda DeAngelo, and René M. Stulz. "Dividend Policy and the Earned/Contributed Capital Mix: A Test of the Life-Cycle Theory." *Journal of Financial Economics* 81, no. 2 (August 2006): 227–54. doi: 10.1016/j.jfineco.2005.07.005.

example, large, profitable firms and firms with little growth opportunity pay more dividends.[45] Firms that are highly leveraged pay lower dividends, which is consistent with the notion that leverage discourages dividend payments, either because debt limits dividends or because debt reduces the firm's liquidity.[46] The liquidity of the stock market has a negative impact on the payment of dividends, which is consistent with the notion that investors view dividends and liquidity as interchangeable concepts.[47] Looking at the above data, it becomes clear that it is impossible to put these companies in the same conditions and demand that they pay dividends to shareholders without taking into account the above features, otherwise it will lead to really unpleasant consequences, at least for a single company, and at most for the country's economy.

This is probably understood by most legislators, and it is for this reason that they do not include in their legislation the right to demand payment of dividends. After all, if the legislator takes this measure, then he will have to find a delicate balance between protecting the rights of shareholders to receive dividends and causing irreparable harm to the company. For this reason, the right to demand payment of dividends as a way to protect the rights of minority shareholders loses a significant part of its effectiveness and attractiveness. Take Finland as an example, where shareholders have the right to demand dividends. However, there are many conditions. First of all, the main conditions are that the payment of dividends on demand must not lead to the insolvency of the company. In addition, according to Finnish law, only a shareholder whose share in the capital of the company is at least 10% of all issued and outstanding shares of the company can claim dividends. Payment may be required at the General Meeting of Shareholders, as well as strictly before the decision on the use of the profit of the financial year is made. In addition, as in other countries, dividends can only be paid out of the company's profits.[48] Accordingly, we again return to a simple rule: no profit - no dividends.

The conclusion, in our opinion, is obvious: fixing the right to demand payment of dividends can not only be dangerous for the company, but is also far from being a panacea. For di-

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[45] Fama, Eugene F. "My Life in Finance." *Annual Review of Financial Economics* 3 (2011): 1–15. http://www.jstor.org/stable/42940417.

[46] Hu, Aidong, and Praveen Kumar. "Managerial Entrenchment and Payout Policy." *The Journal of Financial and Quantitative Analysis* 39, no. 4 (2004): 759–90. http://www.jstor.org/stable/30031884.

[47] Supra note 28

[48] Supra note 11

rectors who want to abuse their power and avoid the distribution of profits, it is enough to simply underestimate the numbers in the annual report - and already the shareholders lose the right to demand payment of dividends.

However, the right to claim dividends is not the only known way to protect the right to receive them. Let's take a closer look at other existing methods.

First of all, it is worth mentioning the distribution of profits for special types of shares (for example, for preferred shares). Preferred shares, unlike ordinary shares, in most cases do not provide voting rights (except for some cases), but at the same time they give their owners some advantages in terms of making a profit. For example, holders of preferred shares may be entitled to receive guaranteed dividends, pay an additional amount of dividends, or even pay dividends of at least a certain amount.[49]

The issuance of this type of shares is permitted in most countries of the world and is perhaps the most reliable way for a shareholder to receive regular dividends. However, the problem here is the other way around: this type of share usually has very limited voting rights, which means that although the shareholder receives some financial guarantee, he jeopardizes his rights in other areas, depriving himself of the right to vote (or significantly limiting yourself in it).[50]

Fairly effective and generally accepted means of protecting minority shareholders from the arbitrariness of insiders are the equal treatment and the majority rules. These rules are intended to give minority shareholders the opportunity to receive their fair share of dividends, as well as the right to vote in deciding whether to pay dividends.

According to the equal treatment rule, the distribution of dividends must be proportional, that is, the amount of dividends that can be paid to a shareholder depends on the amount of capital invested in the firm. However, this rule cannot protect minority shareholders by 100%. So, according to some scientists, dishonest controllers still have quite a lot of opportunities for abuse

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[49] Bratton, William W., and Michael L. Wachter. "A THEORY OF PREFERRED STOCK." *University of Pennsylvania Law Review* 161, no. 7 (2013): 1815–1906. http://www.jstor.org/stable/23527854.

[50] Fernando, Jason. Preference Shares. Investopedia. Accessed March 5, 2022. https://www.investopedia.com/terms/p/preference-shares.asp

(like self-dealing or excessive perks)[51] In other words, the ban on discriminatory dividends does not prevent controlling shareholders from paying less dividends to minority shareholders and thus maximizing their own profits.[52]

The principle of operation of the majority rule is different: limiting the power of controllers and directors by requiring a decision on the distribution of profits by the general meeting of shareholders. This is more democratic way, and additionally general meeting has a significant advantage - publicity. During it, shareholders can listen to the report and evaluate the work of the directors, as well as document its result and make it public. Of course, this is too weak a means to eradicate insider abuse, but since directors and controlling shareholders still usually value their reputation, they are unlikely to commit open and blatant abuse in a public environment.[53]

Extremely controversial, but according to the author, one of the most beneficial approaches for minority shareholders is the payment of dividends not in the form of cash, but in the form of an additional distribution of shares (the so-called "in-kind form")[54]. It is not difficult to guess what is meant under this term - in simple words, as dividends, the shareholder receives not cash, but additional shares of the company. This is quite beneficially in author's opinion, as in this case the shareholder has a choice: to keep the received new shares in his ownership or to sell them, having received cash. In addition, note that cash dividends are subject to distribution tax in many jurisdictions, while stock dividends are generally not subject to this tax.[55]

Some scholars even argue that, in fact, shareholders have historically had reasons to prefer not to receive dividends, and the first of these is the unfavorable tax treatment that dividends have enjoyed compared to other ways of extracting economic benefits from a corporation (the

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[51] Dyck, Alexander, and Luigi Zingales. "Private Benefits of Control: An International Comparison." *The Journal of Finance* 59, no. 2 (2004): 537–600. http://www.jstor.org/stable/3694907.

[52] Atanasov, Vladimir A. and Black, Bernard S. and Ciccotello, Conrad S., Self-Dealing by Corporate Insiders: Legal Constraints and Loopholes (March 6, 2011). RESEARCH HANDBOOK ON THE ECONOMICS OF CORPORATE LAW, Chapter 22, Brett McDonnell and Claire Hill, eds., Forthcoming , Northwestern Law & Economics Research Paper No. 11-07, Available at SSRN: https://ssrn.com/abstract=1714591

[53] Bischoff, Ralph F. "Minority Rights and Majority Rule." *Virginia Law Review* 39, no. 5 (1953): 607–19. https://doi.org/10.2307/1070028.

[54] Fields, L. Paige, and Michael S. Wilkins. "An Empirical Investigation of Stock Dividends-In-Kind." *Journal of Financial Research* 19, no. 1 (Spring 1996): 105. doi:10.1111/j.1475-6803.1996.tb00587.x.

[55] Raum, Leonard. "Dividends in Kind: Their Tax Aspects." *Harvard Law Review* 63, no. 4 (1950): 593–613. https://doi.org/10.2307/1335991.

most obvious and understandable is sale of shares)[56]. According to Grullon and Michaely, the fact that when shareholders are taxed in favor of capital gains, share repurchases taxed as capital gains usually provide shareholders with significant tax advantages over dividends is a significant reason to replace dividends with share repurchases in order to save shareholder taxes.[57]

The second component of the discussed right is the right to receive a part of the company's property in the event of its liquidation. The liquidation of a company is a variant of the development of events that takes place quite often, and in essence represents the final termination of the company's activities without any succession.

Scholars agree that shareholders do not own the company or its assets. For example, Prof Lynn Stout said: "A lawyer would know that the shareholders do not, in fact, own the corporation. Rather, they own a type of corporate security commonly called "stock". As owners of stock, shareholders' rights are quite limited. For example, stockholders do not have the right to exercise control over the corporation's assets".[58] Prof Paul Davies agrees with him, and notices that the company itself is the owner of the assets "The company itself is treated not merely as a person, the subject of rights and duties, but also as a res, the object of rights and duties. It is the fact that the shareholder has rights in the company as well as against it, which, in legal theory, distinguishes the member from the debenture-holder whose rights are also defined by contract …but are rights against the company and, if the debenture is secured, in its property, but never in the company itself."[59]

Based on the foregoing, normally, the property of shareholders is separated from the property of the company - neither the company nor the shareholder can claim each other's property.[60] However, in the event of liquidation, the company ceases to exist as a separate legal entity,

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[56] Supra note 17

[57] Grullon, Gustavo, and Roni Michaely. "Dividends, Share Repurchases, and the Substitution Hypothesis." *The Journal of Finance* 57, no. 4 (2002): 1649–84. http://www.jstor.org/stable/3094520.

[58] Stout, Lynn. "The Corporation and the Law." *Proceedings of the American Philosophical Society* 158, no. 4 (2014): 364–71. http://www.jstor.org/stable/24640181.

[59]Gower, Laurence Cecil Bartlett, Paul Davies, Sarah Worthington, and Eva Micheler. *Gower and Davies' Principles of Modern Company Law*. 9th ed. London: Sweet & Maxwell, 2012.

[60] Ireland, Paddy. "Company Law and the Myth of Shareholder Ownership." *The Modern Law Review* 62, no. 1 (1999): 32–57. http://www.jstor.org/stable/1097073.

and then the shareholder can claim part of its property. Normally it is kind of payment, which is made from the assets of the company. This right is called "liquidation profit" or "liquidation dividend".[61] This is also way for the shareholder to receive profit from his shareholding, but, as is was mentioned earlier, if the main requirement for the possibility of paying dividends is the presence of the company's profit, and they are paid exclusively from profits, then in this case they are subject to distribution of the entire capital of the company (remaining after settlement with the company's creditors, since shareholders are the residual claimants).[62]

The concept of residuarity is well known to modern corporate law. As Justice Frank Easterbrook and Professor Daniel Fishel explained: “Investors bear the risk of failure and receive the marginal rewards of success. Equity investors are paid last, after debt investors, employees, and other investors with (relatively) fixed claims.These equity investors have the “residual” claim in the sense that they get only what is left over but they get all of what id let over”.[63]

First of all, of course, “residuarity” means that the shareholder has the right to receive a part of the company's assets after all creditors receive what is due to them. However, some scientists find another meaning of this concept. So, for example, Prof John Armor and Prof Michael Whincop denoted: “Residual” implies that the rights to control over all states of the world which are not specified by law or contract ex ante. Residuarity matters because it is still possible to allocate residual rights even if specific directions about what should (not) be done in particular circumstances cannot we written or enforced”.[64]

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[61] Chen, James. Liquidating Dividend. Investopedia. Accessed March 4, 2022. https://www.investopedia.com/terms/l/liquidatingdividend.asp#:~:text=A%20liquidating%20dividend%20is%20a,typically%20not%20taxable%20for%20shareholders.

[62] Black, B. (1999). Corporate law and Residual Claimants. *UC Berkeley: Berkeley Program in Law and Economics*. Retrieved from https://escholarship.org/uc/item/5746q7pj

[63] Easterhrook and Fischer, cited by David C. Donald, "Shareholder Voice and Its Opponents," Journal of Corporate Law Studies 5, no. Part 2 (October 2005): 305-362). https://heinonline-org.skaitykla.mruni.eu/HOL/Page?public=true&handle=hein.journals/corplstd5&div=13&start_page=305&collection=journals&set_as_cursor=0&men_tab=srchresults

[64] Armour and Whincop, cited by David C. Donald, "Shareholder Voice and Its Opponents," Journal of Corporate Law Studies 5, no. Part 2 (October 2005): 305-362).https://heinonline-org.skaitykla.mruni.eu/HOL/Page?public=true&handle=hein.journals/corplstd5&div=13&start_page=305&collection=journals&set_as_cursor=0&men_tab=srchresults

The purpose of residual rights is often cited as being able to get back one's property after the liquidation of a company and to avoid its unlawful transfer to another person.[65]

Taking into account the foregoing, the legal doctrine considers the right to receive a part of the company's property after its liquidation as one of the fundamental rights of each shareholder. [66] And it’s hard to disagree with this: since by investing in the company, the investor has the right to expect any return in the event of the liquidation of the company, if this liquidation was not associated with bankruptcy. In simple words, if the property of the company, in which the shareholders made their contributions, remained after its liquidation and settlement with creditors, then this property should quite naturally be divided proportionally among the investor-shareholders.

The order in which and in what amount each of the shareholders will receive this share depends on the charter of the liquidated company, the amount of shares he owned before the liquidation (usually the payment is in proportion to the par value of the shares) and on what type of shares he owned. Usually, the holders of preferred shares receive part of the property first.[67] Normally the so-called liquidation value of preferred shares (the amount of money that the shareholder will receive in the event of liquidation of the company) is indicated in a fixed amount in the charter. This is not a firm rule - the amount may not be mentioned in the charter, but then the shareholders are in a less favorable position, since the amount will be determined during the distribution of assets, and it is not certain that its size will satisfy the shareholders.

It is important, however, to note that it is possible to talk about the presence of this right for shareholders only if the reason for the liquidation of the company is not its insolvency/bankruptcy.[68] This is explained by the fact that in the event of insolvency or bankruptcy, the company does not have the funds even to pay off its creditors, so it is naturally that the shareholders cannot count on any payments. Yes, in this case, the interests of shareholders suffer, but as residual

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[65] Mohawk Carpet Mills, Inc v Delaware Raton Co, 110 A 2d 305 (Del Ch 1954). Justia. Accessed March 28. https://law.justia.com/cases/delaware/court-of-chancery/1954/110-a-2d-305-4.html

[66] Varrenti, Alessandro, and Fernando de las Cuevas, eds. Shareholders’ Rights in Private Public Companies: A Global Guide from Practical Law. 2. ed. London: Thomson Reuters, 2015.

[67] Ferruccio Maria Sbarbaro; Andrea Sacco Ginevri, "Role of Preferred Shareholders in Fundamental Transactions: Preliminary Thoughts," European Business Law Review 26, no. 5 (2015): 765-778

[68] Mikalonienė, Lina. Uždarosios akcinės bendrovės akcininko teisės ir jų gynimo būdai: monografija. Vilnius: Registrų centras, 2015.

claimants they must come to terms with this. After all, investing always involves some degree of risk.

Summing up, it should be noted that we considered three basic economic rights of shareholders: the right to demand payment of dividends, the right to receive part of the company's profit, the right to receive part of the company's property after its liquidation. Perhaps the easiest of these rights to exercise is the right to receive a part of the profits after liquidation. In this case, everything is quite clear: if, after settlement with creditors, the company's property remains, the liquidator distributes it among the shareholders in proportion to the nominal value of their shares.

Speaking of the right to profit from shares, we are fully entitled to call minority shareholders in the EU a vulnerable group.

As the analysis showed, the legislation of the European Union regulates this issue extremely superficially (the provisions on the distribution of profits, including through the payment of dividends, are contained in the provisions of Directive 2017/1132 relating to certain aspects of company law). The right to demand the payment of dividends is not mentioned at all in European Union legislation. It is also worth noting that the regulation of this aspect of corporate legal relations at the level of the European Union is carried out through the adoption of directives, which, as we know, provide only certain general principles, certain goals that need to be achieved. The means, the direct mechanism for achieving them, remains at the discretion of the member countries. Thus, all existing mechanisms for protecting the rights of minority shareholders (including the right to demand the payment of dividends) exist at the level of the national legislation of the member countries, but not at the EU level.

2.1.2. Exit Rights

In its importance, the exit right of a shareholder is not inferior to the right to vote at a general meeting. In his work, David C. Donald expressed a rather correct, in our opinion, idea: when a shareholder finds himself in a disadvantageous situation, he has two basic rights: the

right to vote and the right to exit.[69] The author quotes scholar Hirschnman, and states that "an exit is an 'economic' decision, while a vote is a 'political' decision"[70]. That is, a shareholder who is dissatisfied with the company's policy can either express his dissatisfaction by exercising the right to vote, or simply leave the company by exercising the exit right, respectively. The author also mentions that there is an inverse correlation between voting and exit: where barriers to exit are high enough, while voting is fairly easy to exercise, shareholders use voting rights more often. And vice versa, where there are significant obstacles to the exercise of the right to vote, but it is quite easy to withdraw, the exit right is more popular among shareholders.

It should be noted that exit rights are closely related to the rights discussed in other sections of this thesis, since very often the decision to leave the company arises for a shareholder at the time of large and significant transactions (transformation, merger, acquisition, and so on), which means that the right to exit can be called one of the rights of minority shareholders requiring protection during significant transactions.[71]

This right is known to various jurisdictions. For example, the oppression remedy in the US, whose counterpart is the unfair prejudice remedy in the UK. The appraisal remedy provides shareholders who are opposed to certain corporate actions, such as mergers or sales of major assets, with a chance to have their shares repurchased by the company at an appraised value and afterwards exit the company.[72]

It is generally accepted that this right originated in the United States. Initially, the decision on major changes in the company / transactions had to be taken unanimously [73], that is, since these changes seriously affected the fate of the company (and therefore its shareholders),

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[69] Donald, David C. "Shareholder Voice and Its Opponents." *Journal of Corporate Law Studies* 5, no. 2 (October 2005): 305–61. https://doi.org/10.1080/14735970.2005.11419937.

[70] Hirschman, Albert O. "'Exit, Voice, and Loyalty': Further Reflections and a Survey of Recent Contributions." *The Milbank Memorial Fund Quarterly. Health and Society* 58, no. 3 (1980): 430–53. https://doi.org/10.2307/3349733. (cited by David Donald)

[71] Vorenberg, James. "Exclusiveness of the Dissenting Stockholder's Appraisal Right." *Harvard Law Review* 77, no. 7 (1964): 1189–1217. https://doi.org/10.2307/1338825.

[72] Wang, Qiuju. Exit Remedies for Minority Shareholders in Close Companies: England, the United States, China. Uitgave Vanwege Het Instituut Voor Ondernemingsrecht 82. Deventer: Kluwer, 2011.

[73] Pinto, Arthur R., and Douglas M. Branson. *Understanding Corporate Law*. 3rd ed. Understanding Series. New Providence, NJ: LexisNexis, 2009.

they could not be adopted and implemented unless the consent of each individual shareholder was obtained. However, it is clear that this approach seriously hindered the development of business, since it is quite difficult to enforce this rule. This is explained by the fact that such decisions often involve risk (sometimes a very significant risk), and not all shareholders are ready to take serious risks in the name of business development.[74] Changes were needed, and the rule of unanimity was replaced by majority rule. However, another problem has arisen: majority rule, if not properly balanced, can jeopardize the interests of minority shareholders.[75] Appraisal right appeared as a remedy for this side effect. Its main goal was to balance the interests of the company (its development, restructuring, and so on) and the interests and expectations of minority shareholders. Its essence is simple: in case of disagreement with any decision that is crucial for the company, the shareholder should be able to leave the company by selling his shares at a fair price.

As mentioned earlier, shareholders can claim protection in the event they leave the company because they do not agree to participate in a fateful transaction, citing different remedies (however, they imply the same right to receive a fair price for their shares).[76]

So, in the USA it is oppression remedy, in the UK it is unfair prejudice.[77] The essence of these rules is as follows: if the policy / action / inaction of the company oppresses or unfairly infringes on the interests of all or individual shareholders, harms or risks harming them, the shareholder may file a lawsuit in court, which may decide to buy out the shares of such a shareholder. At the same time, such a decision will not be easy for the court, since its main task will be to in-

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[74] Fletcher, William Meade, and Basil Jones. 1931. Fletcher cyclopedia of the law of corporations (cited by Qiuju Wang, Exit Remedies for Minority Shareholders in Close Companies: England, the United States, China, Uitgave Vanwege Het Instituut Voor Ondernemingsrecht 82 (Deventer: Kluwer, 2011)

[75] Principles of Corporate Governance : Analysis and Recommendations. St. Paul, MN: American Law Institute Publishers, 2008. (cited by Qiuju Wang, Exit Remedies for Minority Shareholders in Close Companies: England, the United States, China, Uitgave Vanwege Het Instituut Voor Ondernemingsrecht 82 (Deventer: Kluwer, 2011)

[76] Zaman, D. F. M. M., ed. The European Private Company (SPE): A Critical Analysis of the EU Draft Statute. Ius Commune Europaeum 78. Antwerp ; Portland: Intersentia, 2009.

[77] Article 14.30 of the RMBCA, "the court may dissolve a corporation in a proceeding by a shareholder if it is established that: … (ii) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent." The most often granted relief is a court-ordered buyout in this remedy. https://www.americanbar.org/content/dam/aba/administrative/business_law/corplaws/2016_mbca.pdf

S. 994 of the CA 2006 in the UK reads as follows: "(1) A member of a company may apply to the court by petition for an order under this Part on the ground– (a) that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or (b) that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial". https://www.legislation.gov.uk/ukpga/2006/46/contents

terpret the activities of the company that the shareholder complains about and decide whether it really damages his interests or is unfair / infringing on him, since it is very difficult in advance (for example, in a regulation) define any action as “unfair” or “harmful”, regardless of the situation.[78] In essence, judges will have to strike a balance between legal certainty and fairness in relation to this remedy.

Thus, it must be said that with any name, the essence of this rule boils down to one thing: ensuring a balance between the corporate interests of the company and the interests of individual (including minority) shareholders.[79]

Speaking about the right of a shareholder to exit, most often we mean the right of a shareholder to demand from the company or majority shareholders (the subject of the obligation varies from country to country) the redemption of his shares (the above-mentioned appraisal rights).[80] This is reasonable, since shareholders are often "locked" in the company simply because of their unwillingness to sell their shares for tiny price and the inability to sell them at the market price. As an example, we can recall situations when a company is being reorganized, or a large-scale transaction, a decision on which is made at a general meeting of shareholders, or significant changes are made to the company's charter that restrict the rights of a shareholder. An important condition for the possibility to demand the redemption of the shares owned by the shareholder is the fact that the shareholder voted against or did not take part in the voting regarding the reorganization / transaction / amending the charter and so on. As Matteo L. Vitali points out in his work, judges and lawyers in most cases tend to interpret the terms and conditions of the buyout quite flexibly.[81]

The European model company act (EMCA) says that the articles of association of many companies may contain redemption (buyout) clauses. However, this document clearly separates

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[78]Edwards, K.B. 1970. “The Principles of Modern Company Law.” *Accountancy* 81 (926): 748–49. https://search-ebscohost-com.skaitykla.mruni.eu/login.aspx?direct=true&db=bsu&AN=7473661&site=ehost-live.

[79] Lin Xiao, Preliminary Study on Appraisal rights, Law, Law Science Journal, the Sixth Issue, 1999. 24. Robert B (cited by Qiuju Wang, Exit Remedies for Minority Shareholders in Close Companies: England, the United States, China, Uitgave Vanwege Het Instituut Voor Ondernemingsrecht 82 (Deventer: Kluwer, 2011)

[80] Gunther M. Bredow, "Redemption of Shares, Takeovers and Stock Option Plans Becomes Easier in Germany," Intertax 26, no. 4 (April 1998): 130-134

[81] Vitali, Matteo, Class of Shares and Share Redemption in the Italian and UK Context (April 2005). Available at SSRN: https://ssrn.com/abstract=870387 or http://dx.doi.org/10.2139/ssrn.870387

the so-called redeemable shares and squeeze/sell-out rights. The latter are designed to enable majority shareholders to "squeeze out" minority shareholders, and vice versa, minority shareholders to sell their shares and terminate relations with the company.[82] The price in this case is determined on the basis of an opinion prepared by an expert, who in most cases is appointed by the court. Redeemable shares are issued from very beginning with the possibility of their redemption in the future by the company that issued them (in this case, no prerequisites for the redemption are needed, and its conditions are negotiated in advance).

The EMCA links the right to demand share buyback with abuse by majority shareholders, and after analyzing the legislation of several countries, concludes that the right to demand share buyback is a powerful and modern way to protect the rights of minority shareholders, in particular in private companies, but does not believe that the protection of minority shareholders may be the sole purpose of the exercise of such a right. The results of the study conducted by the EMCA Group contain quite interesting data. For example, Member States such as France and Italy do not recognize this right and only allow for damages or the annulment of a decision of the general meeting/board of directors to protect minority shareholders. At the same time, section 69-73 of the Danish Companies Act contains provisions according to which shareholders holding more than 90% of the capital and votes may require other shareholders to sell their shares. The minority, in turn, also has the right to demand the repurchase of their shares by controlling shareholders. In fact, these provisions reflect the squeeze-out sell-out provisions contained in EU law (namely, the Takeover Directive 2004/25/EC[83]). There are similar provisions in Finnish company law (Chapter 18)[84] and Sweden (Chapter 22, section 1 et seq.).[85]

It cannot be said that the rights of shareholders to exit are regulated in great detail in the legislation of the European Union. However, the situation is not so bad, since, for example, there

[82] European Model Company Act (EMCA), First Edition, 2017, Nordic & European Company Law Working Paper No. 16-26, Available at SSRN: https://ssrn.com/abstract=2929348

[83] Directive 2004/25/EC of the European Parliament and of the Council of 21 april 2004 on takeover bids (Text with EEA relevance). EUR-Lex. Accessed March 12, 2022. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0025

[84] Limited Liability Companies Act of Finland (624/2006; amendments up to 981/2011 included). Unofficial translation. Ministry of Justice, Finland 2012. Accessed April 23, 2022. https://www.finlex.fi/en/laki/kaannokset/2006/en20060624_20110981.pdf

[85] Companies Act (SFS 1999:1078). Accessed April 24, 2022. https://lagar.nj.se/ovriga/SFS2005-0551EN

is Directive 2004/25/EC (Takeover Directive)[86], which regulates the squeeze-out and sell-out rights, which can definitely be considered aimed at protecting the interests of minority shareholders. We can also mention Directive 2017/1132 relating to certain aspects of company law, which contains provisions on the right of a company to buy back its own shares (Articles 60-63): “without prejudice to the principle of equal treatment of all shareholders who are in the same position, and to Regulation (EU) No 596/2014, Member States may permit a company to acquire its own shares, either itself or through a person acting in his or her own name but on the company's behalf”.[87]

With regard to national legislation - as already indicated earlier, most EU member states recognize the right of shareholders to demand the repurchase of their shares in certain situations (such as a merger or acquisition). National provisions differ primarily by the subject of the buyout: this obligation, for example, may be imposed on a company or on a shareholder who has abused his rights and provoked a minority to demand an exit and buyout of his shares. In some cases (eg Bulgaria and Malta) - the right to redeem varies depending on the type of shares in question - only special shares (redeemable shares referred to in the EMCA) can be bought out by the company.[88]

It is generally accepted that redemption should be carried out at a reasonable (not overpriced or underpriced) price. If the shareholder does not agree with the price, he has the right to challenge the buyout price in court.

Article 15 of the Directive says: “Member States shall ensure that a fair price is guaranteed. That price shall take the same form as the offered consideration in the bid or shall be in cash. Member States may provide that cash shall be offered at least as an alternative.” This article also states that “…for voluntary bid consideration offered in the bid shall be presumed to be fair where, through acceptance of the bid, the offeror has acquired securities representing not less than 90% of the capital carrying voting rights comprised in the bid”, but if it is going about the

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[86] Supra note 85

[87] Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (Text with EEA relevance.) (Art 60). EUR-lex. Accessed April 13, 2022. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32017L1132

[88] Supra note 11

mandatory one - consideration offered in the bid shall be presumed to be fair. The Directive, however, only sets the task for the states to ensure a fair price, but does not establish the methods for determining such a price. It leaves Member States free to determine for themselves acceptable means of enforcing this requirement.[89]

According to scientists, the demand for a fair price is a very powerful tool for protecting the rights of minority shareholders, since without it they would be in a completely disadvantageous position. Indeed, according to K. Jinoria, usually in such situations, minority shareholders actually have no choice whether to sell or not to sell their shares, so a fair price, as it were, "compensates" for the violation of their rights, creates a certain balance.[90]

The legislations of member countries approach this issue in different ways. For example, Art. 34 of the Lithuanian Law on Securities it is clearly written that the price in this case should be fare, and also laid down dome main principles.[91] The most basic of them sounds like this: "the price of a mandatory takeover bid shall be not lower than the highest price of the securities acquired by the offeror in the course of 12 months preceding the exceeding of the threshold defined in Article 31(1) of this Law, and shall be not lower than the average weighted price on a regulated market and the multilateral trading facility in six months prior to the date of exceeding the established threshold when the securities concerned are traded on a regulated market and the multilateral trading facility".[92] Also, any shareholder may file a lawsuit in court to determine the fair price, in which case the price may be determined by the court. In Croatia[93], the buyback price should correspond to the average price of shares traded on the market, and in the Czech Republic[94] it is determined by the price of the company's assets, taking into account future activities.

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[89] Supra note 85

[90] Jinoria, Khatuna. 2015. "A FAIR PRICE PRINCIPLE IN SQUEEZE-OUT ACQUISITIONS". *European Scientific Journal, ESJ* 11 (10). https://doi.org/10.19044/esj.2015.v11n10p%p

[91] Law on securities of the republic of Lithuania. Official Gazette, 2007, No. 17-626. Accessed April 14, 2022. URL: https://e-seimas.lrs.lt/portal/legalActPrint/lt?jfwid=2r1m1rqz&documentId=11ef1d803cfb11e68f278e2f1841c088&category=TAD

[92]Ibid, Art 31(1)

[93] Act on the takeover of joint stock companies. Official Gazette 109/07. Accesses April 23, 2022. https://www.hanfa.hr/getfile/39545/2_2_0_CM_Act%20on%20the%20Takeover%20of%20Joint%20Stock%20Companies.pdf

[94] Act on takeover bid of Czech Republic. Act No. 104/2008. Accessed: April 23. 2022. https://www.cnb.cz/export/sites/cnb/cs/legislativa/.galleries/zakony/zakon_104_2008.pdf

It must be said that the ability of minority shareholders to seek protection from an outsider in the event of determining an unfair price, in their opinion (as in the case of Lithuania), is a very important component of the right to receive a fair price. F. Miliutis proposes to single out 3 directions for such an application for protection, namely: i) determination of a reasonable price by an independent expert; (ii) ex ante control by an administrative or judicial authority (the "supervisory authority"), or (iii) ex post review by a court.[95]

Article 3(a) of Directive 204/25/EC on Takeover Bids, namely Article 2(1), states: "all holders of the securities of an offeree company of the same class must be afforded equivalent treatment; moreover, if a person acquires control of a company, the other holders of securities must be protected"[96] Since this article contains the main principles, we can conclude that the mentioned provision is also an important principle. Article 5 of the same Directive, with reference to the said Article 3, refers to the possibility of public authorities in order to protect and enforce the indicated principle of adjust the price. The article says that the price can be adjusted by the supervisory authority both downward and upward if they consider it to be unreasonably low or, on the contrary, overpriced.[97] National laws are expected to adopt certain criteria for determining a fair price so that supervisors can objectively assess the extent to which it is reasonable. The directive, however, clearly states that any decision by the supervisory authority to adjust the fair price must be justified and made public.

There are various opinions in legal doctrine on this point, but one can often find scholarly approval of the rule of determining a fair price based on the market price. For example, Markus Dollinger makes the following arguments: firstly, the market price is not formed by one person - in fact, it was formed under the influence of many factors and different investors, and secondly - "...every investor is considered as a price taker, so the price that they accept is considered more objective than that deduced by a single auditor."[98]

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[95] Miliutis, Feliksas. "Fair Price in Squeeze-Out Transactions." *Societal Studies* 5, no. 3 (2013): 769–92. https://doi.org/10.13165/SMS-13-5-3-06.

[96] Supra note 85 (Art. 3(a))

[97] Ibid (Art. 5)

[98] Dollinger, Markus. *The Fair Squeeze-out Compensation*. 1. Aufl. Bremen: Salzwasser-Verl, 2008.

In our opinion, it is worth mentioning right away that usually, when it comes to the buy-back of shares and the exit of a shareholder of their company, we can talk about both a squeeze out and a sell out procedure. These two rights correspond to each other: squeeze out provides the opportunity for the majority shareholder to demand the sale of shares from minority shareholders, and sell out, on the contrary, gives the right to minority shareholders to demand that the majority shareholders buy their shares. Both of these rights will be discussed in more detail in another section of this thesis.

Summing up the consideration of this category of rights, we can say that the right to exit is, in our opinion, one of the most recognized and protected categories of rights at the level of the European Union. This is partly because most of the rights covered by this category are within the scope of Directive 204/25/EC on Takeover Bids.[99] The existence of this directive sets a certain framework for member states in drafting their own national legislation, and this significantly reduces the risk of leaving minority shareholders without state protection in case of violation of their rights.

2.1.3. Rights Related to the Issuance of new Shares and the Transfer of Shares

During the life of the company various changes could happen. Some shareholders leave, others come. Perhaps the company is doing very well, that it wants to attract more investment, or simply change the structure of the business. What is happening at this time? There is a transfer of shares from one shareholder to another, or the issue of new shares. And in this seemingly simple process, many questions arise regarding the enforcement of the rights of minority shareholders.

The author takes the liberty of asserting that this category of rights is the most important for minority shareholders especially in public companies. It represents what most of them buy company shares for - their profitable sale. Such activity can even be the main way of earning (unlike dividends from a minority shareholder's share in the capital). In addition, the opportunity to sell shares is also an opportunity to leave the company in case of dissatisfaction with the behavior of its management.

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[99] Supra note 85

This category includes such rights as:

- pre-emptive right to acquire new issued shares
- preemptive right to acquire a share in the event of its transfer by another participant
- right to transfer shares and so on.[100]

First of all we will pay attention to the case of a company issuing new shares. In this case, minority shareholders are also a vulnerable category, since in this case there is a risk of the so-called "dilution" of their shares during the acquisition of new shareholders.

Shares dilution, also known as equity dilution, in a simple words is the reduction of existing shareholders' ownership in a company as a result of the company issuing new shares. Stephen I. Glover provides such a simple example of this phenomenon: "suppose that a company engages in a ten-forone stock split. Following the split, the number of outstanding shares increases from one million to ten million and the stock price drops from $100 to $10. An employee who has an option to acquire ten shares for $50 per share will find that this right, which would have been quite valuable when the stock price was $100, is now virtually worthless."[101]

This example perfectly demonstrates why share dilution is a very undesirable scenario for a shareholder, as the value of his shares is rapidly declining. In order to avoid the dilution of the shares of existing shareholders when the company issues new shares, it was invented to use the pre-emptive right of existing shareholders to purchase these shares. As in the case of the transfer of shares from shareholder to shareholder, in this case, first of all, the right to acquire new issued shares has the existing shareholders of the company in proportion to their share in the capital of the company, and only then third parties. In addition, the scientist suggests that this tool (pre-emptive right of existing shareholders) also significantly reduces the ability of directors or majority shareholders to abuse their power to the detriment of the interests of minority shareholders.[102] So, for example, they will not be able to sell newly issued shares to new share-

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[100] Supra note 11

[101] Glover, Stephen I. "Solving Dilution Problems." *The Business Lawyer* 51, no. 4 (1996): 1241–1302. http://www.jstor.org/stable/40687684.

[102] Cline, James S. "Corporations: Pre-Emptive Rights: Importance of Drafting in Protecting Shareholder against Dilution of Interest and Compulsory Reinvestment." *California Law Review* 40, no. 1 (1952): 132–40. https://doi.org/10.2307/3477848.

holders at a reduced price and for cash, which, of course, would be in their personal interests, since it would bring income to them personally, but such behavior is clearly not in the interests of the company and its other shareholders . The mechanism of so-called pre-emptive right quite effectively allows to deal with such phenomena.

"Pre-emptive right" in fact means the rule in accordance with which a shareholder who wants to transfer his shares must first offer them to other shareholders, and only if none of them expresses a desire to acquire them, sell them to third parties.[103] In case of neglect of this obligation by the selling shareholder, the shareholder who had the right to acquire shares may apply for the protection of his rights. The main means of protection in this case is to go to court with a claim for the transfer of the rights and obligations of the buyer to it. Such a measure of protection seems to be the most popular, as it is provided for by the legislation of many countries both within the European Union and outside it. A slightly less popular way of protection is to apply for restitution.[104] At the same time, most countries do not directly imply the right of pre-emptive right/ right of first refusal in their laws, but allow companies to enshrine such a right in their charters. In Ukraine, for example, the pre-emptive right is enshrined directly in the law[105], as well as a measure of protection is directly indicated - transfer of the rights and obligations of the buyer to the affected shareholder.

In accordance with the opinion of Jelena Pajic, the "rights of first refusal" provision is quite common for the contemporary company law, and can be enshrined in the incorporating documents of closely-held companies or in shareholders' agreements. In fact, this rule puts the obligation on the company/selling shareholder (after setting the price for the third parties) to offer the shares to the existing shareholders for the same price, and only in case of their refusal proceed with selling to the third party. In a typical situation, there are three parties: the owner, the first refusal right holder, and one or more potential third-party buyers. In other words, the

[103] Maitland-Walker, Julian, ed. *Guide to European Company Laws*. 2nd ed. London: Sweet & Maxwell, 1997.

[104] Saencer, Inco. 2007. "Frank Dornseifer (Ed.), Corporate Business Forms in Europe. A Compendium of Public and Private Limited Companies in Europe." *European Review of Private Law* 15 (1): 175–77. https://search-ebscohost-com.skaitykla.mruni.eu/login.aspx?direct=true&db=asn&AN=24201533&site=ehost-live.

[105] Закон України "Про акціонерні товариства".Відомості Верховної Ради України (ВВР), 2008, № 50-51, ст. 384. Accessed March 13, 2022. https://zakon.rada.gov.ua/laws/show/514-17/conv#n333

pre-emptive right granted to other shareholders allows them to take the place of a potential buyer and make a purchase.[106]

It should be noted that this approach was adopted by many legislators, since, in accordance with the results of a study conducted by TGS Baltic, the right of pre-emption is enshrined in the laws of most countries, regardless of the organizational and legal form of the company. However, there were exceptions: in Bulgaria and France, the pre-emptive right to purchase newly issued shares is possible only for shareholders of private companies. However, it is the same in Cyprus, but here it is still possible to fix the preemptive right in the charter of a public company[107].

The second element of this right is the right to acquire a share in the event of its transfer by another shareholder. With regard to this situation, as a general rule, in accordance with Directive 2001/34 / EC[108] on the admission of securities to official stock exchange listings and on the information that must be published on those securities, shares of public companies must be freely transferred from one person to another. There are, however, ways to derogate from this restriction. One of them, recognized by the EMCA[109], is the fixing of the pre-emptive right of purchase in the company's charter (according to the EMCA, a share can be sold or transferred freely unless otherwise stipulated in the company's charter). Most states either do not enshrine the right of pre-emption in law at all, or this rule applies in most cases to private companies. For example, the Lithuanian company law recognizes the preemptive right to purchase for the rest of the shareholders of the company, but only in private companies (Article 47).

An interesting fact is that in countries such as Lithuania and France, shares of some companies can only be acquired under certain conditions. So, for example, in Lithuania, if a person buys a certain percentage of the shares of the total capital of a strategic enterprise, then for this he must first obtain permission from the relevant state body. In France, a similar rule applies, but

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[106] Jelena Pajic, "Share Transfer Restrictions and Exit Mechanisms in Shareholders' Agreements," GSI Articletter 7 (2012): 21-24

[107] Supra note 11

[108] Directive 2001/34 / EC on the admission of securities to official stock exchange listings and on the information that must be published on those securities. EUR-Lex. Accessed April17, 2022. https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32001L0034

[109] Supra note 84

here the restriction is set for the purchase by a foreign investor of a certain part of the shares in the capital of a French company - in this case, again, permission from the state body is required.[110]

The third element of this group of rights is the shareholder's right to transfer his shares. This seems to be a mirror image of the previous considered elements - earlier we talked about the pre-emptive right of shareholders to purchase shares, now we are talking about the opposite right of a shareholder to sell their shares. Usually this construction has a fairly standard form: the pre-emptive right of one shareholder to acquire shares corresponds to the obligation of the shareholder selling his shares to offer them to existing shareholders before offering them to a third party.

Selling the shares at a profit can be a pretty good way to profit from one's participation in a company if, for example, the company pays dividends infrequently or in small amounts, or does not pay them at all. In the course of its activities and "life", the company develops, concludes contracts with new partners, makes transactions, possibly expands, acquiring subsidiaries, sometimes becomes a huge holding company that conducts its commercial activities all over the world. Naturally, that if the size of its profit rises, the share price rises proportionally, so that a shareholder who once bought the company's shares at a fairly low price has the opportunity to sell at a much higher price, thus making a profit.

If we look at the situation objectively, then we can see that quite often the main purpose of buying a small number of shares of a particular public company is to profit from the subsequent sale of these same shares at a higher price. While dividends are extremely rarely the sole or main source of income for a shareholder, trading in shares of public companies quite often becomes for some individuals their main source of income. This activity (stock trading, most often on the stock exchange) is very popular nowadays. In our opinion, one can even say that it is "fashionable" to invest in shares of companies today, since simply by entering a query into the Google address bar, we will see a lot of links to sites that encourage every conditional office employee to use a broker and receive income from buying and sale of shares (a broker is a person

[110] Supra note 11

who is an intermediary between investors and the exchange, who has the right to dispose of shares on behalf of a client).

As pointed Hansmann and Kraakman, “transferable shares does not necessarily mean freely tradable shares”.[111] In legal doctrine, it is possible to hear about these types of restrictions on the transfer of company shares: the consent clause and the offer clause or the pre-emption clause. As Bite and Narkevičius write in their article, “…the consent clause puts on a shareholder wishing to sell his shares to a third party, an obligation first to obtain the consent of either a certain body of the company (for example, the board of directors) or to obtain the consent of all shareholders”.[112]

In the case of an offer clause, the shareholder is required to first offer his shares to existing shareholders before offering them to third parties.

The practice of restricting the right to transfer company shares is quite popular - the laws of many countries recognize and apply any means for such restriction. For example, the modern Law on Companies of the Republic of Lithuania (as amended on 10/14/2014) states: “a shareholder must give a written notice to a private limited liability company of his intention to sell all or a part of the shares in a private limited liability company and indicate the number of shares being disposed of according to their classes and sale price”. However, “…the right of pre-emption to acquire all the shares offered for sale in a private limited liability company shall be vested in the shareholders who, on the day of receipt of the shareholder's notice of his intention to sell shares by a private limited liability company, held shares in the company” (Art. 47 (1-2))[113]. Thus, shareholders are required to respect the preemptive right to purchase other shareholders. This rule is widely applied outside the European Union. For example, the Economic Code of

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[111] Hansmann, Henry and Kraakman, Reinier H., What is Corporate Law? (Feb 25, 2004). Yale Law & Economics Research Paper No. 300, Available at SSRN: https://ssrn.com/abstract=568623

[112] Bitė, Virginijus, and Žygimantas Narkevičius. “Pre–Emption Right of Shareholders to Purchase Shares for Sale in Private Limited Liability Companies: The Problematic Legal Remedies.” *Verslas: Teorija Ir Praktika* 17, no. 2 (June 20, 2016): 150–58. https://doi.org/10.3846/btp.2016.628.

[113] Republic of Lithuania Law on Companies. E-seimas.Irs.lt. Accessed April 17, 2022. https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/2af0c0d049b811e68f45bcf65e0a17ee?jfwid=j4afxygp

Ukraine directly states that shareholders of a company have a pre-emptive right to purchase shares sold by other shareholders of the company.[114]

It should be noted that there are 2 generally recognized types of companies: private (closed) or public (open) companies.[115] The main difference between them is that the shares of a public company can be freely traded on the stock exchange (the above restrictions in most cases do not apply to them). But they fully apply to the shares of private companies.

This restriction is being explained in such a pretty way: this is done so that control over the company is in the hands of those people who have long been the holders of its shares, participate in management and know it's specifics, know the company "from the inside". Although in practice, quite often in this area there is a danger of infringement of the rights of minority shareholders. For example, it often happens like this: the majority shareholder decides to sell his part of the shares to a third party. A minority shareholder cannot oppose the transaction, and as a result, has no opportunity to oppose the transfer of the company to the control of another person. This situation is not so rare, and for this case, there are also ways to protect minority shareholders

Here it is going about, first of all, so-called tag-along right and drag-along rights. These concepts (like squeeze-out and sell-out mechanisms) exist to make the life of shareholders easier. Thus, as explains Jelena Pajic, "tag-along clause typically requires that shareholders intending to sell their shares to an outside investor offer to the other shareholders the opportunity to take part in the sale".[116] This right is intended to protect minority shareholders from the danger of being excluded from a bargain sale of assets. The scholar gives the definition to the drag-along right as well - in her opinion, this is, on the contrary, "the drag-along provision attributes to one or more shareholders the right to force all other shareholders to jointly sell their shares to a third party at the same price and upon the same terms and conditions" In other words, the scholar defines the drag along rights as a form of call option on the shares of other shareholders with an endoge-

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[114] Господарський кодекс України. Відомості Верховної Ради України. Accessed April 17, 2022. https://zakon.rada.gov.ua/laws/show/436-15#Text

[115] Allee, Kristian D., Brad A. Badertscher, and Teri Lombardi Yohn. "Private versus Public Corporate Ownership: Implications for Future Changes in Profitability." *Journal of Management Accounting Research* 32, no. 2 (Summer 2020): 27–55. doi:10.2308/jmar-52550.

[116] Supra note 108

nously determined strike price (that is a price agreed upon with a third party).[117] These rights are most often stipulated in the shareholder agreement, but may also be provided for in the Articles of Association.[118]

The tag-along right, according to scientists, is a fairly effective tool for protecting the rights of minority shareholders, as it imposes a restriction on the ability of the majority shareholder to sell their shares to a third party without the consent of the minority shareholder and provides the minority shareholder with the opportunity to make a profitable deal and earn money by joining the majority shareholder. [119]

Summing up, we can say that the considered group of rights (namely, the rights to transfer shares and the rights associated with the issue of new shares) are protected at the level of both the European Union and the Member States quite well. There are quite a lot of instruments designed to protect the rights of minority shareholders in the implementation of the mentioned transactions with shares. When a company issues new shares in many EU countries, there is a preemptive right to purchase, which protects the interests of minority shareholders and prevents the so-called dilution of their shares, and also benefits the company, since the number of shareholders decreases without reducing the size of capital, and the likelihood that among the shareholders are persons who are interested not only in making a profit, but also in the further development of the business, is increasing.

2.2. Peculiarities and Protection of the Control Rights of Minority Shareholders.

Legal doctrine generally considers the rule that the control and ownership are separated from each other as one of the main characteristics of company. For example, Julian Velasco[120] supports this point of view. But in our opinion, it cannot be argued that even with a functioning board of directors endowed with broad powers, shareholders have no control in their hands. The

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[117] Ibid

[118] Justisiana, Rinna, and Togi Pangaribuan. "Drag-along and Tag-along Rights In The Perspective of Indonesian Company Law." *Sociological Jurisprudence Journal* 5, no. 1 (February 28, 2022): 45–55. https://doi.org/10.22225/scj.5.1.2022.45-55.

[119] Andras Kisfaludi, "Corporate Governance and the Shareholders' Right to Exit (Theoretical Questions and Legislative Answers from Hungary)," European Business Law Review 16, no. 6 (2005): 1367-1384

[120] Supra note 28

directors manage the company, making sometimes life-changing decisions, while the shareholders exercise their control through the exercise of the voting rights that the shares give them. It follows logically from this that the degree of control available to a shareholder primarily depends on the number of shares he owns.

The national legislation of different countries has different distribution of powers between the shareholders (general meeting) and the Board of Directors.

At the EU level, shareholder control rights are mostly covered by Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies.

In national laws there are following positions on the distribution of power between shareholders and directors:

- the management board is exclusively responsible for the administration of the company's affairs (e.g. Germany, Austria, Belgium, Italy, France, Hungary)
- a matter of the company's constitution (e.g. UK, Ireland)
- the general meeting has the ultimate power in the company (Nordic countries)[121]

The rights of shareholders regarding control over the company can be divided into 2 groups: rights related to management / supervisory Board of the Company and rights related to General meeting.

According to Lee, internal control, which is carried out through the general meeting and the meeting of directors, "…is considered one of the main ways to protect and expand the rights of minority shareholders…", therefore, this area cannot be neglected in any case. Indeed, in fact, the company consists of its shareholders and their property, and directors have fiduciary duties to shareholders.[122]

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[121] Bitė, Virginijus. "Shareholder's rights." Presentation. Course: European and International Company law, Mykolas Romeris University.

[122] Supra note 11

2.2.1. Rights Related to Management /Supervisory Board of the Company

Speaking of this group of shareholder rights, the first thing that comes to mind is the right of shareholders to appoint members of the Board of Directors of the company. According to Julian Velasco, this right is “the most important and paramount among the other rights of shareholders” (together with the right to dispose of their shares)[123].

Not in all cases, each shareholder can fully exercise his right to appoint a director or other manager. From a company law perspective, the rights of shareholders to appoint directors vary primarily by jurisdiction. For example, in countries such as the United Kingdom, France, Germany, Australia, Sweden, Belgium and Brazil, no minimum shareholding is required to appoint directors, but the practical possibility of bringing this matter to the general meeting may well be limited. For example, in Australia, at least 100 shareholders (acting together) or shareholders with at least five percent of the votes have the right to raise the issue of appointing a new director at a general meeting.[124],in the Netherlands it is at least one percent and in Indonesia at least 10 percent.[125]

The process of appointing directors in Australia is largely controlled by majority (often institutional) investors with a large number of votes.[126] Interestingly, these shareholders rarely, according to statistics, vote against incumbent-proposed directors. There is an assumption that such issues are resolved by them “behind closed doors”, that is, unofficially, since they have the opportunity to voice their opinions and to enter into dialogue with the board and executive team on a range of matters.[127] At the same time, in our opinion, Australia has one of the most successful approaches to the appointment of directors: namely, here, as well as in many other jurisdictions, the board of directors or, even more preferably, a specially formed for the purposes of ap-

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[123] Supra note 28

[124] Corporations Act 2001 (Cth) s 249N(1). Federal Register of Legislation. Accessed April19, 2022. https://www.legislation.gov.au/Details/C2017C00328

[125] Board Member Nomination and Election. Paris: OECD, 2012. https://www.oecd.org/daf/ca/BoardMemberNominationElection2012.pdf

[126] Blaga, Sorin. “Australian Corporate Governance and Distribution of Power.” (2011).

[127] Voogt, Thea, and Martie-Louise Verreynne. “Director Appointments: Expressing Board Care and Diligence.” *University of New South Wales Law Journal* 41, no. 4 (October 2018): 1335–67. doi:10.53637/jkth2865.

pointments by a committee of the board of directors (this is a common practice in corporate governance codes, reflecting practices that have been in place since the 1980s).[128]

This practice has 3 important advantages. First, it is easier to ensure that new board members are appointed by independent non-executive directors.[129] Secondly, the board of directors, which consists of specialists who know their business, can immediately assess the potential and abilities of new members. Third, the board of directors is likely to nominate candidates that will be useful for the board to carry out its core functions. Where directors are appointed by shareholders, directors may be chosen who may act in the best interest of one individual shareholder (or group of shareholders) but not in the best interest of the company, resulting in an incapacitated board of directors. [130]

In addition to Australia, the board plays a significant role in evaluating its own composition and performance under the UK, Singapore, Australia, G20/OECD and South African corporate governance codes.[131]

The approach in which the candidates for new directors are nominated by the board of directors seems to the author to be one of the most optimal, and, undoubtedly, it makes it possible to reduce the possibility of abuse during the appointment of directors. However, it is worth remembering that the practice in which the appointment of directors is going by a vote of shareholders also takes place, and is even quite popular. The voting rights of minority shareholders are quite often subject to infringement in the process of such voting.

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[128] See, eg, Financial Reporting Council, 'The UK Corporate Governance Code' (April 2016) 11 ('UK Code'); Organisation for Economic Co-operation and Development, 'G20/OECD Principles of Corporate Governance' (Report, September 2015) 22–3 ('G20/OECD Principles'); Szymon Kaczmarek, Satomi Kimino and Annie Pye, 'Antecedents of Board Composition: The Role of Nomination Committees' (2012) 20 Corporate Governance: An International Review 474, 474–5; P M Vasudev, 'Law, Economics, and Beyond: A Case for Retheorizing the Business Corporation' (2010) 55 McGill Law Journal 911, 944–5.

[129] Campbell, Joanna Tochman, T. Colin Campbell, David G. Sirmon, Leonard Bierman, and Christopher S. Tuggle. "Shareholder Influence over Director Nomination via Proxy Access: Implications for Agency Conflict and Stakeholder Value." *Strategic Management Journal (John Wiley & Sons, Inc.)* 33, no. 12 (December 2012): 1431–51. doi: 10.1002/smj.1989.

[130] Hill, Jennifer G. "The Rising Tension between Shareholder and Director Power in the Common Law World." *Corporate Governance: An International Review* 18, no. 4 (July 2010): 344–59. doi:10.1111/j.1467-8683.2010.00804.x.

[131] KPMG International Cooperative and Association of Chartered Certified Accountants, 'Balancing Rules and Flexibility – A Study of Corporate Governance Requirements across 25 Markets' (Research Report, November 2014). https://assets.kpmg/content/dam/kpmg/pdf/2016/05/sg-Corporate-Governance-A-Delicate-Balancing-Act.pdf

If we are talking about examples of national legislation, then perhaps we should start with Malta, where it is directly determined that the process of appointing directors must be fair, transparent and take into account the interests of minority shareholders.[132] In addition to Malta, the right of minority shareholders to participate in the appointment of directors is recognized by such states as Austria, Italy, Denmark. Ireland has also adopted rules that are quite favorable for minority shareholders, although not as favorable as in Malta. Irish law does not directly oblige the company to ensure the participation of minority shareholders in the process of appointing directors, but allows the company to enshrine such provisions in the Articles of Association.[133]

What about the right to dismiss directors, in Austria[134] and Croatia, if there is a material reason, a particular member of the supervisory board can be dismissed by the court at the request of shareholders who collectively own at least 10% of the share capital.

In Lithuania, such a mechanism as cumulative voting is widely used. The mechanism is detailed in Article 31(3) of the Law on Companies of the Republic of Lithuania: “when electing the supervisory board members, each shareholder shall have the number of votes equal to the number of votes carried by the shares he owns multiplied by the number of members of the supervisory board being elected”. The shareholder shall distribute the votes at his own discretion, giving them to one or several candidates. The law further states: “the candidates who receive the largest number of votes shall be elected, and if the number of candidates who received the equal number of votes exceeds the number of vacancies on the supervisory board, a repeat voting shall be held in which each shareholder may vote only for one of the candidates who received the equal number of votes”[135]

In some countries, there is a practice that allows "leaving" the appointment of several managers to minority shareholders, that is, the desire to ensure that they have 100% right to influence the process of appointing directors. An example here is the Netherlands, where the char-

[132] Maltese Companies Act. Legizlazzjoni Malta. 1st January, 1996. Accessed on April 23, 2022. https://legislation.mt/eli/cap/386/eng/pdf

[133] Irish Companies Act (2014). Irish Statute Book. Accessed on April 23, 2022. https://www.irishstatutebook.ie/eli/2014/act/38/enacted/en/html

[134] Austrian Code of Corporate Governance. January 2018. Accessed on April 23, 2022.

[135] Supra note 115

ter of a private company may provide that one or more members of the board of directors must be appointed by the holders of a certain class of shares (for example, a 10% shareholder of class A shares can appoint 1 out of 3 directors)[136]

Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms speaks of the need for diversity in government.[137]

In 2002, the so-called concept of shareholder democracy was recommended by the Corporate Law Panel on Takeovers.[138] Its main goal was to create in companies the most independent boards of directors, auditors, supervisory (non-executive) bodies (the latter were also supposed to be empowered in the field of resolving conflicts of interest). The European Commission has accepted this initiative.[139] This is logical - when the board of directors consists for the most part of independent and disinterested managers, the scope for abuse on their part is greatly reduced. In addition, such a policy can bring practical benefits to the company - after all, independent members can bring new knowledge and skills to the management team (for example, in the specifics of the company's activities, in accounting, in finance, in law, and so on).

In addition to the appointment and dismissal of board members, minority shareholders also need protection from possible disregard of their opinion by the current management bodies. Here we can mention such possible protections as requiring directors to provide periodic reports (as well as information at the request of a minority shareholder), the need to consult with shareholders (including minority) shareholders before making life-changing decisions for the company and important transactions, and the obligation to take their opinion into account .

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[136] Supra note 11

[137] Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms. EUR-lex. Accessed April 19, 2022. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0036

[138] Supra note 7

[139] The Commission of the European Communities, 'Commission Recommendation of 15 February 2005 011 the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board '. Official Journal of European Union, 25.2.2005. Available at http:/lc urlcx.curopa .eu/LcxUr iServ/LexUriScrv.do?uri =Of:L:2005:052:0051:0063:EN:PDF

It should be noted that neither the EU legislation nor the legislation of most EU member states contains a requirement for consultations and provision of information specifically to minority shareholders. On the other hand, there is a widespread rule on providing information to shareholders as a whole (that is, including minority shareholders, although attention is not focused on them). Such provisions can be found, for example, in the legislation of Austria, Germany, Latvia, Lithuania, Poland, Portugal, Romania and so on.[140]

Based on the foregoing, it can be concluded that both at the EU level and in individual member countries, attempts are being made to ensure that minority shareholders can participate in the selection of directors.

There is another point of view expressed in the doctrine and to some extent supported by the author of this work.[141] It is quite bold and even radical, and consists in the fact that in most cases minority shareholders have absolutely no interest in the right to take part in the process of choosing directors (the so-called “rational apathy”)[142]. Interest in the composition of the board of directors is more typical for majority shareholders, while minority shareholders more often support the current directors, as they think. them, unlike themselves, professionals. This view is rather crude, but in our opinion quite truthful. As long as the share price rises, minority shareholders in most cases are not interested in exercising the right to elect directors. If, due to the irrational activities of the directors, the price of the company's shares falls, then a more rational way out for the minority shareholder would be to simply sell such shares, rather than initiating / participating in the process of changing directors who perform their duties poorly.

2.2.2. Rights Related to General Meeting

[140] Supra note 11

[141] Dov Solomon, "The Voice: The Minority Shareholder's Perspective," Nevada Law Journal 17, no. 3 (Summer 2017): 739-772

[142] Brewer, Thomas F. “Corporations: Control of Shareholders’ Meetings.” *California Law Review* 39, no. 1 (1951): 127–33. https://doi.org/10.2307/3477733.

The General Meeting of Shareholders is the governing body of the company, the main mission of which is to agree on the will of all shareholders, and in accordance with their agreed will, make a decision that has an impact on the fate of the company.[143]

Voting rights include the right of a shareholder to vote on corporate policy matters, including decisions on the composition of the board of directors, the issuance of new securities, the initiation of corporate actions such as mergers or acquisitions, the approval of dividends, and the introduction of significant changes in the company's activities.[144]

Thus, at the general meeting, the shareholders exercise their right to vote and by such participation influence the fate of the company, but still it cannot be said that the shareholders manage it on an equal basis with the directors. First, Julian Velasco points out that it is impossible for shareholders (most often) to propose their own deals or amendments to the bylaws - they can only vote on issues presented to them by the directors (again, in most cases they cannot change them). In addition, the directors may well “circumvent” the general meeting of shareholders, for example, passing off the merger as the purchase of assets (the result of these two transactions is not too different in the end, but the approval of the general meeting is not necessary for the purchase of assets)[145]. These drawbacks are quite impressive in themselves, and in fact in most jurisdictions the proposals of shareholders can be heard by the directors, but are not required to be carried out. It should be noted that the author has nothing against such a system, because it is assumed that the directors are professionals in their field, while shareholders usually are not. But it is impossible not to talk about these characteristics of the right to vote as shortcomings, since after all they make the voting right of shareholders to some extent “illusory”.

Shareholder voting is a recognized manifestation of “corporate democracy”. It is during the general meeting that the so-called “shareholders’ activism” is manifested - that is, the oppor-

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[143] A. Dorresteijn et al., European Corporate Law. Kluwer Law International, Alphen aan de Rijn (2009), p. 193.

[144] Hayes, Adam. Stockholder Voting Rights. Investopedia. Accessed April 14, 2022. https://www.investopedia.com/terms/v/votingright.asp

[145] Paramount Comm., Inc. v. Time Inc., 571 A.2d 1140, 1145-48 (Del. 1989) (cited by Julian Velasco. The Fundamental Rights of the Shareholder, 40 U.C. Davis L. Rev. 407 (2006), p.7. Available at: http://lawreview.law.ucdavis.edu/issues/40/2/articles/davisvol40no2_velasco.pdf.)

tunity for shareholders to take part in corporate governance and influence the fate of the company.[146]

Despite all the shortcomings, the right to vote, along with the right to profit, is recognized as a fundamental right of shareholders.[147] According to some scholars, the right to control (which can also be exercised through voting at a general meeting) is the main goal of shareholders when buying shares in a company.[148] The main reason for this is that it is a way for many shareholders to come to a unified decision.[149] In addition, the important role of voting at the general meeting is that it is a deterrent to the power of directors. Yes, there is a presumption that directors are specialists (as opposed to owner-shareholders) and know best how to act in the interests of business development. However, at the same time, not all issues can be resolved by managers. As Theodor Baums says, “complete contracts do not exist” - that is, no matter how ideal the articles of association / memorandum of foundation of the company, the agreement between shareholders - most likely it is not able to provide and regulate all aspects of the life of the company and all situations that could potentially arise. These "gaps" can be filled by additions to the statutory rules in the form of a decision taken by shareholders at a general meeting.[150] Secondly, it is an opportunity for shareholders to express their consent or disagreement to any fundamental changes in corporate policy, which limits the freedom of action of managers and, thus, serves as a defense against moral abuse of their position.[151]

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[146] Jakupak, Tina. “Shareholders Activism.” *InterEULawEast: Journal for International & European Law, Economics & Market Integrations* 1, no. 2 (December 2014): 71–84. https://search-ebscohost-com.skaitykla.mruni.eu/login.aspx?direct=true&db=bsu&AN=101680571&site=ehost-live.

[147] Baums, Theodor. “General Meetings in Listed Companies - New Challenges and Opportunities.” (2000).

[148] Jong, Abe de, Gerard Mertens, and Peter Roosenboom. “Shareholders’ Voting at General Meetings: Evidence from the Netherlands.” *Journal of Management & Governance* 10, no. 4 (November 2006): 353–80. https://doi.org/10.1007/s10997-006-9006-1.

[149] Van der Elst, Christoph. “Shareholder Rights and Shareholder Activism: The Role of the General Meeting of Shareholders.” *SSRN Electronic Journal*, 2012. https://doi.org/10.2139/ssrn.2017691.

[150] Harris, Ellie G. “The Economic Structure of Corporate Law.” *Journal of Finance (Wiley-Blackwell)* 48, no. 1 (March 1993): 410–12. doi:10.2307/2328900.

[151] Easterbrook, Frank H., and Daniel R. Fischel. “The Corporate Contract.” *Columbia Law Review* 89, no. 7 (1989): 1416–48. https://doi.org/10.2307/1122807.

It is generally accepted that during the decision-making by the general meeting of shareholders, the principle “one share - one vote”[152] applies, that is, shareholders vote on an equal footing, in accordance with the size of their contribution to the company's capital.

However, it should be noted that this rule is not absolute. First of all, it depends on the type of share held by the shareholder. So, for example, in most cases, holders of preferred shares have the right to vote at a general meeting only on certain issues, and there are also so-called “non-voting” shares, as well as shares that give their holder the right to more than one vote (the so-called Dual Class Stock , but this type of stock is quite controversial and banned in some countries), and so on.

The territory in which the company operates also plays a role. One share, one vote rules are almost universally used in the US[153], however, in Europe the situation is different. In Europe, there are fewer companies with dispersed ownership - the situation is much more common when power is concentrated in the hands of several large shareholders (these can be individuals or legal entities). A study was commissioned by the Association of British Insurers (ABI) in 2005 on this issue. Its results were stunning: according to the researchers “in Europe ... shareholders count themselves lucky if they have a vote”[154]

In 1997, the European Corporate Governance Network (ECGN) submitted its empirical findings to the European Commission, "The Separation of Ownership and Control: A Study of 7 European Countries”. They said that European companies are still dominated by large shareholders, families, the state. However, this report also mentions that fundamental changes are taking place in Europe at the moment. The share of holders of large blocks of shares (as well as families, groups of companies, states, and so on) is decreasing, and the “dispersed ownership” model is becoming more and more popular, in addition, the share of institutional investors (both domestic and foreign) is increasing.[155] Whether this trend is positive or vice versa, negative, is difficult

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[152] Ferrarini, Guido. “‘One Share – One Vote: A European Rule?’” *European Company & Financial Law Review* 3, no. 2 (June 2006): 147–77. doi:10.1515/ECFR.2006.007.

[153] Supra note 7

[154] Ibid

[155] Becht, Marco. Strong Blockholders. Weak Owners and the Need for European Mandatory Disclosure, 1997, at p. 14. https://www.researchgate.net/publication/237648777_Strong_Blockholders_Weak_Owners_and_the_Need_-for_European_Mandatory_Disclosure

to assess. On the one hand, it seems to be more “democratic”, as it reduces the share of majority shareholders-controllers, on the other hand, there is a danger of granting management unlimited control over the company (the reason for this is “rational apathy” - the unwillingness of shareholders to take an active part in the management of the company) . In addition, such a policy inevitably increases the number of minority shareholders in the company. It is clear that this can only be suitable for public, and not for private companies, where the concentration of control in the hands of majority shareholders still prevails.[156]

Based on this, we can conclude that the “dispersed ownership” method in itself does not necessarily contribute to the violation of the rights of minority shareholders - however, in order for it to function successfully and the rights of minority shareholders are respected, a well-adapted regulatory framework and the availability of suitable institutions and remedies to deal with the specific problems of widespread “dispersed ownership”.

In such a conditions, it could be assumed following some pieces of legal doctrine, that the voting rights of minority are not really important due to insufficiency, although barely someone would say it straightaway. According to Tina Jakupak, for example, one of the most important factors for the development of the company in the long term of the active participation of large institutional shareholders (companies or organizations that invest money on behalf of clients or members. As an examples hedge funds, mutual funds, and endowments could be mentioned.[157]

In conditions of dispersed ownership, it is precisely this category of rights that is quite often violated by management or majority shareholders in relation to minority shareholders. The variety of ways to limit the right of minority shareholders to participate in the general meeting and vote is quite large. So, for example, in the case of a large number of shareholders who are scattered around the world, a serious obstacle may be a ban on voting by proxy, the requirement for the personal presence of a shareholder for a possible expression of will. In addition, the general meeting can be held in hard-to-reach, remote regions. Purely practical obstacles are also

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[156] Moll, Douglas K. “Shareholder Oppression in Close Corporations: The Unanswered Question of Perspective.” *Vanderbilt Law Review* 53, no. 3 (April 2000): 747. https://search-ebscohost-com.skaitykla.mruni.eu/login.aspx?direct=true&db=asn&AN=3975398&site=ehost-live.

[157] James Chen. “Institutional Investor” Investopedia. Accessed Aril 18, 2022. [interactive] https://www.investopedia.com/terms/i/institutionalinvestor.asp

possible: for example, information about the holding of a general meeting, the place and time of its holding, the agenda may be communicated to minority shareholders too late, almost before the meeting, which actually deprives them of the opportunity to prepare for the meeting and take part in it.

Abuse by majority shareholders of their rights, aimed at infringing on the voting rights of the minority shareholders, reducing the influence of their voice during the resolution of issues at a general meeting is not among corporate lawyers the term "freezing out”.[158]

“Freezing out” can be done in different ways. For example, among them:

- Merger and Consolidation - can be utilized by the majority to transform the original corporation into a new one in which the rights of the minority could be diminished. An example is Matteson v. Ziebarth[159], where the majority shareholder is aware that the company is on the verge of collapse and the only way to save it is to sell it to another corporation. All minority shareholders agreed to sell their shares, and one of them (the plaintiff) voted against. Then the majority shareholder came up with a scheme to circumvent the need to obtain the consent of this minority shareholder, namely, he created a new company for the sole purpose of selling it to this corporation. Under the merger agreement, the shareholders received shares in this new fictitious company (however, these shares were redeemable). The transaction was approved by all shareholders except the plaintiff. However, contrary to state law, the dissenting shareholder did not demand that his shares be bought back by the company. The merger took place. The dissenting shareholder sued, arguing that the deal was unfair. And the Washington Supreme Court upheld a merger designed to eliminate a stockholder who was blocking a proposed sale to a purchaser who would buy only if it could acquire all the outstanding stock.[160]

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[158] O’Neal, F. Hodge. “Close Corporations: Existing Legislation and Recommended Reform.” *The Business Lawyer* 33, no. 2 (1978): 873–88. http://www.jstor.org/stable/40685865.

[159] “Freezing out Minority Shareholders.” *Harvard Law Review* 74, no. 8 (June 1961): 1630. https://doi.org/10.2307/1338376.

[160] Jentry, Anne. The Developing Law of Corporate Freeze-outs and Going Private, 7 Loy. U. Chi. L. J. 431 (1976). https://lawecommons.luc.edu/luclj/vol7/iss2/8

Professor Vorenberg has suggested that this case was, in fact, decided in accordance with an analogous common law exception allowing sale of a profitless company because there was a pressing business need for the sale.[161]

- Issuance of New Stock - as previously discussed, existing shareholders have the right to purchase newly issued shares.[162] In many cases, the majority holders buy new shares themselves, reducing the voting power of the minority shareholders.

- Sale of the Corporate Assets - this method is in many ways similar to a merger and can be used by unscrupulous directors to avoid the need to obtain shareholder approval that a merger requires. The decision to sell assets may be made by the directors themselves, or with the approval of the majority shareholders, while the consequences may actually be equal to those of the merger.

- Dissolution - if the charter provides for the possibility of voluntary dissolution of the corporation by decision of the board of directors and a certain majority of shareholders, then it is quite easy for the majority shareholders not to take into account the opinion of minority shareholders and independently approve such a decision.

- Changing Voting Rights - in some jurisdictions, the majority may directly limit the voting power of the minority by amending the corporate articles. While some courts consider cumulative voting provisions in laws or state constitutions to be mandatory,[163] an increasing number of jurisdictions are allowing statutes or by-laws to be amended to replace cumulative voting with direct voting and thus, in many cases, deprive minority board representation.[164]

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[161] Vorenberg, James. "Exclusiveness of the Dissenting Stockholder's Appraisal Right." *Harvard Law Review* 77, no. 7 (1964): 1189–1217. https://doi.org/10.2307/1338825.

[162] Drinker, Henry S. "The Preemptive Right of Shareholders to Subscribe to New Shares." *Harvard Law Review* 43, no. 4 (1930): 586–616. https://doi.org/10.2307/1330288.

[163] Wolfson v. Avery. 6 Ill. 2d 78 (1955). Justia US Law. https://law.justia.com/cases/illinois/supreme-court/1955/33563-5.html

[164] Supra note 162

Of course, today quite a few ways have been invented to reduce the gap in rights between minority and majority shareholders during the voting at the general meeting.

At the level of the European Union, the protection of this right has received considerable attention. For example, in 2007 the European Parliament and the Council adopted Directive 2007/36/EC on the exercise of certain rights of shareholders in listed companies. The aim of this directive was to enable shareholders in the area to exercise their rights as far as possible and effectively within the Community.

According to Article 4 of the mentioned Directive “The company shall ensure equal treatment for all shareholders who are in the same position with regard to participation and the exercise of voting rights in the general meeting.” This provision can be considered indirectly aimed at protecting the rights of minority shareholders, since it calls for equal treatment of all shareholders, and this, in turn, does not preclude the infringement of the rights of any group of shareholders.

In addition, the mentioned Directive also requires the company to provide “timely and complete information about the time and place of the General Meeting” (Article 5), the "opportunity for shareholders to put issues on the agenda of the General Meeting" (Article 6), the “right to ask questions and vote by proxy" (Article 5). 9 and 10) and also requires the company to “disclose the voting results” (Article 14).[165]

At the same time, notice periods vary from country to country. In some member countries this period is the same for all companies (Croatia, Latvia), in others it varies depending on the type of meeting (annual or extraordinary) (Austria, Estonia), it may also differ depending on whether the company is registered or not. on the stock exchange (France, Malta, Poland). Ireland gives the company the right to set this period in its articles of association (meaning it is not set by law). In the United Kingdom, this period is fixed by law, but a longer period may be fixed in the charter.[166]

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[165] Supra note 14

[166] Supra note 13

As for the language of the general meeting, everything is ambiguous here. So, for example, in some member states the law establishes the obligation to hold a general meeting in the language of the member state (if the company is registered in it), in others it is permissible to hold a general meeting in the languages enshrined in the Charter. It is also possible that an interpreter must be provided to a participant who does not speak the language in which the meeting is being held. It may be common practice in some companies to make general meeting documents bilingual at all. The language issue is also of considerable importance in the context of providing shareholders with the opportunity to fully participate in the general meeting. For listed companies, there are even special language rules. They are enshrined in Article 20 of the Directive 2004/109/EC of the European Parliament and of the Council on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market. Paragraph 1 contains the basic rule: “Where securities are admitted to trading on a regulated market only in the home Member State, regulated information shall be disclosed in a language accepted by the competent authority in the home Member State”. Further in this article, various cases regarding the use of languages in the provision of information are fixed.[167]

So, for example, during the formation of company management bodies, one of the most effective ways to protect the rights of minority shareholders is cumulative voting. Cumulative voting is understood as voting when electing persons to the company's bodies, when the total number of shareholder votes is multiplied by the number of seats in the elected body of the company, and the shareholder has the right to cast all votes for one candidate or distribute them among several candidates.[168]

Thus, the majority shareholders are deprived of the opportunity to monopolize the choice of members of the company's management bodies. Minority shareholders thus get the opportunity to take part in the election of the company's management bodies, thus simultaneously influencing the future fate of the company, despite owning a minimum number of shares.

[167] Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC. EUR-lex. Accessed April 16, 2022. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0109

[168] Dragneva, Rilka. *Investor Protection in the CIS: Legal Reform and Voluntary Harmonization*. Leiden; Boston: Martinus Nijhoff Publishers, 2007. https://doi.org/10.1163/ej.9789004155329.i-342.

And in author’s opinion, it is not for nothing that the emphasis here is on the choice of management bodies, because this is the area in which activities can have the most serious impact on the work of the company, and hence on the price of its shares, which in most cases is the most important for minority shareholders .

Also, speaking of recognized ways to protect the rights of minority shareholders, we should definitely mention the right of veto as one more quite powerful tool to protect their rights. The right of veto implies the possibility for minority shareholders to block a decision with which they do not agree. For example, a minority shareholder may have the right to block such decisions like business sales, mergers, liquidation, sale of a substantial block of shares etc.[169]

To conclude, it should be noted that the rights relating to the general meeting perhaps can be considered to be among the best protected shareholders’ rights at the EU level. There is a directive that methodically and in detail sets out most of the shareholder's rights in connection with the general meeting, which must be protected. Since the directive must be implemented in the national legislation of the member states, it can be assumed that, although the directive does not specifically mention minority shareholders, their rights are still quite well protected at the EU level.

2.2.3. Rights Related to the Major Transactions

The Companies Act of New Zealand defines the major transactions as a following actions: “the acquisition/agreement to acquire assets the value of which is more than half the value of the company’s assets before the acquisition; or the disposition of/agreement to dispose of, assets of the company the value of which is more than half the value of the company’s assets before it; or a transaction that has or is likely to have the effect of the company acquiring rights or interests or incurring obligations or liabilities, the value of which is more than half the value of the company’s assets before the transaction”.[170]

[169] Deane, John. Minority shareholder protection. Gannons Solicitors. Accessed April 12, 2022. https://www.gannons.co.uk/shareholder-rights/minority-shareholders/

[170] Companies Act of New Zealand (1993). New Zealand legislation. Accessed February 21, 2022. https://www.legislation.govt.nz/act/public/1993/0105/latest/DLM320644.html

Major transactions could be also referred as fundamental corporate changes, which means the "alterations in a corporation that require a charter amendment and thus consent of the shareholders as parties to the contract represented by the charter". In fact, such change to Che charter must be "material, radical or fundamental", and which "binds only the accepting majority, and discharges a dissenting shareholder from his contract of subscription".[171]

Earlier, in the nineteenth century, the position of the law regarding such transactions was quite rigid: for example, in the United States, the shareholder agreement was considered sacred and enforceable by a single shareholder, either against all other shareholders, or even against the state[172], although nowadays the law has moved to the position that the shareholders' agreement no longer has universal force, and the only right of the shareholder in the event of its violation is the appraisal remedy.[173] A shareholder who objects to a merger or sale of all assets of a corporation in which he or she has invested can no longer go to court to prevent these transactions.[174]

Then, in 1886, Victor Morawetz wrote: "A corporation cannot consolidate with another company, even pursuant legislative authority, except with the consent of all its shareholders. An unauthorized consolidation may be prevented by any dissenting shareholder or may be treated as a ground for severing his connection with the company by a rescission of his subscription"[175]

As a result of the analysis of European legislation on this issue, we can conclude that the situation in Europe is almost the same as the situation in the United States - the main criteria for protecting the interests of minority shareholders in major transactions are the following: does a dissenting minority shareholder have the right to exit and if has, whether the redemption of its shares is carried out at a reasonable price, and also whether the shareholder has the opportunity

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[171] S., J., and Seymour D. Thompson. "Commentaries on the Law of Private Corporations." *Harvard Law Review* 10, no. 1 (April 25, 1896): 66. https://doi.org/10.2307/1321251.

[172] Mason v. Pewabic Mining Co., 133 U.S. 50 (1890); Treat v. Hubbard-Elliott Copper Co., 4 Alas. 497 (Dist. Ct. 1912); State ex rel. Brown v. Bailey, 16 Ind. 46 (1861); Abbot v. American Hard Rubber Co., 33 Barb. 578 (1861); Murrin v. Archbald Consol. Coal Co., 232 N.Y. 541, 134 N.E. 563 (1921); cf. Trustees of Dartmouth College v. Wood- ward, 17 U.S. (4 Wheat.) 518 (1819)

[173] Manning, Bayless. "The Shareholder's Appraisal Remedy: An Essay for Frank Coker." *The Yale Law Journal* 72, no. 2 (1962): 223–65. https://doi.org/10.2307/794814.

[174] Carney, William J. "Fundamental Corporate Changes, Minority Shareholders, and Business Purposes." *American Bar Foundation Research Journal* 5, no. 1 (1980): 69–132. http://www.jstor.org/stable/827965.

[175] Morawetz, Victor. 1886. A treatise on the law of private corporations. Boston: Little, Brown and Co.

to go to court in case of violation of these rights. Note that these criteria apply to a private company, since in a public company everything is much simpler - a dissenting shareholder can simply sell his shares.

At the level of the European Union, the degree of concern about the settlement of large transactions is quite high. There are several directives and regulations, one of the goals of which is precisely to protect the rights of shareholders. Among them: Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation). Furthermore, it is Third Council Directive 78/855/EEC of 9 October 1978 based on Article 54 (3) (g) of the Treaty concerning mergers of public limited liability companies (the “Merger Directive”), Sixth Council Directive 82/891 /EEC of 17 December 1982 based on Article 54 (3) (g) of the Treaty, concerning the division of public limited liability companies (the “Division Directive”), Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies.[176]

The reality is that none of the above documents suggests the right of a minority shareholder who does not agree to a transaction to challenge it in court or influence whether it is concluded or not. Thus, the opinion of minority shareholders in large transactions is practically not taken into account - all that European law can offer them as protection is the right to know about the transaction and its consequences in advance, the right to sell their shares upon exit at a fair price and the right to go to court for protection of their rights, if the right to information or the right to exit (the redemption price of shares in the opinion of the shareholder is unfair). In other words, you can challenge the process, but not the fact of the transaction.[177]

However, it cannot be said that minority shareholders are not protected in this area. First of all, in accordance with TGS Baltic Study, 2 groups of EU Member States with different approaches to this right were distinguished:

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[176] For now all this Directives are no longer in force - they were repealed by the consolidated Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law.

[177] I. H. P. “Corporations: Reorganization: Disregarding Corporate Entity: Rights of Dissenting Minority Shareholders.” *California Law Review* 17, no. 5 (1929): 557–65. https://doi.org/10.2307/3475557.

- EU Member States where the right to block alterations of the Company's Constitution requires a simple majority of votes.
- EU Member States where the right to block alterations of the Company's Constitution requires 1/3 or 1/4 of the votes of those present at the General meeting (i.e. a qualified majority of votes, by either 2/3 or 3/4 of the votes of those present at the General meeting, is needed to alter Company's Constitution);[178]

Important, that large majority (22 of 27) of EU Member States belong to group II, where the right to block alterations of the Company's Constitution requires a qualified majority of votes.[179]

Thus, in most cases, a decision on a major transaction that seriously affects the fate of the company and shareholders can only be taken by a qualified majority (that is, the process of its adoption is complicated). This is a significant plus for the protection of minority shareholders.

However, according to Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law, Member States do not have to enshrine the need for such decisions by qualified majority in their national legislation. Thus, under Article 93(1) of the Directive "a merger shall require at least the approval of the general meeting of each of the merging companies. The laws of the Member States shall provide that this approval decision shall require a majority of not less than two thirds of the votes attached either to the shares or to the subscribed capital represented." However, the second part of this paragraph mentions that "the laws of a Member State may, however, provide that a simple majority of the votes specified in the first subparagraph shall be sufficient when at least half of the subscribed capital is represented…".[180]

Speaking of possible abuse by circumventing this rule, we can mention cases where a fictitious transaction is concluded, which is not formally a merger or acquisition, but has identi-

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[178] Supra note 11

[179] Supra note 11

[180] Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (Text with EEA relevance.). EUR-Lex. Accessed April 13, 2022. https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32017L1132

cal consequences. For example, it could be an asset sale transaction. In most cases, such a decision can be taken by a simple majority, or even by the board of directors without convening a general meeting. In addition, in this case, it is not necessary to resolve the issue of observing the rights of shareholders during the merger, since there was no de facto merger.[181]

Article 96 of the Directive requires an examination of the draft terms of merger by experts. This also benefits minority shareholders, as a proper merger makes their rights and non-discrimination more likely to be respected.

Section 97 requires shareholders to be given access to documents relating to the merger. This point has already been discussed in the section on the right to information - the better informed the shareholder, the more opportunities he has to protect his rights. Paragraph 3 of this article emphasizes: “every shareholder shall be entitled to obtain, on request and free of charge, full or, if so desired, partial copies of the documents needed”.

In accordance with the Art 5(1) of the Takeover Directive “where a natural or legal person, as a result of his/her own acquisition or the acquisition by persons acting in concert with him/her, holds securities of a company which, added to any existing holdings of those securities of his/hers and the holdings of those securities of persons acting in concert with him/her, directly or indirectly give him/her a specified percentage of voting rights in that company, giving him/her control of that company, Member States shall ensure that such a person is required to make a bid as a means of protecting the minority shareholders of that company.” This provision is also intended to protect the rights of minority shareholders, as it gives them the opportunity not to be taken by surprise by the changes. In essence, this article deals with the observance of the right of minority shareholders to information in a situation of takeover of control.

Articles 15 and 16 of the Takeover directive contain provisions on squeeze out and sell out rights. It should be replaced that under Article 15(2) “Member States shall ensure that an offeror is able to require all the holders of the remaining securities to sell him/her those securities at a fair price” The mirror rule is also contained in Article 16(2): “Member States shall ensure

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[181] Malloch, George A. “Corporations: Sale of Assets or De Facto Merger?” *California Law Review* 47, no. 1 (1959): 180–87. https://doi.org/10.2307/3478781.

that a holder of remaining securities is able to require the offeror to buy his/her securities from him/her at a fair price…"

When we talk about a fair price, it is clear that the point of it is primarily to provide a fair payment that does not take advantage of the fact that minority shareholders are cornered.

This practice is also recognized by the legislation of many Member States, for example in the case of Poland, the provisions of the Directive on the right to sell-out were reflected in the Code of Trading Companies of September 15, 2000 of the Republic of Poland, where in Art. 418 there are rules according to which shareholders who own no more than 5% of the authorized capital may demand the mandatory buyout of their shares from no more than five shareholders, who together represent at least 95% of the authorized capital.[182]

Squeeze out and sell out instruments are designed to strike a balance between the rights of minority and majority shareholders in a takeover of control situation, but quite often they are criticized as illegal, as they are equated with forced transactions with property (a demand to sell (squeeze out) and a demand to buy (sell out) shares). In the context of violation of the rights of minority shareholders, squeeze out is most often mentioned as a procedure that infringes on the property rights of minority shareholders.

There is a fairly extensive jurisprudence on this issue in the world, even the European Court of Human Rights has such cases in its practice. Let's consider some cases in more detail.

The first example we will talk about is the Feldmiuhle[183] case, which was solved by the Federal Constitutional Court of Germany.Court came to the conclusion, that the right of the majority shareholder to squeeze-out was recognized as legitimate, but with strict observance of constitutional norms, namely: equality before the law, the social nature of the state, the rule of law.

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[182] Kodeks spolek handlowych [Electronic resource]. - URL: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20000941037/U/D20001037Lj.pdf

[183] German Federal Constitutional Court; Judgement of August the 7th, 1962; Feldmuihle Fal (BVerfG, 1BvL 16/60); NJW 1962, Volume 37, page 1667 and fol. Online resource. URL: https://opinioiuris.de/entscheidung/1294

The court came to the same conclusion in the cases of DAT/Atlanta[184] and 1 BvR 390/04[185] (one of its last decisions regarding the "squeeze out" procedure).

In addition to the above, the court came to the following conclusions:

- application of the squeeze out procedure does not mean depriving shareholders of their property;
- the use of the squeeze out procedure in itself does not contain signs of discrimination;
- however, one of the most important criteria for the legitimacy of such a procedure is a fair buyout price, which means that when conducting a squeeze out, it is necessary to provide guarantees that will serve to protect the rights of minority shareholders, namely: the appointment of an expert to determine the price by the court, a bank guarantee of compensation for shares, an increase in the price in the event that the majority shareholder did not fulfill his obligations on time, unquestioning provision of the possibility of going to court to appeal the price by minority shareholders, and so on.

The Constitutional Tribunal of Poland, in decision No. 65/6/A/200558[186], came to the following conclusions:

- squeese-out really represents the transfer of property to one subject of private law from another against the will of the latter, and this is formally a violation of property rights, so it should be followed by reasonable compensation;
- compensation must be reasonable, that is, one that would provide the former owner with the same benefit to replace the transferred one or restore the property status that preceded the transfer (in the case of minority shareholders, fair compensation will be a fair assessment of the shares and, as a result, payment of a reasonable price)

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[184] Bundesverfassungsgericht;Beschluss der 1. Kammer des Ersten Senats vom 23. August 2000. 1 BvR 68/95-Rn. (1-31). Online resource. URL: http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2000/08/rk20000823 1bvr006895.htm

[185] Bundesverfassungsgericht; Beschluss der 3. Kammer des Ersten Senats vom 30. Mai 2007. 1 BvR 390/04 - Rn. (1-39). Online resource. URL: http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2007/05/rk20070530_1bvr039004.htm

[186]Trybunal Konstytucyjny; 65/6/A/2005 Wyrok z dnia 21 czerwca 2005 r. Sygn.akt P 25/02. Online resource. URL: http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20051241043/T/D20051043TK.pdf

- a minority shareholder, of course, should have the right to go to court: he can either appeal against the decision of the general meeting (if he presents evidence that the decision was made with the intent to harm him) or appeal against the unfair, in his opinion, share price.

However, the Constitutional Court of Georgia in it's decision from May 18, 2007 came to the opposite conclusion.[187] The main thesis was this: compulsory deprivation of property is possible only on the basis of social necessity, while the acquisition of 95% of the company's shares by one shareholder cannot be considered as such. In addition, the court indicated that the principle of proportionality must be observed in the compulsory decision of ownership; first of all, 2 circumstances should be assessed: whether it met the criteria of proportionality and whether the minority shareholder was guaranteed commensurate compensation. If these 2 criteria are not met, then the procedure will be unlawful even if there is a legitimate aim.

Speaking about the practice of the European Court of Human Rights, we can recall the decision of October 12, 1982 Bramelid and Malmström v Sweden.[188]

At that time there was a law in Sweden according to which a shareholder who owned 90% or more of the company's shares had the right to require minority shareholders to sell their shares at a price set for sale by public offer or determined by an arbitration award. The applicants - minority shareholders, whose shares were bought out under this procedure (the price was determined by an arbitration commission of 3 people), appealed to the ECHR, claiming that their rights under Article 1 of the Protocol to the convention were violated, which reads: "No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law"[189].

The court did not accept the application for consideration, referring to the fact that the applicants could not sufficiently substantiate the assertion that their rights had been violated. In

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[187] The Constitutional Court of Georgia. Second Chamber. 2/1-370, 382, 390, 402, 405. Online resource. URL: https://constcourt.ge/en/judicial-acts?legal=392

[188] «Bramelid and Malmstrom v. Sweden» (dec.), app. no. 8588/79, 8589/79, 12 October 1982, unreported. URL: http://hudoc.echr.coe.int/eng#{"fulltext":["Bramelid and Malmstrom v. Sweden"]}.

[189] Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art. 1 of the Protocol 1. Online resource.https://www.refworld.org/docid/3ae6b3b04.html.

addition, the rights in this. The case was not violated by the state, as required by the Convention. In addition, the court reasonably noted that the legislation contains provisions designed to facilitate the determination of a fair price, in addition, minority shareholders themselves can, if they are interested, demand the repurchase of their shares. Based on the above facts, the Court did not find a violation of rights in this situation.

In the decision of the ECHR Offerhaus and Offerhaus v. The Netherlands[190] court concluded that a necessary condition is a balance between the goal and the means to achieve it. Of great importance is the compensation determined by local law in the event of a justified forced seizure of someone's property. If such compensation does not allow replacing the seized value with an equivalent one, then there can be no question of maintaining the said balance.

Thus, we can sum up. The area of large transactions is one of the most popular in the context of protecting the rights of minority shareholders. European legislation pays sufficient attention to the protection of minority shareholders in this area, and quite a lot of European Union legislation (directives and regulations) has been adopted to regulate it. The considered legislative acts rarely contain the term “minority shareholder”, but as a result of the analysis of their provisions, it becomes clear that their essence is aimed at protecting the rights of minority shareholders and establishing a balance between the observance of the rights of majority and minority shareholders. As a result of the analysis of judicial practice, we can conclude that such instruments as squeeze out and sell out, although they contain elements of coercion, are nevertheless justified and recognized by the court as legal in most cases. We can also single out the weak side of European legislation: in most cases it is a framework and gives quite wide freedom in the internal settlement of this issue to the Member States. In some cases, this may lead to a reduction in the force of European law and a subsequent weakening of the protection of the rights of minority shareholders.

2.3. Peculiarities and Protection of the Information Rights of Minority Shareholders.

The right of shareholders to information about the activities of the community is an undeniable right of all (not just minority) shareholders in most countries of the world. In the

[190] Offerhaus and Offerhaus v. the Netherlands (dec.), no. 35730/97, 16 January 2001.

EU, these rules can be enshrined in various sources, namely in EU regulations/directive and national legislation, in judicial precedents, in corporate governance codes.

It is generally clear, as it is impossible to fully exercise the one's rights as a shareholder without having an idea of how things are in the company's business activities, what is the current financial situation, without having access to the company's documents. Therefore, the right of shareholders to information is one of the main ones - in fact, this right simultaneously represents a kind of guarantee for the exercise of all other rights of shareholders.

At EU level (and in EU Member States), the right to be informed is understood in the light of the Transparency Directive[191], as well as other requirements of the EU Disclosure Act as the right to receive publicly disclosed information.

Article 9 of the Shareholder Rights Directive states: “Every shareholder shall have the right to ask questions related to items on the agenda of the general meeting. The company shall answer the questions put to it by shareholders.” Thus, this article gives each shareholder the right to ask questions on the agenda of the General Meeting without any restrictions, and this, of course, is a significant contribution to protecting the rights of shareholders to information. Including for minority shareholders, as this article does not contain any limitation on the number of shares held by a shareholder in order to be able to ask questions.

In general, in the European Union, the protection of the right of minority shareholders to information is one of the corporate governance priorities. First of all, there is a recommendation to introduce the collective responsibility of the board of directors for the disclosure of financial information, to pay more attention to the disclosure of information on transactions with related parties. This is an important step that gives minority shareholders the ability to monitor the sus-

[191] Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC Text with EEA relevance. EUR-lex. Accessed April 16, 2022. https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32013L0050

picious behavior of majority shareholders, having access to both public and private information.[192]

Fourth Directive (78/660/EEC)[193] introduced requirements regarding the disclosure to minority shareholders of such information as profit and loss, the financial condition of the company at the end of the financial year.

Starting from fiscal year 2017, companies are required by Directive 2014/95/ to disclose information on all non-financial facts and circumstances, including certain specific matters relating to the environment, social impacts, employees, anti-corruption and anti-bribery, and rights person.

As a result of these measures, the information about companies, indicated above and which is not confidential, in many Member States is available not only to shareholders, but also to everyone, to the general public. Of course, if we are not talking about "sensitive" for the company or confidential information.

In addition, under IAS 24 the EU requires all listed companies to fully disclose related party transactions, including costs, liabilities and other details of the transaction.[194]

Seventh Directive (83/349/EEC)[195] requires the company to disclose all off-balance sheet transactions that have any effect on the functioning of the company.

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[192] Hopt, Klaus J., Eddy Wymeersch, Hideki Kanda, and Harald Baum. Corporate Governance in ContextCorporations, States, and Markets in Europe, Japan, and the US. Oxford University Press, 2005. https://doi.org/10.1093/acprof:oso/9780199290703.001.0001.

[193] Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31978L0660

[194] Gorak, Angelika. 2014. The Interests of Minority and Majority Shareholders in the EU. *Interstate - Journal of International Affairs* 2013/2014 (1), http://www.inquiriesjournal.com/a?id=1086 (cited from McCahery, A. J and Vermeulen , P.M E. 'Corporate Govern ance Cris.es and Related Party Tra nsactions: A Post-Parmalat Agenda' in Klaus J. Hopt , Eddy Wymeersch, Hideki Kand a, and Harald Baum (eds) Corporate Govern ance in Context Corporations, States, and Markets in Europe, Japan, and the US', Oxford ; New York: Oxford University Press, 2005, pp. 215-246 (p.220).)

[195] Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54 (3) (g) of the Treaty on consolidated accounts. URL: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A31983L0349

What about the certain states, then, for example, Greek law divides minority shareholders into "major" minority (shareholders representing 1/3 of the paid-up share capital) and "minor" minority (shareholders representing 1/20 of the paid-up share capital). Both these groups of shareholders have the right to receive information, but to a different extent.[196]

The "minor" minority may require the board of directors to disclose to the ordinary general meeting the following: amounts of remuneration paid during the last two years and for any reason to members of the board of directors or managers or other employees of the company, and any other amounts paid, regardless of the reason for the payment and the significance of the amount, and even any other contract concluded by the company with these persons. In addition, the aforementioned minority also has the right to demand specific information related to the affairs of the company.[197]

The "major" minority, provided that it is not represented on the board of directors, may request information about the affairs of the company and the state of its property.[198]

Of course, in this situation, minority shareholders also run the risk of being abused by the majority shareholders. However, quite often minority shareholders themselves abuse their right to receive information about the company's activities. We are talking about a situation where minority shareholders deliberately “throw” management with a huge number of questions and requests for information, while the real purpose of these actions is to create objective difficulties in the activities of the company’s management or create grounds for accusing the company’s management of violating their rights.

As an example outside the EU, let's take the US state of Delaware. Here the shareholders have no general right to information - only certain special rights. For example, the right of share-

[196] Gologina-Economou, Eleni, “Rights of Minority Shareholders,” Revue Hellenique de Droit International 55, no. 1 (2002): 117-140. Accessed February 20, 2022, https://heinonlineorg.skaitykla.mruni.eu/HOL/Page?public=true&handle=hein.intyb/rhelldi0055&div=13&start_page=117&collection=intyb&set_as_cursor=0&men_tab=srchresults.

[197] Ibid

[198] Ibid

holders to inspect the books and records of a corporation.[199]. However, this right is not as impressive as it might seem, given that shareholders bear the burden of demonstrating a proper purpose.[200]

Moreover, they have the right to get acquainted only with the main documents, such as the articles of association, by-laws, minutes of meetings of the board of directors and the list of registered shareholders. If they wish to get acquainted with other information (any additional to that permitted by law), they must first verify the legality of such a requirement.[201]

It is quite understandable, that it could be a sufficient problem for the shareholders to obtain the the information (which is to use their information right) This is quite easy to explain - such information is rarely publicly available, as it can reflect badly on the company's reputation. And the fact that it is not publicly available also makes it more difficult for shareholders to access it. However, it can be objected that this information is usually available to everyone who wants it - unless the decisions of the courts are usually published in publicly available national databases. However, not everything is so simple - for example, in Slovakia, a search in the register of court decisions is possible only by case number, but not by company name.[202]

Based on the above, we can draw 2 main conclusions:

1. The right to information is fundamental to the exercise of all other rights of minority shareholders, since without being informed they cannot take any steps to protect or exercise their rights.

2. At the level of the European Union, the right to receive information has been given considerable attention. Quite a few European Union acts require maximum transparency in the course of a company's activities, which cannot but have a positive impact on the protection of the

[199] DEL. CODE ANN. tit. 8, § 220 (2006); MODEL BUS. CORP. ACT §§ 16.02- 16.03. (cited by Julian Velasco. The Fundamental Rights of the Shareholder, 40 U.C. Davis L. Rev. 407 (2006), p.7. Available at: http://lawreview.law.ucdavis.edu/issues/40/2/articles/davisvol40no2_velasco.pdf.)

[200] Corp. v. U.S. Die Casting & Dev. Co., 687 A.2d 563, 568 (Del. 1997). (cited by Julian Velasco. The Fundamental Rights of the Shareholder, 40 U.C. Davis L. Rev. 407 (2006), p.7. Available at: http://lawreview.law.ucdavis.edu/issues/40/2/articles/davisvol40no2_velasco.pdf.)

[201] Supra note 28

[202] Court decisions database. Slovak Ministry of Justice. Accessed April 18, 2022. http://jaspi.justice.gov.sk/jaspiw1/jaspiw_mini_fr0.htm

right of minority shareholders to access information. In addition, as a result of research conducted by the author personally, it became clear that in almost all EU countries there are websites of registrars, where basic information about companies is freely available to the general public - and this is also an important step towards transparency and full awareness of minority shareholders information that is important to them. Most of them have a website version in English, which also greatly facilitates access to information in a globalized environment, when a company can have shareholders from all over the world.

2.4. Peculiarities and Protection of the Litigation Rights of Minority Shareholders.

The right to judicial protection is undoubtedly very important. And hardly anyone will deny its importance, because the ability to challenge the action of a violator of rights is already a very big contribution to making minority shareholders feel safe.

According to scholars, shareholder litigation may be a management channel through which shareholders keep managers' selfish and moral concerns in check.[203]

The risk of violation of this right (preventing shareholders who are trying to start legal proceedings against the company) by management and majority shareholders is quite high, since, according to Deng et al., shareholder litigation damages the reputation of the respondent firms and increases the cost of external financing.[204]

Speaking about judicial protection, it should be noted that there are 3 types of claims:

1. Derivative claim;
2. Individual claim;
3. Class action.

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[203] Donelson, Dain C., and Christopher G. Yust. “Litigation Risk and Agency Costs: Evidence from Nevada Corporate Law.” *The Journal of Law and Economics* 57, no. 3 (August 2014): 747–80. https://doi.org/10.1086/675942.

[204] Deng, Saiying, Richard H. Willis, and Li Xu. “Shareholder Litigation, Reputational Loss, and Bank Loan Contracting.” *The Journal of Financial and Quantitative Analysis* 49, no. 4 (2014): 1101–32. http://www.jstor.org/stable/43303980.

Most often, shareholders bring lawsuits against firms either through securities class action or derivative lawsuits.[205]

The Delaware Supreme Court defined a derivative claim as follows: "A shareholder derivative suit is a uniquely equitable remedy in which a shareholder asserts on behalf of a corporation a claim belonging not to the shareholder, but to the corporation."[206]

As Lee states in his article, the derivative claim doctrine was originally formed in English case law (in Foss v Harbottle[207])[208]

A derivative claim differs significantly from a shareholder direct suit or class suit. The most significant difference is that shareholder derivative claims are brought in favor of and on behalf of the company, while individual and class shareholder claims are filed in the event of direct harm to a specific shareholder or their group.[209]

The derivative claims rule can be found in chapter 11, section 39 of the EMCA (both in relation to the liability of directors and shareholders). According to this rule, the decision on the responsibility of the director to the company must first be taken by the general meeting of shareholders. In some cases, the general meeting may decide to dismiss instead of holding accountable. However, some shareholders (including minority shareholders) may disagree. If shareholders representing at least one tenth of the share capital object to any indemnification decision or waive the right to take legal action, any shareholders may initiate legal proceedings on behalf of the Company for damages on behalf of the person responsible for the losses incurred. Shareholders initiating such proceedings must pay the associated legal costs, but may be reimbursed by the

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[205] Nguyen, Nam H., Hieu V. Phan, and Eunju Lee. "Shareholder Litigation Rights and Capital Structure Decisions." *Journal of Corporate Finance* 62 (June 2020): 101601. https://doi.org/10.1016/j.jcorpfin.2020.101601.

[206] Levine v. Smith, 591 A.2d 194, 200 (Del. 1991), rev'd on other grounds by Brehm v. Eisner, 746 A.2d 244, 253 n.13 (Del. 2000). https://www.lawcatalog.com/media/productattach/s/h/shareholder_derivative_chapter_1-r36.pdf

[207] Foss vs Harbottle. Casebrief. https://simplestudying.com/foss-v-harbottle-1843-67-er-189/

[208] Supra note 13

[209] Hughes, John D, Pendleton, Gregory D, Toren, Jonathan. Shareholder Derivative Litigation: A Primer for Insurance Coverage Counsel. Edwards Wildman. Accessed April 18, 2022. https://media.lockelord.com/files/uploads/documents/17908572_1.pdf

Company for such costs, to the extent that they do not exceed the amount recovered by the Company as a result of the proceedings.[210]

A derivative lawsuit is actually an effective tool, as it allows shareholders (including minority shareholders) to file a lawsuit against the company's directors on behalf of the company itself. Accordingly, such a claim is brought when a director violates his fiduciary duties towards the corporation.

It is appropriate here to recall the case of Daniels v. Daniels. The ratio decidendi of this decision, which has been formulated in legal doctrine, was: "The authorities which deal with simple fraud on the one hand and gross negligence on the other do not cover the situation which arises where, without fraud, the directors and majority shareholders are guilty of a breach of duty which they owe to the company, and that breach of duty not only harms the company but benefits the directors; if minority shareholders can sue if there is fraud, I see no reason why they cannot sue when the action of the majority and the directors, though without fraud, confers some benefit on those directors and majority shareholders themselves"[211].

From the above such a simple principle is formulated: "a minority shareholder who has no other remedy may sue where directors use their powers, intentionally or unintentionally, fraudulently or negligently, in a manner which benefits themselves at the expense of the company".[212]

The question arises: how likely is it that minority shareholders will resort to this method of judicial protection. According to the author, it is very small. This is also a kind of manifestation of "rational apathy": the percentage of shares owned by minority shareholders (each individual minority shareholder) is too small for his vote to significantly affect the decision taken by a simple majority during the general meeting of shareholders, the amount invested by shareholders in shares are also relatively small. For these reasons, most often minority shareholders prefer to remain on the sidelines, not interfering in the management of the company and not bothering

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[210] Supra note 84

[211] W. "Minority Shareholders and Directors' Duties." *The Modern Law Review* 41, no. 5 (1978): 569–72. http://www.jstor.org/stable/1095006.

[212] Ibid

to be interested in issues of relations within it, between majority shareholders and directors. Thus, it is most likely that if a director violates his fiduciary duties towards the company and shareholders, minority shareholders will not even know about it. Therefore, it is difficult for the author to assume that a derivatives suit, despite its effectiveness in general, is the most appropriate tool for protecting the rights of minority shareholders.

In addition, in such claims, since the amount of compensation received in the event of a win will be quite large, the remuneration of a lawyer filing a claim on behalf of shareholders will be very high, while the shareholders themselves (each individual) will receive little or nothing. . For the company, such a lawsuit would also be extremely disadvantageous. Evidence of this may be the case with Oracle, where Lawrence J. Ellison, chief executive of Oracle, agreed by prior agreement to pay $100 million to charity to resolve a lawsuit accusing him of insider trading in 2001. In addition, under the terms of the agreement, lawyers who filed suit on behalf of shareholders will receive approximately $22.5 million, separate from the $100 million payment.[213]

Lee also talks about the so-called private actions model, which, in fact, consists in the ability of a shareholder to seek help if necessary to protect their rights. This includes the right of minority shareholders to seek protection in court, to demand compensation and damages, and so on.[214]

This method may well be used by a minority shareholder who believes that his rights have been violated. But here it should be noted that in this case the shareholder initiates legal proceedings on his own and on his own behalf, which means that he bears all the costs on his own. In addition, there are limited circumstances in which shareholders can bring claims on their own behalf. For example, they can sue for non-payment of dividends, but usually only if the board of directors has decided to pay dividends (that is, the shareholder is entitled to them).[215] Again, given the fact that the contribution of a minority shareholder is not significant, the likeli-

[213] D. Glater, Jonathan. Oracle's Chief in Agreement to Settle Insider Trading Lawsuit. The New York times. Accessed April 20, 2022. https://www.nytimes.com/2005/09/12/technology/oracles-chief-in-agreement-to-settle-insider-trading-lawsuit.html

[214] Supra note 13

[215] Supra note 28

hood that he will go to court, incur costs and risk losing, is small. However, theoretically, this method is well suited to minority shareholders who want to protect their rights.

As for the class action, it is resorted to when many shareholders have the same claims against the company or management. Most often, in the case of minority shareholders, we are talking about a securities class action, in which "lawsuit is usually initiated by a group of shareholders who trade a firm's shares within a specific period and suffer from a sudden stock price decline, aiming at recovering their financial losses due to an alleged securities fraud".[216] Class action is possible not only in connection with securities fraud - in fact, it is simply an opportunity for a large number of shareholders with the same claims to file one general claim instead of a huge number of separate claims, which, firstly, would be unprofitable for the plaintiffs themselves (since the satisfaction of the first several considered claims can exhaust the solvency of the defendant, as a result - the so-called "race to sue" occurs), and the judicial system (which in this case risks being overloaded with the same type of claims). Perhaps this method is optimal for minority shareholders, since in this case the burden of litigation does not fall on one shareholder, and the total share of many minority shareholders can be very significant as a percentage of the company's capital.

The listed rights of shareholders can be weakened by the so-called business judgment rule.[217] In countries where this rule exists, it is quite difficult to prove that directors violated their fiduciary duties, as the presumption that they acted in the best interests of the company at the time the decision was made is very strong, and gives little opportunity for judges to review their decision. In addition, in this case, the burden of proof lies on the shoulders of the shareholders, and not the directors, which, of course, does not make their task easier. The author does not in any way question the effectiveness of this rule for protecting the interests of the company (and indirectly, its shareholders) - the directors are not afraid to take more risky, but also more potentially profitable decisions, and therefore, if the director turns out to be right, the share price rises, and with it and the profit of shareholders. However, if one or more individual shareholders believe that the director has violated his fiduciary duties, then it will be quite difficult for them to

[216] Nguyen, Nam H., Hieu V. Phan, and Eunju Lee. "Shareholder Litigation Rights and Capital Structure Decisions." Journal of Corporate Finance 62 (June 1, 2020): 101601. https://doi.org/10.1016/ j.jcorpfin. 2020.101601.

[217] Julian Velasco, Structural Bias and the Need for Substantive Review, 82 WASH. U. L.Q. 821, 828-34 (2004)

prove this, and this, whatever you say, is an oppression of their rights to judicial protection. It looks as if one side of the lawsuit (the defendants) is placed in a more secure position than the plaintiffs.

And even in the case when it comes to the director's suspicion of violating the obligation of loyalty to. The entire fairness rule[218] is applied to the company, all the same, the directors are in a more advantageous position than the plaintiffs-shareholders, since as long as they look "honest" in the eyes of the court, they will not be held liable.

Summing up, we can conclude that the right of minority shareholders to judicial protection is practically not protected at the level of the European Union. In the European Union, there are no regulations that directly regulate this area. This is logical, since each member state has its own procedural law, and in accordance with it regulates the resolution of corporate corporate disputes (including claims by minority shareholders).

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[218] Horton, Brent J. "Terra incognita: Applying the entire fairness standard of review to benefit corporations." *U. Pa. J. Bus. L.* 22 (2019): 842.

CONCLUSIONS

In view of the conducted research, and due to its underlying objectives, the following conclusions have been developed:

1. Observance and protection of the rights of minority shareholders contributes to the well-being of both a single company and the economy of entire countries and even the entire European Union.

2. The most detailed and protected at the EU level are the following rights: exit rights, right to transfer shares of the company, rights related to major/related party transactions and information rights;

3. The least protected are the rights to profit from shares (in particular, the right to receive dividends and the right to demand payment of dividends) and litigation rights.

4. Some rights (such as the right to information) are both a shareholder's right and a way to secure rights for others.

5. All shareholder rights are interrelated. For example, rights in major transactions are closely related to information rights, appraisal (exit) rights, sometimes consequently to litigation rights.

6. The concept of "minority shareholder" is not defined at the level of European legislation, although it is used in some regulations. However, despite this, European Union legislation contains many provisions that aim to protect the rights of minority shareholders, even if this goal is not explicitly stated. This becomes clear as a result of the analysis of the text of such provisions.

7. The rights discussed in the dissertation apply to all shareholders, however, minority shareholders require special protection of these rights precisely in connection with their status as a minority shareholder, and, as a result, increased vulnerability.

8. Minority shareholders in private companies are a more vulnerable group than minority shareholders in public companies, as the latter have the right to freely sell their shares on the stock exchange and leave the company, and often do not need dividends, as they buy their shares in order to profitably sell them.

9. Minority shareholders in public companies under "dispersed ownership" need little or no special protection for most of these rights due to their minority shareholder status. For example, they profit from the sale of shares, can freely sell them on the stock exchange (without expecting a buyout by the company), are often not interested in exercising control over the company and are unlikely to go to court if they are dissatisfied with the decision of the company's management - rather, they are again just sell their shares.

10. Member States regulate a lot at the level of their national legislation, and most regulations are framework legislation. The bulk of European corporate law legislation exists in the form of directives.

RECOMMENDATIONS

1. In order to increase transparency and legal certainty, it is necessary to fix the definition of the concept of “minority shareholder” at the level of European legislation, since this term appears in many legislative and recommendatory acts. Since it is difficult to define this concept unambiguously (too many factors to consider), we propose the following definition: a minority shareholder is a shareholder who owns less than 1% of the company's shares. With this approach, they do not and cannot take part in the management of the company at all, and their interests are more often concentrated on dividends.

2. The rights of minority shareholders, of course, must be protected, but not all of them require consolidation at the level of the European Union. For example, there is no need to enshrine in European law the right of shareholders to demand dividends, as this may have a negative impact on the activities and existence of the company.

3. Rules for the appointment/dismissal of directors require quite detailed and clear rules aimed at reducing the temptation of majority shareholders to appoint "their" directors who will act in their personal interests, and not in the interests of the company (and therefore other shareholders). First of all, the rule should be fixed at the level of the European Union, according to which directors should be elected by a special committee consisting of indisputable and independent members.

4. As for public companies, according to the author, it is not advisable to fix special rules aimed at ensuring minority shareholders when choosing directors, since the goal of minority shareholders is not to express their opinion on directors, but to receive a decent profit from their shares. Consequently, minority shareholders are interested in the competent and efficient management of the company, as a result of which, accordingly, the value of its shares will increase. The author allows the fixing of such provisions in the order of recommendations, but they must necessarily be of a dispositive nature. The author is sure that the empowerment of shareholders should be consistent with their ultimate goal. Therefore, in this case, since minority shareholders are extremely rarely interested in participating in control over the affairs of the company, it would be reasonable to give each state the right to independently decide what measures to protect the interests of minority shareholders should be

provided for in its legislation and how much to regulate this area. The solution of this issue at the EU level would be, according to the author, excessive detail and complexity of European legislation and expediency.

5. Regardless of the type of company, even if the minority shareholder's share is so small that his vote cannot affect anything at all, he must be notified of the general meeting. It may be worth fixing at the level of the EU Directive the obligation to post a notice of a general meeting on the company's website, in addition, shareholders should have access to resolutions and minutes of the general meeting. According to the author, all shareholders, no matter how small their share in the capital, should have the right to do so. There shouldn't be any limit.

6. Given the development and increase in the share of transnational corporations in the world, it is necessary to digitalize the corporate governance sphere as much as possible. The COVID-19 pandemic has already resulted in more and more directors' meetings, for example, being held online (via Zoom, Skype, Microsoft Teams etc). We need to develop this area: to create the possibility of electronic voting through an electronic platform for the general meeting, for example. In addition, it is possible to establish a requirement for each company to have an internal electronic register that would contain all information that is internal, but not confidential, and to which each shareholder would have access. Undoubtedly, this will increase transparency and facilitate the exercise of voting rights for minority shareholders.

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ABSTRACT

This thesis is devoted to the concept of minority shareholders, the determination of their legal position, the rights and ways of their protection. In the thesis, the author makes an attempt to determine the concepts of "minority shareholder" and "majority shareholder", as well as an analysis of most ways to protect (which are existing today) rights of minority shareholders and creation of a balance of the rights of minority and majority shareholders.

This study is based on the legal practice of various (both EU members and non-EU members), analyzes the level of security of individual groups of the rights of minority shareholders at the level of different states and, in general, at the level of the European Union. The study is aimed at determining the current situation with the protection of the rights of minority shareholders in the EU, as well as the search for ways to improve it and increase the degree of their security.

Key words: minority shareholder, majority shareholder, rights, right to dividends, appraisal rights, right to control, general meeting, board of directors, tag along rights, drag along rights, squeeze out rights, sell out rights, major transaction, litigation rights, protection, claim.

SUMMARY

This master thesis focuses on various forms and methods of protection of the rights of minority shareholders that currently exist6 from application in different countries and at the EU level and opportunities for improving the level of protection of minority shareholders.

The master thesis is structured in two parts:

1. The first chapter is devoted to the general definition and characterization of the concept of "minority shareholder", the establishment and explanation of the vulnerability of his position and the rationale for the need to separate them into a separate category and special protection of their rights.
2. The second chapter is devoted to certain ways to protect the rights of minority shareholders. In this chapter, the author analyzes the level of protection of minority shareholders and ways to protect their rights both at the EU level and at the level of individual states. Moreover, the second chapter summarizes the empirical evidence and discusses the general level of protection for minority shareholders at the level of each country considered and at the level of the EU as a whole.

The stated objectives of the study reflect the structure of the article and are formulated as follows:

1. to analyze the existing methods of protecting the rights of minority shareholders, known to the law of the European Union, to assess their effectiveness, to identify the advantages and disadvantages of each approach;
2. to analyze the national approach to solving this problem at the level of the member states, to conduct a comparative analysis, to highlight the most relevant and effective methods unknown to EU law;
3. to identify gaps and shortcomings in the regulation of the issue of protecting the rights of minority shareholders at the EU level, to propose solutions to this problem, based on the results of the study.

As part of the master thesis, the practice of various EU member states and third countries regarding various individual rights of minority shareholders was analyzed, their protection was assessed, the disadvantages and advantages of each of their methods of protection were assessed, the most effective and most ineffective of them were determined, and based on this, the relevance of fixing such methods of protection at the level of EU legislation.

In addition, the most and least protected categories of rights of minority shareholders in the EU were identified, gaps in the regulation of this area were identified, and ways to solve the problems considered were proposed.

As a result of the study, the author came to the conclusion that there are several main categories of rights of minority shareholders, which have varying degrees of importance and require protection to varying degrees. At the moment, the rights of minority shareholders are unevenly protected and, in general, the level of protection for minority shareholders at the level of the European Union is insufficient, for the most part it is enshrined in framework legislation, so this area is mainly regulated by the internal legislation of the member states.

In addition, the author came to the conclusion that it is necessary to separate minority shareholders in private and public companies, since they have different problems, need a different approach and different degrees of protection.