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CONCEPT, TYPES AND BUSINESS FORMS OF COMPANIES IN UKRAINE, LITHUANIA AND OTHER EU MEMBER STATES

Master thesis

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LIST OF ABBREVIATIONS

AB (*Akcinė Bendrovė)* – public limited company (Lithuania)

AG (*Aktiengesellschaft*) – public limited company (Germany)

ALC *(Товариство з Додатковою Відповідальністю*) – additional liability company (Ukraine)

CC – Civil Code

EC - Economic Code

ECJ – European Court of Justice

EEIG – European Economic Interest Grouping

EU – European Union

GmbH (*GesellschaftmitbeschränkterHaftung)* - limited liability company (Germany)

GP – general partnership

JSC- joint-stock company

LLC - limited liability company

LLP – limited liability partnership

LP – limited partnership

MS - Member States

PCA - Partnership and Cooperation Agreement

SCE *(Societas Cooperativa Europaea)* – European Cooperative Society

SE *(Societas Europaea)* - European Company

SMEs – small and medium-sized enterprises

SPE *(Societas Privata Europaea)* – European Private Company

TFEU – Treaty on the Functioning of the European Union

UAB (*Uždaroji Akcinė Bendrovė*) - private limited company (Lithuania)

UK – United Kingdom

USA – United States of America

INTRODUCTION

A company is a legal entity that engages in business and conducts subsequent distribution of a profit among its participants. It covers all entrepreneurial companies (‘*підприємницькі товариства*’) and corporate enterprises (‘*корпоративні підприємства*’) that have the same understanding in Ukraine. Ukrainian law views partnerships within the notion of ‘company’. In European countries, partnerships are not attributed to companies and not in all jurisdiction they are legal entities. In Ukraine, they always have the status of legal entity. But it should be noted that both companies and partnerships are commercial entities.

The word ‘company’ comes from a Latin word that means ‘companion’. The formal name for a company is ‘corporation’.[1] The term ‘company’ mostly is used in continental Europe while ‘corporation’ is preferred in the common law system. In our research, we use both definitions ‘company’ and ‘corporation’ as synonyms.

Problem of research. Reforming of company law is on agenda in many countries today, because of the globalization processes and rise of competition in the trade sector. The emergence of new industries, change of key players and technical improvements force companies to search expansion to the new markets.[2]

Generally, the legal status of corporations is regulated by national law of each European Union Member State and the problem arises how to lower the regulatory burden on corporations and create the most favorable legal conditions for conducting cross-border business, especially for Ukraine that is on the way to the EU integration.

The general issues can be stated as the necessity to answer the question about the benefits and lack of the Ukrainian legislation on companies in comparison with European Union Member States. Ukraine should study foreign experience in regulating corporate relations and take the best from other countries’ experience in this area. Under the Association Agreement between Ukraine and the EU[3], Ukraine has undertaken to adapt its legislation to the EU legislation in priority areas that include company law.

“From a comparative perspective, however, the differences that exist among different jurisdictions within the European Union are more profound than the differences that can be found in the United States among different states. Language and cultural barriers and the path

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[1] P.Lynch, J. Rothchild, J. Wiley & Sons, *Learn to Earn: A Beginner's Guide to the Basics of Investing and Business* (New York, 1997), 13.

[2] Klaus Hopt, *Modern Company Law Problems: A European Perspective Keynote Speech*. *A Comparative Outlook of Current Trends* (Stockholm, Sweden: Organization for Economic Cooperation and Development, 2000), 3.

[3] “Угода про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським співтовариством з атомної енергії і їхніми державами-членами, з іншої сторони” [Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part], Законодавство України, Accessed 1 March 2020, https://zakon.rada.gov.ua/laws/show/984_011.

dependency of legal systems affect, and to some extent hinder, the harmonization of European corporate law. In an effort to harmonize and unify European corporate law, the European Union has enacted several directives and regulations."[4]

Based on the answer to the question on whether unification of types and legal forms of Ukrainian companies to companies in EU Member States is necessary, the research question is what changes should be made to the laws of Ukraine?

Ukraine is on the path to joining the European Union, one of the tasks of which is to adapt existing legislation to EU legislation in order to create European conditions for development in the country and, in particular, in corporate law.

Relevance of the final thesis. The criteria for determining the business forms of the different types have been one of the most discussed issues in the history for a long time.[5] The corporate law of Ukraine is on difficult and crisis stages of its development. The main disadvantages of modern Ukrainian corporate law can be recognized as artificial nature of most legal requirements, contradictory, duplicated and uncertain rules that have declarative nature, significant gaps in the Ukrainian corporate law, absence of a unified approach concerning the definition of a company, etc.

Scientific novelty and overview of the research on the selected topic of Master Thesis is the development of approaches for proving the necessity of the unification of types and business forms of Ukrainian companies to EU Member States. Such necessity is discussed in practice.

For instance, Klymenko in his article "Business forms of legal entities: the comparative analysis of Ukrainian and foreign laws" (2016)[6] made a conclusion about the results of the research of foreign companies that enhance the understanding of necessary optimization and theoretical topical issues related with corporate legal regulation.

Zelisko reviewed and suggested in the dissertation "Legal entities of private law as subjects of civil legal relations" (2017)[7] that it is necessary to provide the systematization within existing legal forms of legal entities of private law, particularly companies. That was done on the basis of current developments of domestic and foreign doctrine, legislative practice of European States.

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[4] Ventoruzzo M. et al., "Comparative Corporate Law: Look No Further," *Bocconi Legal Studies Research Paper No. 2626021* (2015): 35.

[5] Eric Orts, *Foundations of the Firm I: Business Entities and Legal Persons* (United Kingdom: Oxford University Press, 2013), 9.

[6] Клименко С.В. та Даниш Я.В., "Організаційно-правові форми юридичних осіб: порівняльний аналіз законодавства України та іноземних держав," *Порівняльно-аналітичне право*, 6 (2016):77, http://www.pap.in.ua/6_2016/23.pdf.

[7] Зеліско А.В., " Підприємницькі юридичні особи приватного права як суб'єкти цивільних правовідносин" (дисертація, Науково-дослідний інститут приватного права і підприємництва імені академіка Ф. Г. Бурчака Національної академії правових наук України, 2017), https://www.twirpx.com/file/2393277/.

The article by a Ukrainian scientist, Zhornokui "Corporation: current regulation in Ukrainian and foreign legislation" (2018)[8] is devoted to a comparative analysis of the provisions of the legislation of Ukraine, Germany, France and England regarding the understanding of the category "corporation" and the possibility of its implementation in the national legislation of Ukraine.

An Italian scholar, Riccardo Ghetti devoted some scientific papers to issues of harmonization and unification of corporate law. In his work "Unification, Harmonization and Competition in European company forms" (2018) examined the main tools for convergence of corporate law and named such tools as unification and harmonization.[9]

The practical significance of the paper is connected with the contribution of authors' work into understanding the concepts, types and forms of companies operating on the territory of Ukraine and European Union Member States under their legislation. The results of the study will be useful to understand the shortages of Ukrainian legislation on company law and given recommendations will be helpful to make changes in order to unify Ukrainian laws in compliance with the EU legislation system on company law. It is especially significant in the conditions of economic globalization that makes companies operate on the foreign markets and feel the pressure from those countries' legal systems.

The aim of the study is to identify the essence, types and business forms of companies in Ukraine in comparison with company laws in Lithuania and other EU Member States and investigate what amendments are necessary in Ukrainian legal acts. The changes must reduce the lack relating to the incompliance of the Ukrainian corporate law to the European Union law. We are going to focus more attention on several jurisdictions: Ukraine, Lithuania, England, France and Germany. England is a great example of a common law system. Ukrainian and Lithuanian legal systems on company law have traces of Soviet times. Germany and France are the best representatives of civil law system known with the adoption of foremost company rules in Europe. But other jurisdictions will be taken into account as well.

The objectives of research. The objectives of the study are formulated in accordance with the necessity to review Ukrainian corporate law in the line with the EU Member States. They are as follows:

(1) to disclose the history and legal nature of a company as a form for running a business;

(2) to identify a typology of companies existing in the business market;

[8] Жорнокуй, Ю., "Корпорація: Сучасний стан Законодавства в Україні та Європейському Союзі," *Цивільне право і процес*, *1* (2018): 13-17.

[9] Riccardo Ghetti, "Unification, Harmonisation and Competition in European Company Forms," *European Business Law Review* 29, 5 (2018): 813, https://www.kluwerlawonline.com/abstract.php?area=Journals&id=EULR2018031.

(3) to highlight the specificity of the Ukrainian and European companies' functioning in the different business forms and develop recommendations for improving Ukrainian corporate law.

In order to achieve the aim and answer on the research question of the master thesis the following **methods** were applied. The use of the **historical and legal methods** was necessary to determine whether there are common historical roots between Ukraine and EU Member States and indicate the main viewpoints to the notion and features of companies. The **comparative** method was used for legal differentiation between public and private companies in EU countries and Ukrainian law as well as other types of companies based on a variety of criteria. **Logical-semantic, systematic and analysis methods** were applied for the detailed examination of business forms of companies in order to understand their peculiarities in different countries. The same methods were put in the construction of new standards, which are recommended for implementation in Ukraine. Discussion of the results of the study requires using the general scientific **methods as description and interpretation**. They were relevant to observe the legislation of Ukraine, Lithuania and other European Union Member States and represent the comparative conclusions about their benefits and shortages.

Structurally, this paper is divided into 3 sections: 1 – The Company as a form of doing business in present-day conditions, 2 – Typology of companies in the business market, 3 – Comparative analysis of the functioning of companies in different business forms in Ukraine and EU Member States.

In Chapter 1 the author studies the history of the concept 'company' development as legal entities. For these purposes, the nature of the first corporate entities and definitions of 'corporation' are explored. The author highlights the legal status of companies and outlines features of a company as a legal entity. The distinction between commercial entities' forms is summarized. It is recommended to separate 'companies' from 'partnerships' in Ukrainian legislation. **In Chapter 2** the legislative criteria of companies' classification are researched. This section contains the description of types of companies based on the size of companies in regard to accounting and financial reporting and mode of incorporation. The legal norms of the Law of Ukraine 'On Joint-Stock Companies' are analyzed ranged before and after reform 2017.[10] The comparison of EU Member States' legislation on public and private companies is provided. **In Chapter 3** functioning of companies of the different business forms is analyzed with respect to the legislation of Ukraine and selected EU Member States. Recommendations how to improve legal regulations of business forms of companies in Ukraine are given based on comparative analysis, especially with regard to the systematization of the list of business forms in legal acts, deprivation of the company status

[10]"Про акціонерні товариства," Законодавство України, Accessed 28 February 2020, https://zakon.rada.gov.ua/laws/show/514-17.

from private enterprises and additional liability companies, abolishment of duplicated provisions in order to unify and harmonize Ukrainian corporate law.

Defendant statements. The defendant statements of Master Thesis offered are as follows:

- On the way to EU integration, Ukraine faces the challenges of the necessity to modify its legislation and develop the unified approach to the definition of types and legal forms of companies;

- Ukraine should make amendments directed to unify the types and legal forms of companies in Ukrainian corporate law in compliance with the relevant European legal acts, especially to provide the common term of 'company' among different Ukrainian legal regulations and distinguish it from the definition 'partnership';

- Ukraine must abolish the ambiguous regulation of the corporate law relations by eliminating Soviet times' concepts of company law.

1. THE COMPANY AS A FORM OF DOING BUSINESS IN PRESENT-DAY CONDITIONS

1.1. The history of the rise and development of companies as legal entities

Debates concerning the problem whether the entities are legal establishments founded by the state as real ones that exist independently from the state are traced in the Roman times. These discussions reflect the historical frictions between the scholars who studied the status and features of business firms.[11] The development of corporate law was focused on the policy of limited liability and jurisprudential theory of legal entity where the financial obligations were the main point of research and this tendency is still observed.[12] In this subchapter, it is necessary to examine the history and features of first corporate entities and investigate the specificity of the legal status of companies. It will help to understand how the concept of 'corporation' has changed in the contemporary legal studies, the present essence and to distinguish the corporations from the other commercial entities.

1.1.1. The nature of the first corporate entities

The first business associations derive from the 6th millennium BC. The economies of the first states, such as the Sumerian Kingdom, as well as Mesopotamia in the mid-second millennium BC, were based on tribal associations operating at the expense of the capital invested by the community members. Similar associations were known in the territory of the ancient Assyrians and Phoenicians.[13]

It seems appropriate to consider the basic stages of the formation of the economic and legal foundations of the functioning of corporate entities that were initiated in the Ancient World and, above all, in the Roman Empire.

The famous historian Momlesen described the economies of ancient Athens, Rome, Corinth, and London, Paris and New York of the 19th century as equal, arguing that modern capital operations are the legacy of an ancient civilization. Legislation of Ancient Rome in the Cicero era established societal associations of publishers (*societas publicanorium*), which many researchers call the first prototype of the contemporary joint-stock company.[14]

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[11] Eric Orts, *Foundations of the Firm I: Business Entities and Legal Persons* (United Kingdom: Oxford University Press, 2013), 9.
[12] Blumberg Phillip, "The Transformation of Modern Corporation Law: The Law of Corporate Groups," *Connecticut Law Review* (2005): 192, https://opencommons.uconn.edu/law_papers/192.
[13] Ilchuk P. and Korolieva O., "Corporate Governance: Historical aspects," *National university lviv polytechnic* (2009): 181.
[14] Ibid.

"Roman law recognized a range of corporate entities under the names *universitas*, *corpus* or *collegium"*.[15] According to Holton, the majority of the corporations in Rome were established to perform religious purposes and in order to execute different tasks, the Romans concluded private contracts. For example, these were contracts to build aqueducts, temples and other constructions. The workers were hired by companies which were called *"publicani"*. Later *publicani* has evolved into a new type of company that was permanent.[16] This organizational structure corresponded to the modern form of joint-stock companies.

Some scholars report about the lack of legal personhood in Rome. The reason is the culture of the country. Romans have inherent ethics views on commerce which are similar to the views of ancient Greeks. Despite the significance of commerce and trade, they believed that the only way to earn the wealth is war and conquering other lands.[17] "(It is important to emphasize that the Roman form of the corporation has not been the first entity of legal personality in the history.)" In France and Germany, mills operating societies emerged, governed by the board chosen by the participants. Shares of their capital started to be sold freely, to be pledged, and to be inherited.[18] As we can see, they had some manifestations of legal personhood.

In Europe, the first corporations were created before the 17th century. As stated by Korten, Kaplan, and Bennet, their status was non-profitable entities that were established for the public, e.g. hospitals and educational institutions (universities). The duties they performed were dictated by the government. In the 17th century the major concern of the corporations shifted to making money. The imperial powers were used by the companies to control territory, trade and resources in Africa and Asia.[19] A number of joint-stock corporations was formed in England, and later in France, under the names of the East Indies, West Indies, Surinamese, Canadian, etc. These corporations emerged in no other way than with the permission of the government on a case-by-case basis. Infused with administrative oversight, pursuing the political goals of expanding the state territory, they were public in nature, as if they were branches of the state economy.[20] The first line of such companies was outlined by the English (1600) and Dutch (1602) East India Companies. The procedure of the foundation of East India Company included a combination of the persons. As a result of such a combination, it appeared the company's stock that allowed it to

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[15] Harold Joseph Berman, *Law and Revolution* (vol. 1)*: The Formation of the Western Legal Tradition* (Cambridge: Harvard University Press, 1983), 215–216.
[16] Glyn Holton, *History of Corporations* (2013), https://www.glynholton.com/notes/corporation/.
[17] Davoudi, L., Ch. McKenna and R. Olegario, "The historical role of the corporation in society," *Journal of the British Academy* (2018): 7.
[18] Ilchuk, P. and Korolieva O., "Corporate Governance: Historical aspects," *National university lviv polytechnic* (2009): 181.
[19]"A Short History of Corporations," New Internationalist, Accessed 1 March 2020, https://newint.org/features/2002/07/05/history.
[20] Ягмурджи А., "Еволюція становлення та розвитку корпорацій: організаційно-економічний аспект," *Вісник економічної науки України,* 13 (2008): 129.

rise in the first commercial corporation. The business of this corporation included shipments of gold and silver to Asia in exchange for textile, luxury products and spices.[21]

At the end of the 18thcentury, the first attempts were being made to codify the law and use the shareholder form of business. The government initially gave corporations broader autonomy. However, serious financial irregularities, unfair competition, stock speculation caused the shareholder legislation to be enforced. For example, in Germany, shareholders emerged later than in other countries, their development was determined by the state 'gigantomania' and at the same time colossal decentralization, internal political and economic wars, etc.[22]

The beginning of the 19th century has brought the development of the corporate law in Germany. Its evolution was based on three codification processes. The Germans enthusiastically embraced limited liability companies and joint-stock companies, although the former principles were more widespread. The German entrepreneurs were enthusiastic to establish entities with share capital, even though the German law was dualistic about the protection of the minority shareholders' rights. The decline of family property was also accompanied by the gradual dispersion of the stake. This trend was completely reversed after 1945 as holdings began to dominate the ownership structures. Joint participation inequity has become an important mechanism, especially after 1945.[23] It should be noted that corporate entities played the biggest role in the economic growth of Germany. Under appropriate economic conditions in Germany, there was a place for various corporate forms to exist.

The first transformations in corporate law began in France, after Napoleon Bonaparte came to power. This event once again suggests that the economic, moral and cultural foundations of society are closely connected with its institutional foundations. The Commercial Code, adopted in France in 1808, identified three key organizational and legal forms: general partnerships, limited partnerships, and limited liability companies.[24]

For almost two centuries, the history of Ukrainian entrepreneurship has been inextricably linked to the corporations – merchant guilds that were created in the 18th century. "The establishment and development of a business initiative in Ukraine were carried out within the bounds and legal field of the Russian Empire, where the main levels of management were in the hands of the nobility or genetically related bureaucracy. […] In the middle of the 18th century, merchants, in particular from the Left Bank Ukraine, began to actively appeal to the state for fixing

[21]"A Short History of Corporations," New Internationalist, Accessed 1 March 2020, https://newint.org/features/2002/07/05/history.

[22] Ягмурджи А., "Еволюція становлення та розвитку корпорацій: організаційно-економічний аспект," *Вісник економічної науки України,* 13 (2008): 130.

[23] Фіронова, В.,"Виникнення та розвиток систем корпоративного права," *Державний вищий навчальний заклад Українська академія банківської справи Національного банку України* (2009): 223.

[24] Магданов П. В., *История возникновения корпораций до начала XX в*., № 4 (Ars Administrandi, 2012), 118.

their own monopoly on trading operations and, according to the Trade Charter of 1755, the peasants were forbidden to trade at a distance from cities." [25] Merchants, as we could see, gradually became a privileged category of the population with sufficiently strong features of isolation. A new stage in the development of domestic trade entrepreneurship and corporate organization of merchants began in the last quarter of the 18thcentury that led to the creation of the modern forms of companies.

The founding of joint-stock trading companies – merchant guilds – created real appropriate conditions for the merchants to become independent, on the basis of which Ukraine began to develop rapidly a class of entrepreneurs. A typical feature of the new merchants, which distinguished it from previous merchants, and also from the Institute of Guilds of Western Europe, was that it was an 'open corporation'. "The merchant status was not only hereditary, and not even lifelong, but it was subjected to annual 'certification' by paying a guild fee (1% of the declared capital). Commercial failures, deteriorating economic conditions and, consequently, the inability to pay the guild's fees timely often made merchants leave the guilds and join the bourgeois".[26]

Thus, modern corporate law derives from the ancient Rome. The first corporate formations arose in ancient times, but they did not become genuine predecessors of corporations. This is explained by the fact that before the emergence of the Roman Republic and the establishment of a municipal government system, the existence of corporations was impossible since there was no legal personhood.

Based on the analysis of scientific views on the process of the formation of corporations as participants of economic relations, it is established that the English and Dutch East India companies were the generally recognized first precursors and prototypes of modern joint-stock companies. Later it was shown that the corporate legal form of corporations has proven to be extremely cost-effective and widespread in different countries of the world.

The merchants played an important role for the development of corporate law in Ukraine. Nevertheless, they had some level of isolation and could operate only within one city. During a long historical period, they were modified in present-day forms of companies.

The first companies in Europe were characterized by the existence of various corporate relations. After a while, they have transformed and created the modern form of 'corporation'.

[25] Колібабчук, Н. К., "Історія виникнення і розвитку підприємництва на Україні в XVIII – на початку XX ст.," *Часопис цивілістики* (2015): 199-200.
[26] Ibid, 199-200.

1.1.2. The modern understanding of 'corporation'

The concept of 'corporation' usually has no contradictions among the academicians, but the definitions are varied dependently on the sphere of its usage and jurisdiction. It could be defined as an entity intended to satisfy the purposes of its members about economic growth. From the legal point of view, a corporation represents the type of legal entity.[27] The founders of corporation are accepted as founding members. They can be natural persons or legal entities. It should be noted that in all European Union countries even one founder can establish a corporation. It was determined by the Twelfth Council Directive 89/667 of the European Union.[28] Therefore, Tičar states that the essence of corporation is that it is an entity, independently on the number of members, whether one, two or more.[29]

In our opinion, successful definitions of the concept of "corporation" is offered by the Ukrainian scholar Nashinets'-Naumova:

1. A corporation is the most effective form of business organization in view of the real opportunity to attract the necessary investments. It is through the securities market that it can unite the different capitals of a large number of individuals and legal entities to finance the modern directions of scientific, technical and organizational progress, increase of production capacity. […]
2. A corporation is a commercial structure directed to obtain and increase profits. […]
3. A corporation is an entrepreneurial company where each shareholder as a co-owner bears only limited liability (in case of the bankruptcy of the firm he loses only the value of his shares). […]
4. A corporation is a legal entity that can function for a very long period (permanently), which creates unlimited opportunities for future development.[30]

In the legislation of Ukraine, there is an exact notion of 'corporation'. It is one of the types of unification of enterprises. According to part 3 of article 120 of the Economic Code of Ukraine[31], "the corporation is recognized as a contractual association created on the basis of the combination of industrial, scientific and commercial interests of the united enterprises with the delegation of separate powers of centralized regulation of the activities of each participant to the governing bodies of the corporation". In the view of this legal definition, the term 'corporation'

[27] Tičar, Bojan, "Persona Sine Anima – Towards an Innovative Classification of Legal Persons," *Journal of Criminal Justice and Security* (2016): 168.
[28] "Twelfth Council Company Law Directive 89/667/EEC of 21 December 1989 on single-member private limited-liability companies," EUR-Lex, Acessed 1 March 2020, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31989L0667.
[29] Tičar, Bojan,"Persona Sine Anima« – Towards an Innovative Classification of Legal Persons," *Journal of Criminal Justice and Security* (2016): 169.
[30] Нашинець-Наумова А.Ю., "Поняття та передумови виникнення корпоративного управління," *Проблеми системного підходу в економіці,* 1 (2007): 3, http://jrnl.nau.edu.ua/index.php/EPSAE/article/view/3904.
[31]"Господарський кодекс України," Законодавство України, Accessed 1 March 2020, https://zakon.rada.gov.ua/laws/show/436-15.

cannot be used to refer to those entities that are considered to be the principal participant of a corporate relationship (company).

In England, the term 'corporation' means any legal entity, since they are all divided into sole corporations or associated corporations. Profit corporations in England are called companies and are divided into public and private joint-stock companies. Characteristics of corporations in England, as stated by O. Makarova, are as follows: limited liability of participants for the obligations of the corporation; centralized management is exercised by persons other than members of the corporation; high information transparency; the permanent activity of the corporation regardless of the retirement of its members.[32]

"The concept of 'corporation' in continental European countries (Germany, France, Austria, the Netherlands, Sweden, Norway, etc.) refers to a well-organized group of persons and capitals, characterized by common group interests for the implementation of any socially beneficial activity and endowed with the status of a legal entity."[33] The legal status of members of the corporation in these countries is characterized by freedom and equality, in other words, it is based on the principle of complicity in management and subordination. In European countries, the concept of 'corporation' is related to the concept of a legal entity. A well-known fact that all companies are legal entities.

In Germany, in particular, the term 'corporation' means a legal entity that is an association with a distinct independence of its members. The members of the corporation are vested in certain rights and have certain obligations with respect to both the corporation itself and each other. In Germany, corporations include joint-stock corporations (*Aktiengesellschaft),* non-stock corporations, such as limited liability companies (*Gesellschaft mit beschränkter Haftung),* and other organizational capital associations.[34]

Members of a corporation express their will appointing authorized management. For example, they appoint the president of the corporation, the director and management board of a company, etc. The shareholders in share capital companies have the right (1) to appoint management board and take part in the procedures of yearly-based profit distributions, i.e. dividend allocation depends on the quantity of their share; (2) to participate in the measures of entity's liquidation in the case if a corporation ceases its existence.[35] All transactions are performed by the members of a corporation's management including the management board, director,

[32] Макарова О. А., *Корпоративное право* (Москва: Волтерс Клувер, 2005), 4.
[33] Руденко В. В., "Корпорації в Україні та за кордоном: сутність і характерні ознаки," *Науковий вісник Ужгородського національного університету* (2015): 146-147.
[34] Лукач І., "Історія становлення корпоративного права в європейських країнах континентальної системи права," *Вісник Київського національного університету мені Тараса Шевченка* (2012): 43.
[35] Tičar, Bojan,"Persona Sine Anima« – Towards an Innovative Classification of Legal Persons," *Journal of Criminal Justice and Security* (2016): 168.

president, etc. The measures taken by them in the course of entity's operation can impact the entire functioning of a corporation.

Corporations are characterized by a certain structure. According to Belinfanti and Stout, the corporation consists of the individual elements which include physical assets, financial resources, intellectual capital and others coordinated through the operation of the corporate legal entity. A corporation can be interpreted as an entity comprising the range of coordinated subsystems. They are management and marketing team, production personnel and financial resources.[36]

As stated by Solaiman, from a legal viewpoint, a corporation is defined as an entity founded by individuals and determined by law as an artificial person which is characterized by legal personhood realized through incorporation from the part of a state agency.[37] Corporate entities originated in the form of division of society and quickly transformed into the associations of several individuals. It should be noted, however, that today one person is enough to establish a corporation. This type of legal entity is viewed as the most competitive player for both national and global economies and today's societies are strongly dependent on their functioning. They offer a lot of products and services which are needed for everyone. Despite the importance of corporations for societies, it is a difficult task to obtain the status of corporation as a legal entity. The difficulty of corporation recognition is caused by the fact that legal entities have liabilities and rights. Many centuries it puzzled academicians and legal experts how the corporations should be regarded, for example, where they are separate persons independent on the owners or not.[38] Nowadays, separate personhood of an entity is recognized by all civilized legal systems, but the volume of liabilities may vary dependent on the jurisdiction. Therefore, separate personhood makes it possible for entities to act on as contracting party and this is, in Kraakman's opinion, the most significant contribution to the development of corporate law.[39] As a matter of fact, corporations are formed by individuals and recognized at the state level as an established entity for the purposes of benefiting human society. The rights and liabilities of the individuals embody the corporation's essence.[40]

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[36] Belinfanti, Tamara and Stout Lynn, "Contested Visions: The Value of Systems Theory for Corporate Law," *University of Pennsylvania Law Review* (2018): 579-631.
[37] Solaiman, S. M.,"Legal personality of robots, corporations, idols and chimpanzees: a quest for legitimacy," *Artificial Intelligence and Law* (2017): 12.
[38] Solaiman, S. M.,"Legal personality of robots, corporations, idols and chimpanzees: a quest for legitimacy," *Artificial Intelligence and Law* (2017): 13.
[39] Kraakman, R. et al., *The anatomy of corporate law – a comparative and functional approach* (Oxford: Oxford University Press, 2009).
[40] Tičar, Bojan,"Persona Sine Anima – Towards an Innovative Classification of Legal Persons," *Journal of Criminal Justice and Security* (2016): 169.

Being a legal entity, a corporation is established based on the laws of its state of incorporation. The laws are varied in the different states. As a result, individual countries have powers to change laws concerning the creation and dissolution of corporations. For example, in the USA many States follow 'The Model of Business Corporation Act'[41]. Corporations are legally independent that prevent its members to be personally liable for the organization's debts. The legal personalized status of a corporation does not cause termination of its functioning in case of stockholders' deaths. The corporation's structure is not altered as a result of such circumstances. However, corporations are taxable legal entities that are incurred by the different schemes. Therefore, corporations often face double face challenges. Both corporate and shareholder dividends are subject to taxation, but corporate incomes are taxed at a lower rate than the taxes established for individuals.[42]

To conclude, we can say that there is no consent on the concept, features and forms of the modern corporation. The precise notion of corporation varies from country to country, but the main understanding is the same everywhere. Summarizing the definitions of the corporation, it can be determined as a commercial entity that is based on share capital, has legal status and is aimed at profit maximization. The current understanding of corporation includes almost all business organizations that are membership-based.

1.2. Overview of the legal status of companies

This section discusses the definitions and features of the company and its correlation with the concept of 'legal entity' as different terms. We will also give a detailed characteristic of alternative organizational forms to the companies and comparison with each other. Nevertheless, much more attention is paid to partnerships as an alternative form. Ukrainian law views partnerships within the notion of 'company'. In our opinion, entrepreneurial companies ('*підприємницькі товариства*') are companies per se, including economic companies ('*господарські товариства*') and production cooperatives ('*виробничі кооперативи*'). In European countries, companies and partnerships exist as separate business forms and have distinctive features.

[41]"Model Business Corporation Act," American Bar, Accessed 1 March 2020, https://www.americanbar.org/content/dam/aba/administrative/business_law/corplaws/2016_mbca.authcheckdam.pdf
[42]"Corporations," Legal Information Institute, Accessed 1 March 2020, https://www.law.cornell.edu/wex/corporations.

1.2.1. Definition and features of the company and its correlation with the concept of 'legal entity'

Companies are considered as legal entities if they are created on the basis of an establishment act and articles of association by individuals or entities in order to implement goals or perform certain business operations. Corporations can be founded mostly in one of the legal forms such as limited liability company and joint-stock company.[43] Article 48 of the Treaty establishing the European Community states that 'companies' and 'firms' shall mean companies and firms operating on the basis of civil and commercial law, including cooperative societies and other legal entities governed by private or public law, except for non-profit legal entities.[44] Companies or firms established under the law of a Member State and having their own registered office, central administration or principal place of business within the Community are given the same powers as natural persons of that Member State. Therefore, from the above provisions, the following features of commercial entities that are subject to the law of the European Union can be defined: 1) the organization in accordance with the legislation of one of the EU Member States; 2) the presence in the EU of at least one of three attributes: a registered location, a central management authority or a principal place of business; 3) the focus of activities on profit; 4) recognition by a legal entity in accordance with *lex societatis* (the law applicable to that person).[45]

In Ukrainian law, the term 'company' is used, but there is no such legal form of a legal entity under civil and economic law in Ukraine. This statement was made under the analysis of Ukrainian Civil[46] (article 84) and Economic Codes (part 5 of article 63)[47]. For example, according to the Civil Code, a company could be defined as entrepreneurial company ('*підприємницьке товариство*') which goal is to get profit and its subsequent distribution between participants, it can only be created as economic companies – '*господарські товариства'* (general partnerships – '*повні товариства'*, limited partnerships – '*командитні товариства*', limited or additional liability companies – '*товариства з додатковою та обмеженою відповідальністю*', joint-stock companies – '*акціонерні товариства'*) or production cooperatives – '*виробничі кооперативи*'. Pursuant to the Economic Code, "a corporate enterprise ('*корпоративне підприємство*') is formed, as a rule, by two or more founders by their joint decision (agreement),

[43]Armand Krasniqi, "Legal or business personality of the commercial companies according to business law in Kosovo," *International Journal of Sciences: Basic and Applied Research* (2016): 5.
[44] "Treaty establishing the European Community (Consolidated version 2002)," EUR-Lex, Accessed 1 March 2020, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12002E%2FTXT.
[45] Мовчан О. О., "Поняття «компанія» та його тлумачення в законодавстві Європейського союзу та України," *Наукові записки* (2003): 245.
[46]"Цивільний кодекс України," Законодавство України, Accessed 1 March 2020, https://zakon.rada.gov.ua/laws/show/435-15.
[47]"Господарський кодекс України," Законодавство України, Accessed 1 March 2020, https://zakon.rada.gov.ua/laws/show/436-15.

acts on the basis of merger of property and / or commercial or labor activity of founders (participants), their joint management of affairs on the basis of corporate rights, including through the bodies they create, the participation of the founders in the distribution of income and risks of the enterprise. Corporate enterprises are cooperative enterprises, enterprises created in the form of economic companies, as well as other enterprises, including those based on the private property of two or more persons." Therefore, according to Ukrainian law, 'entrepreneurial companies' under the CC of Ukraine and 'corporate enterprises' under the EC of Ukraine are companies.

Most legal entities in the territory of Ukraine for the purpose of carrying out economic activity are created in the organizational and legal form of an economic company in accordance with the Law of Ukraine 'On Economic Companies'.[48] According to the article 1 of the mentioned Law: "An economic company is a legal entity which share (compound) capital is divided into shares between participants". They include: joint-stock companies, limited and additional liability companies, general partnerships, and limited partnerships. Economic companies in Ukraine are enterprises and organizations established on the basis of agreement by legal entities and citizens through combining their property and business activities for profit.[49]

As stated by Butler, "the modem corporation is one of the most successful inventions in history".[50] In the contractual theory, a corporation is a set of contracts concluded between shareholders, creditors, managers, workers and other participants. The contractual relations may be ensured by the customized agreements or other forms established by the statutory law.[51]

Concerning the features of companies, the five core structural characteristics of the corporation are: (1) legal personality, (2) limited liability, (3) transferable shares, (4) centralized management under a board structure and (5) shared ownership by contributors of equity capital.[52] In legal doctrine, some scholars highlight only three or even more than five features of the company. For example, Peter Mäntysaari, a Finnish scholar, defines such peculiarities as indefinite duration, profit orientation and majority rule.[53]

Overall, we must pay attention to the main characteristics of a company as follows[54]:

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[48]"Про господарські товариства," Законодавство України, Accessed 1 March 2020, https://zakon.rada.gov.ua/laws/show/1576-12.

[49] Ibid.

[50] Butler, H., "The Contractual Theory of the Corporation," *George Mason Law Review* (1989): 99-123.

[51] Ribstein, L., "Limited Liability and Theories of the Corporation," *Marryland Law Review* (1991): 84.

[52] Reinier Kraakman, John Armour et al., *The Anatomy of Corporate Law. A Comparative and Functional Approach*. Third Edition (2017), 8-12.

[53] Mäntysaari P., *Organising the Firm: Theories of Commercial Law, Corporate Governance and Corporate Law* (Springer, Berlin, Heidelberg, 2012), https://link.springer.com/book/10.1007%2F978-3-642-22197-2.

[54] " 4 perpetual existence a company is a stable form of business organization", Amity University, Accessed 1 March 2020, https://www.coursehero.com/file/pd9fap/4-Perpetual-Existence-A-company-is-a-stable-form-of-business-organization-Its/.

1.*Incorporated association.* A company as a legal entity is established when it is registered under the procedure prescribed by law.

2. *Artificial legal person.* The company is not a physical person. It cannot act on its own. It operates through a board of directors appointed by shareholders. It was well defined in Bates V Standard Land Co.: "The board of directors are the brains and the only brains of the company, which is the body and the company can and does act only through them".[55] But for some purposes, a company is considered to be a physical person (transfer the property, to conclude a contract with third parties, and can sue and be sued on its behalf).

3. *Perpetual Existence.* Law creates it and law alone can dissolve it.[56]

4. *Limited Liability.* The well-known English case (Salomon v A Salomon and Co Ltd) pays attention to this issue: "It is about the claims of certain unsecured creditors in the liquidation process of Salomon Ltd., a company in which Salomon was the majority shareholder, and accordingly, was sought to be made personally liable for the company's debt. Hence, the issue was whether, regardless of the separate legal identity of a company, a shareholder/controller could be held liable for its debt, over and above the capital contribution, so as to expose such member to unlimited personal liability".[57] Generally, shareholders are not liable for the company's debts by their own property.

5.*Transferable Shares.* All shares are transferable. A Ukrainian scholar, N. Butrin, defines 'transferability of shares' as an ability to make transactions and other actions concerning such objects.[58] Nevertheless, not all shares are tradable. There could be some restrictions in public markets. Public companies must have tradable shares to sell them on the stock exchange.

6. *Separate Property.* "As a company is a legal person distinct from its members, it is capable of owning, enjoying and disposing of property in its own name. Although its shareholders contribute its capital and assets, they are not the private and joint owners of its property. The company is the real person in which all its property is vested and by which it is controlled, managed and disposed of".[59]

7. *Delegated Management.* The participants of the company create special corporate bodies for conducting management and actual control. Additionally, not all members participate in corporate governance.

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[55] Ibid.

[56]Kuchhal M.C. & Kuchhal Vivek. *Business Law*, 7th Edition **(**Vikas Publishing House, 2018), https://books.google.ru/books?id=64akDwAAQBAJ&hl=ru.

[57] 'Salomon v Salomon [1897] – Case Summary', Lawteacher.net, Accessed 1 March 2020, https://www.lawteacher.net/cases/salomon-v-salomon.php?vref=1.

[58]Бутрин Н. С., *Правочин як підстава виникнення та припинення корпоративних прав* : дис (Київ, 2014), 34.

[59]"4 perpetual existence a company is a stable form of business organization", Amity University, Accessed 1 March 2020, https://www.coursehero.com/file/pd9fap/4-Perpetual-Existence-A-company-is-a-stable-form-of-business-organization-Its/.

Also, according to the scholars, company is correlated with the concept of legal entity by such criteria as (1) rights and obligations; (2) legal capacity; and (3) legal personhood.[60]

So, the company could be defined as an artificial person that is created under the law and separated from its members who support, own, manage its activities and are not responsible for its debts and obligations.

Then, it should be mentioned that not all entities can obtain legal entity status. To obtain such a status, they must correspond to a number of features of a legal entity. From the content of the Civil Code of Ukraine[61], the main features of a legal entity are the following: organizational unity; the presence of separate property; performance in a civil turnover on his own behalf; independent liability.

These features are characteristics of many legal systems, i.e. are universal. They give only the most general idea of the category 'legal entity', their purpose is to identify organizations that can act as independent participants in civil relations. Meanwhile, modern legal entities are extremely diverse in their legal features: they differ in their structure, forms of ownership, principles of creation, management and activity. Therefore, it is impossible to resolve the question of the correlation between the concepts of 'legal entity' and 'corporation' without resorting to the classification of legal entities.

Normally, legal entities are traditionally divided into the following types: legal entities of *public and private* law - differ in the way of creation, functions and the legal regime of activity; *commercial and non-profit* - are divided depending on the purpose of the activity; *organizations and institutions* - differ in construction principles.[62]

According to the CC of Ukraine, a legal entity of private law is incorporated on the basis of a private act – memorandum or articles of association (article 87) and legal entity of public law is created on the basis of the act of the President of Ukraine, government authority, authority of the Autonomous Republic of Crimea or municipal authority (article 81). Legal entities of private law could be split into profit and non-profit entities or organizations and institutions etc.

Therefore, all companies are legal entities of private law, but not every private legal entity is a company, as not any legal entity has all features of the company.

Summarizing the above-said, the company (corporation) is an independent commercial entity that has the rights of a legal entity and carries out its activities for profit. This definition of

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[60] Adriano, Elvia, "Natural persons, juridical persons and legal personhood," *Mexican Review Law* (2014): 108.
[61]"Цивільний кодекс України," Законодавство України, Accessed 1 March 2020, https://zakon.rada.gov.ua/laws/show/435-15.
[62] Alexander N. et al., "Sector Non-profit Organizations in the Management of Socio-Economic Systems," *Journal of Legal, Ethical and Regulatory Issues*, 20, 1 (2017), Accessed 2 March 2020, https://www.questia.com/library/journal/1P4-1987378733/sector-non-profit-organizations-in-the-management.

the company is generalized. In Ukraine, entrepreneurial companies and corporate enterprises are companies. Both the Civil and Economic Codes operate different terms in regard to a 'company', but under the same meaning.

Corporations are the form of legal entities characterized by the contractual corporate governance and legal personhood. Concerning other features of companies, they are common for all described countries. To be a company, entities need to have certain characteristics of their activity - exclusive business activities that are entrepreneurial in nature and the nature of the relationship (the share capital must be divided into shares that are vested by owners, which gives them the ability to participate in management affairs and the right to profit from its activities). Also, the main feature is 'limited liability' – the participants are not liable for companies' debts and vice versa. So, the company could be defined as an artificial person that is created under the law and separated from its members who support, own, manage its activities and are not responsible for its debts and obligations. All companies are legal entities, but not every legal entity is a company, as according to our research legal entities can operate not only as companies but also in other forms, for example, as non-profit organizations.

1.2.2. Distinction between a company and other commercial entities' forms

Generally speaking, there are three major types of business forms which allow conducting trade and commercial activity: (1) sole proprietorship (trader); (2) partnership and (3) corporation. Inside some categories of the specified entities there are several options.[63]

Sole proprietorship is a form of business that suggests control by exceptionally one owner. In order to establish sole proprietorships, an individual does not require getting a special legal document. Moreover, this form of business is not isolated from its owner. It means that the entrepreneur is completely liable for all debts of its business and its management. However, it should be specified that if the sole proprietorship is executed under the name, it must be filed to receive a name certificate.[64] According to Andersen, this form of business is easier in relation to paperwork. The regular operations of the sole proprietorship are organized informally and can be controlled by the owner's desires in subject with the legal and tax restrictions. This company requires paying taxes by specific dates. This company exercises unlimited liability that means the

[63] Robison, L., S. Hanson and R. Black, *Alternative forms of business organization* (November 13, 2013), Accessed 2 March 2020, https://biz.libretexts.org/Bookshelves/Finance/Book%3A_Financial_Management_for_Small_Businesses_-_Financial_Statements_and_Present_Value_Models_(Robinson_et_al.)/02%3A_Alternative_Forms_of_Business_Organizations.

[64] David Rodeck, "*How Successful Are Sole Proprietorships?"* Accessed 28 January 2020, https://smallbusiness.chron.com/successful-sole-proprietorships-24539.html.

liability for business' debts extends over the owner's investments into the company.[65] For example, if the sole proprietorship is unable to pay the debts and fulfill its obligations, the creditors are entitled to collect the debts from the personal assets which are not the part of the owner's business. This feature is the same in general and limited partnerships in regard to general partners.

Another form of commercial entities is *partnerships.* Partnerships are a form of business that requires two or more owners. There are several variations of partnership: (1) general partnership, (2) limited partnership and (3) limited liability partnership (LLP).[66] In general partnerships, all general partners of the company are liable for debts of business and all of them have the right to bind the partnership. In respect to the management aspect, usually, all partners are equal in rights, if otherwise is not agreed. The major feature of the general partnership is its non-transferability. In the case of one partner's death, the general partnership dissolves.[67]

A limited partnership is a form of business that requires one or more general partners and one or several limited partners. As it is explained by Robison, limited partners possess limited liability for debts and partnership itself, but they are passive investors, so limited partners do not take an active part in running the business.[68] Limited partners become liable for the debts only at the rate of their contributions. Limited partnerships are transferable business entities because general partners can be replaced in them.[69]

Limited liability partnership represents a form of business with legal personality that is usually governed by professionals, for example, lawyers or accountants. The partners here have unlimited liability for own decisions and acts, but not for the payment of debts or for obligations of the other partners.[70] It is one of the most popular forms in the USA and the UK.

The third major type of legal entity is the corporation. Corporation is interpreted as a legal entity that is separate and distinct from its owners. The key features of corporations are offered by Kenton: "A corporation is a legal entity that is separate and distinct from its owners. Corporations enjoy most of the rights and responsibilities that individuals possess: they can enter into contracts,

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[65] Thomas Andersen, "What form should a new business take?" *Williams, Birnberg & Andersen, LLP*, n.d..
[66] Robison, L., S. Hanson and R. Black, *Alternative forms of business organization* (November 13, 2013), Accessed 2 March 2020, https://biz.libretexts.org/Bookshelves/Finance/Book%3A_Financial_Management_for_Small_Businesses_-_Financial_Statements_and_Present_Value_Models_(Robinson_et_al.)/02%3A_Alternative_Forms_of_Business_Organizations.
[67] Ibid.
[68] Ibid.
[69] Lin, Lin and HY, Yeo, "Limited partnership: new business vehicle in People's Republic of China," Butterworths Journal of International Banking and Financial Law, 25, 2 (2010): 104.
[70] Robison, L., S. Hanson and R. Black, *Alternative forms of business organization* (November 13, 2013), Accessed 2 March 2020, https://biz.libretexts.org/Bookshelves/Finance/Book%3A_Financial_Management_for_Small_Businesses_-_Financial_Statements_and_Present_Value_Models_(Robinson_et_al.)/02%3A_Alternative_Forms_of_Business_Organizations.

loans and borrow money, sue and be sued, hire employees, own assets, and pay taxes. Some refer to it as a 'legal person'. […] An important element of a corporation is limited liability, which means that shareholders may take part in the profits through dividends and stock appreciation but are not personally liable for the company's debts".[71]

The Lithuanian Civil Code establishes the legal rules for the creation of companies, the formation of governing bodies, their competence, legal status, as well as the procedure for liquidation.[72] Also, the Law 'On Companies'[73] regulates these issues. Additionally, according to the Law 'On Companies' of the Republic of Lithuania, all companies operating in the territory of the republic have the status of legal entities. There are the following types of share capital corporations: closed joint–stock company (*uždaroji akcinė bendrovė* - UAB) and joint-stock company (*akcinė bendrovė* - AB). But quite often, in order to use terminology more understandable in Western countries, they are translated as *public limited companies* and *private limited companies*. And there are such alternatives as limited (KŪB - *komanditinė ūkinė bendrija*), general (TŪB - *tikroji ūkinė bendrija*) and small (MB - *mažoji bendrija*) partnerships.[74] They are all legal entities.

In Germany, general partnerships are related to the legal entities based on the German Commercial Code.[75] According to paragraph 105(1), the goal of general partnerships includes the establishment and regulation of the trade relations between partners. As stated by Wooldridge, "there are a considerable number of ordinary or general commercial (trade) partnerships in Germany, but this entity does not appear as popular as the private limited liability company (GmbH) at present. This is probably because many businesspeople currently fear the possible consequences of unlimited liability".[76] In Germany, *the general partnerships do not have their own legal status*.[77] Their status depends on the legal status of all partners. At the same time, a general partnership still remains a legal entity if it concerns to the liability of a company before the German Court. Partners working in general partnership in Germany have equal rights in

[71]Kenton, W., *Corporation* (2019), Accessed 29 January 2020, https://www.investopedia.com/terms/c/corporation.asp.
[72]"Civil Code of the Republic of Lithuania," *WIPO*, Accessed 28 January 2020, https://www.wipo.int/edocs/lexdocs/laws/en/lt/lt073en.pdf.
[73] "Law On Companies of the Republic of Lithuania," E-seimas, Accessed 16 February 2020, https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.106080/ijtiWHwizy.
[74] Bité, Virginijus, "Impact of EU Membership on regulation of Lithuanian close companies: enrichment or legal irritants?" quoted in The Consequences of Membership in the EU for new Member States – structural, political and economic changes, by Barbara Mielnik,101-109. E Publishing. Legal and Economic Digital Library. Faculty of Law, Administration and Economics of the University of Wroclaw (2017): 102.
[75]"Handelsgesetzbuch," TRANS-Lex, Accessed 12 February 2020, https://www.trans-lex.org/600200/_/german-commercial-code/.
[76] Wooldridge, F., *The general partnership in German law*, (Amicus Curiae, 2009), 11.
[77] *German Business Law*. n.d., Accessed 26 January 2020, http://www.germanbusinesslaw.de/.

making managerial decisions and acting on the behalf of a company.[78] In Germany, the structure of a partnership is frequently more flexible than the structure of a corporation and its incorporation less formal. As opposed to corporations, the partnership itself is not a legal entity but partly dealt with as if it was.[79] "In partnerships limited by shares (*Kommanditgesellschaft auf Aktien, KGaA*), at least one partner must have unlimited liability towards the creditors of the company (the general partner, *Komplementär*). The limited partners (*Kommanditaktionäre*) participate in the registered share capital of the partnership in the same way as shareholders in an LLC, without being personally liable for the liabilities of the company. […] Since any legal person (corporation or partnership) may be the general partner, this legal form makes it possible to limit the personal liability of the investors. However, there are far fewer partnerships limited by shares than corporations and general partnerships in Germany".[80]

In some European countries, there are separate 'trade (commercial) partnerships' (general and limited partnership) and 'economic companies' (joint-stock company, limited liability company and additional liability company). The Belarusian scientist Funk explains this division as follows: the use of two terms to define these types of companies is based on the old German division of partnerships into 'personal (individual) partnerships' (*Personelgesellschaften*) and 'capital' ones (*Kapitalgessellschaften*), however, the scientist notes that such separation is artificial enough, therefore neither the legislator of Ukraine nor the legislator of the European Union has taken care to fix the differences of one term from another.[81]

In Ukrainian law, there is a single legal term – "economic companies", and the following types are distinguished: joint-stock company, limited liability company, additional liability company, general and limited partnerships.[82]

The legal status of members of general partnerships and general members of limited partnerships is, first and foremost, influenced by the fact that, according to the current legislation of Ukraine, these companies are recognized as legal entities. On the one hand, a legal entity exists irrespective of the composition of the participants, has some autonomy from them, and can exist forever; has an independent will that does not coincide with the will of individual participants; on the other – the legal entity's property is separated from the participants' property; has the right to

[78]Lawyers Germany, "*General Partnerships in Germany"* (2015), Accessed 26 February 2020, https://www.lawyersgermany.com/general-partnerships-in-germany.
[79] Warth & Klein Grant Thornton, "Doing Business in Germany," (2017), 13.
[80]Hogan Lovells, "Doing Business in Germany," Accessed 26 February 2020, https://www.hoganlovells.com/~/media/germany_folder-for-german-team/broschueren/brochure_doing_business_in_germany.pdf
[81] Функ Я. И., *Виды хозяйственных обществ и товариществ в праве Республики Беларусь*, (Минск: Ред. журн. «Промышленно-торговое право», 2004), 34.
[82] Костур О. Д., "Особливості правового статусу аграрних госпордарських товариств в Україна та країнах СНД," *Вісник Ужгородського Національного Університету* (2014): 449.

enter into agreements not prohibited by law on their own behalf; can act as a plaintiff and defendant in the judicial authorities on its own behalf.[83] General and limited partnerships operate on the basis of a founding agreement, except for a limited partnership with one general partner, which is their sole constituent document.[84]

Therefore, the Law of Ukraine 'On Economic Companies' (part 3 article 1) stipulates that general and limited partnership as well as limited liability, additional liability and joint-stock companies are covered by the notion 'economic companies'. But a Ukrainian scholar, S. Kravchenko states that general and limited partnerships are not companies because they do not have appropriate corporate bodies, and the relationship between the parties is primarily contractual. Accordingly, and corporate relations in such partnerships do not arise.[85] P. Stepanov, another Ukrainian scholar, also does not recognize general and limited partnerships as companies. In his opinion, general and limited partnerships are a transition form from a simple partnership to a corporation.[86] We agree with both scholars. Moreover, general partnerships do not have such features of the company as limited liability of members as well as general partners in limited partnerships. Generally, participants conduct business in common. So, it is appropriate to distinguish these types of business forms because of distinctive peculiarities (despite the fact that companies and partnerships are legal entities). In addition, it will be wise to abolish the Law 'On Economic Companies', which was adopted in 1991, and approve a new legal act for the legal regulation of general and limited partnerships since there are special laws regulating the activities of economic companies such as ALCs, LLCs and JSCs which we will analyze further.

In closing, it is worth mentioning that a sole trader is an alternative to a company due to its unlimited liability and a form of an individual. LLP is a common alternative in the UK and the USA. It has limited liability and legal personality, that's why it could be considered as a modified company. Also, legislation of Ukraine and EU are different in the status of 'general and limited partnerships'. According to Ukrainian legislation, the company includes partnerships because of the legislative prescription. In EU countries, partnerships are an option another than the company. They are characterized by the contractual basis and absence of legal personality (this feature refers to not all EU countries). Also, the members carry out business in common. General partners have unlimited liability in general partnership while limited partners in limited partnerships are limited liable. To approximate the legal regulation of economic companies in Ukraine to EU

[83] Юркевич Ю. М.,"Правовий статус учасників повних товариств та повних учасників командитних товариств за законодавством України," *Науковий вісник Херсонського державного університету* (2015): 118.
[84] Ibid,19.
[85] Кравченко С. С., "Юридична природа прав учасників господарських товариств" (автореф. дис., *Ін-т держави і права ім. В. М. Корецького*, 2007), 10.
[86] Степанов П.В., *Корпорации в российском гражданском праве №4* (Москва, 1999), 11–15.

Member States' legislation, it is necessary to distinguish the partnerships (general and limited) from the term 'economic companies', consider them as alternatives to companies because of different features and adopt the new legal act that will regulate their status.

2. TYPOLOGY OF COMPANIES IN THE BUSINESS MARKET

2.1. The main criteria for classifying companies in the legal doctrine and legislation

Classification of the types of companies that is grouping them according to certain characteristics is very important in order to ensure a unified state accounting and identification of companies. Grouping will help to obtain statistical information about the number of entities in regions, the types of their economic activity, organizational and legal forms of economic activity in an official way, as well as continuous and selective surveys, interaction with the information systems of other governmental authorities.[87] However, there is a diversity of approaches to classifying the types of companies that causes unnecessary confusion, interferes with the formation of the fundamental knowledge and has an influence on the practical field. The main criteria for classification are introduced below.

2.1.1. Differentiation by the size of companies

The classification of EU companies is formed not only taking into account legislative requirements, but also bearing in mind accounting goals, which result in the differentiation of companies by their size, including several criteria. It is appropriate to analyze the typology of EU companies on the basis of the requirements of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013. The Directive 2013/34/EU classifies companies into micro, small, medium and large.[88] There are three criteria for this: balance sheet currency; net turnover; average annual number of employees (Table 2.1). Also, this classification has practical manifestation due to the fact that accounting is one of the main aspects of companies' operation.

Table 2.1. Criteria under the Directive 2013/34 / EU:[89]

Indicator	Company categories *				
	Micro company	Small company		Medium company	Large company
		Recommended values	Upper border**		
Balance sheet currency, € million	≤0,35	≤4	≤6	≤20	>20

[87] Дзюба С. Г.,"Правові основи систематики видів підприємств," *Зовнішня торгівля: економіка, фінанси, право* (2014): 156.

[88] "Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings," EUR-Lex, Accessed 11 March 2020, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013L0034

[89] Zubilevych, S.,"Oblikova Dyrektyva YeS, yii vplyv na sklad i zmist zvitiv yevropeiskykh kompanii ta perspektyvy dlia Ukrainy" [EU Accounting Directive, its impact on the structure and content of the reports of European companies and prospects for Ukraine], *Bukhhalterskyioblikiaudyt*, 7 (2014): 5.

Net turnover, € million	≤0,7	≤8	≤12	≤40	>40
Average number of employees during the financial year, persons	≤10	≤50	-	≤250	>250

* If two of the three criteria are exceeded, the company will move from one category to another within two financial years.

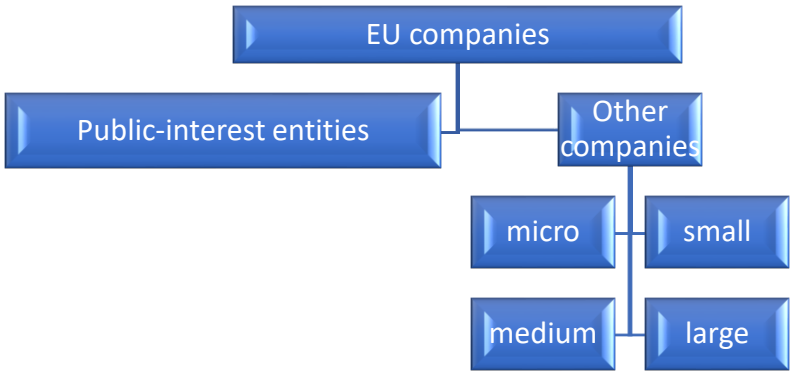
** An EU Member State has the right in its legislation for small companies to increase the recommended values to the maximum possible.

The classification of companies is carried out in order to establish the requirements for the composition and content of their annual reporting. However, there are companies for which the criteria considered are not relevant, they include public-interest entities. These include:

- companies whose securities are admitted to trading on the regulated market of any Member State;
- credit institutions;
- insurance organizations;
- other companies, for example, because of the nature of the business, their size or the number of employees. The specific list of such entities is governed by the laws of the EU Member States[90].

In Figure, a schematic presentation of the classification of companies in EU Member States is based on the principles of the Directive 2013/34/EU, which are made in accordance with the requirements for the composition and content of the reports[91].

Figure No. 1 Schematic presentation of the classification of companies in EU Member States on the basis of the principles of the Directive 2013/34/EU:



[90] Ibid.

[91] "Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings," EUR-Lex, Accessed 11 March 2020, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013L0034

The composition of the financial statements of small companies cannot be altered by the law of EU Member State. However, medium and large companies of public interest have the right to introduce other financial statements.[92]

In relation to the principles of the Directive 2013/34/EU, a requirement is made for the classification not only of individual companies, but also of groups of companies (Table 2.2.).

Table 2.2. Criteria for groups of companies under the Directive 2013/34/EU:[93]

Indicator*	Small groups of companies		Medium groups of companies	Large groups of companies
	Recommended values	Upper border		
Balance sheet currency, € million	≤4	≤6	≤20	>20
Net turnover, € million	≤8	≤12	≤40	>40
Average number of employees during the financial year, persons	≤50	-	≤250	>250

To add, small-group parent companies are exempt from the obligation to prepare consolidated financial statements, except where any subsidiary is a public interest entity. Such exemption is not currently used in Greece, Estonia and Romania[94].

The Directive also allows at the national level to exempt medium-sized companies from the obligation to prepare consolidated financial statements (except where any subsidiary of the group is a matter of public interest).

For 2020, the level of corporate relations regulation in Ukraine cannot be considered perfect and effective.

The analysis of the current legislation of Ukraine showed that, as of 2020, the division of companies is submitted in accordance with the definition of categories of economic entities (‘subjects of management’ – ‘*суб’єкти господарювання*’ in the EC). In Ukraine, these positions

[92] Zubilevych, S.,"Oblikova Dyrektyva YeS, yii vplyv na sklad i zmist zvitiv yevropeiskykh kompanii ta perspektyvy dlia Ukrainy" [Account the EU Directive, its impact on the structure and content of the reports of European companies and prospects for Ukraine], *Bukhhalterskyioblikiaudyt*, 7 (2014): 6.
[93] Ibid.
[94] Holov S., “Rehuliuvannia bukhhalterskoho obliku i audytu v YeS ta vyklyky dlia Ukrainy,*” Bukhhalterskyi oblik i audyt*,10 (2014): 3-13.

are set out in Part 3 of article 55 the Economic Code of Ukraine.[95] The main criteria of this division are set out in table 2.3.

Table 2.3. Categories of economic entities ('subjects of management') in Ukraine in accordance with the provisions of the Economic Code of Ukraine:[96]

Indicator	Categories			
	Micro	Small	Medium-sized	Large
Annual income from any activity, € million	≤2	≤10	≤50	>50
Average number of employees for the reporting period (calendar year, persons)	≤10	≤50	≤250	>250

Comparing the data presented in tables 2.1 and 2.3. there is a significant discrepancy between the number of criteria used to classify companies in Ukraine under the EC (two versus three in the EU) and the values of annual income for micro, medium and large enterprises to those imposed by the Directive 2013/34/EU.

Nevertheless, on 5 October 2017, the Law of Ukraine 'On Amending the Law of Ukraine 'On Accounting and Financial Reporting in Ukraine'[97] concerning the improvement of certain provisions' was adopted.[98] According to part II of ending and transitional provisions, it took effect on 1 January 2018 (some provisions became effective on 1 January 2019) and provided the classification of enterprises with the same categories and indicators prescribed by the Directive 2013/34/EU. So, Ukraine has finally harmonized this classification in the line with EU law, but which has differences in regard to the classification under the Economic Code. We have to apply the above-mentioned Law as a special act in the sphere of accounting and financial reporting in Ukraine.

[95] "Господарський кодекс України," Законодавство України, Accessed 1 March 2020, https://zakon.rada.gov.ua/laws/show/436-15

[96] Zubilevych, S.,"Oblikova Dyrektyva YeS, yii vplyv na sklad i zmist zvitiv yevropeiskykh kompanii ta perspektyvy dlia Ukrainy" [Account the EU Directive, its impact on the structure and content of the reports of European companies and prospects for Ukraine], *Bukhhalterskyioblikiaudyt*, 7 (2014): 6.

[97] "Про внесення змін до Закону України "Про бухгалтерський облік та фінансову звітність в Україні" щодо удосконалення деяких положень," Законодавство України, Accessed 11 March 2020, https://zakon.rada.gov.ua/laws/show/2164-19

[98] "Про бухгалтерський облік та фінансову звітність в Україні," Законодавство України, Accessed 11 March 2020, https://zakon.rada.gov.ua/laws/show/996-14

Also, Ukrainian legislation introduces the 'public-interest companies' as well. For instance, the Law of Ukraine 'On Accounting and Financial Reporting in Ukraine', inter alia, the article 1 defines that they are "enterprises - issuers of securities whose securities are admitted to trading on the stock exchanges or in respect of securities of which the public offer has been made, banks, insurers, non-state pension funds, other financial institutions (except for other financial institutions and non-state pension funds belonging to micro-enterprises and small enterprises) and enterprises that, according to this Law, belong to large enterprises".

In the EU, the concept of SMEs (small and medium-sized enterprises) has a special place, but it should be noted that, in EU countries, state laws approve their rules of registration and company names.

Thus, most EU Member States have their own criteria for classifying businesses as small and medium-sized businesses. There is no definition of a medium-sized business in Sweden. Small businesses include companies with fewer than 50 employees, annual revenue of SEK 50 million (EUR 5.31 million) and a balance sheet currency of SEK 25 million (EUR 2.66 million). This definition is a consequence of an economic system that has many small businesses operating in the services and new technologies sectors[99].

Norway is characterized by a division into small, medium and large companies, which is independent of revenue or balance sheet currency. Small business is considered to be one that has from 1 to 19 employees, medium - from 20 to 99 workers, and large - more than 100 employees.[100]

It is worth mentioning that the above-mentioned SMEs were costly and difficult to be operated across borders and a small number of them invested abroad. It was caused by a lot of factors, for example, the diversity of national company law included legal and administrative requirements. The costs for legal advice and translation were likely to be particularly high for groups of companies since any SME parent company had difficulties with requirements for each subsidiary it tried to create in another MS.[101]

"The economic role of SMEs has given a fresh impetus to business organization law reforms. Over the past decade, SMEs have attracted increased attention in recognition of their major employment-generating abilities and their contribution to innovation and economic

[99] Марущак Я. С., "Нові організаційно-правові форми товариств в Європейському Союзі," *Юридичний науковий електронний журнал*, 3 (2017): 48.
[100] Ibid.
[101]"Impact Assessment Accompanying the document Proposals for a Directive of the European Parliament and of the Council on single-member private limited liability companies," EUR-Lex, Accessed 25 March 2020, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014SC0124&from=EN.

growth."[102] In order to create appropriate conditions for their function, policymakers at both the international and national levels should have found the most efficient business forms of companies.

The European Commission was trying to create an appropriate environment for companies, especially SMEs. "In particular, a number of SME-relevant actions were set out in the Communication on "An Integrated Industrial Policy for the Globalization Era", one of the Europe 2020's seven key flagship initiatives. The review of the Small Business Act and the Single Market Acts I and II[103] also included actions focused on improving access to finance and making further efforts to reduce the costs of doing business in Europe."[104]

Attempts were made by the Commission to adopt proposals for a European Private Company Statute (SPE). After the withdrawal of these proposals, the Commission continued to elaborate measures to provide flexible and simple rules across the EU appropriate to the needs of SMEs. The main focus was, in particular, on obstacles in relation to the establishment and operation of subsidiaries of SMEs abroad.[105]

So, there were suggestions concerning the establishment of national company law forms for single- members private LLCs with harmonized conditions concerning the registration process and minimum capital. "The costs of implementing the proposed rules at national level depend on the existing level of minimum capital and the digitalization of national company registration processes. For many MS that already have direct on-line registration procedures and minimum capital requirements of €1, the costs are low." […] As a result, nowadays, there are such single-members private LLCs as '*société privée à responsabilité limitée unipersonnelle*' in Belgium, '*еднолично дружество с ограничена отговорност*' in Bulgaria, '*entreprise unipersonnelle à responsabilité limitée*' in France, '*società a responsabilità limitata unipersonale*' in Italy, etc.[106]

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[102] Vermeulen, E. P. M., *The Evolution of Legal Business Forms in Europe and the United States: Venture Capital, Joint Venture and Partnership Structures* (The Hague: Kluwer Law International, 2003), 18-19, https://books.google.lt/books?id=rGbN_R9PmgC&pg=PP1&lpg=PP1&dq=Vermeulen+The+Evolution+of+Legal+Business+Forms+in+Europe+and+the+United+States:+Venture+Capital,+Joint+Venture+and+Partnership+Structures&source=bl&ots=6grtqasUhr&sig=ACfU3U1gSxDCA8dMaiS2DBA0P1dASyphw&hl=lt&sa=X&ved=2ahUKEwjVyt7lga7oAhXwAxAIHYpLDIYQ6AEwAnoECA4QAQ#v=onepage&q=Vermeulen%20The%20Evolution%20of%20Legal%20Business%20Forms%20in%20Europe%20and%20the%20United%20States%3A%20Venture%20Capital%2C%20Joint%20Venture%20and%20Partnership%20Structures&f=false.

[103] COM(2010) 614.; COM(2011) 78, 23.2.2011.; COM(2011) 206, 13.4.2011; COM(2012) 573, 3.10.2012. quoted in "Impact Assessment Accompanying the document Proposals for a Directive of the European Parliament and of the Council on single-member private limited liability companies," EUR-Lex, Accessed 25 March 2020, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014SC0124&from=EN.

[104] "Impact Assessment Accompanying the document Proposals for a Directive of the European Parliament and of the Council on single-member private limited liability companies," EUR-Lex, Accessed 25 March 2020, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014SC0124&from=EN.

[105] Ibid.

[106] Ibid.

In the course of the reform of EU corporate law, the Twelfth Directive[107] and in the subsequent Directive 2009/102/EC[108], fixed the possibility of creating a joint-stock company with one participant (as well as limited liability companies). The peculiarity of such a joint-stock company is that it is subject to the rules applicable to a limited liability company with one participant. This rule was designed to create additional guarantees for creditors.

On the whole, the aim of Directive 2013/34/EU is to achieve a high level of harmonization of the composition and content of European companies' reports, while reducing the administrative burden of reporting to small businesses. The implementation of the Directive involves the classification of companies and groups by the relevant criteria and its close relationship with the volume of financial statements. The main categories are public interest entities and other companies, which are divided into micro, small, medium and large, based on three criteria: balance sheet currencies; net turnover; average annual number of employees. There is a significant discrepancy between the number of criteria used to classify companies in Ukraine under the Economic Code (two versus three in the EU) and the values of annual income for micro, small, medium and large enterprises to those imposed by the Directive 2013/34/EU. However, the Law of Ukraine 'On Amending the Law of Ukraine 'On Accounting and Financial Reporting in Ukraine' concerning the improvement of certain provisions' put this classification in the line with EU law and has a priority over the Economic Code of Ukraine in the application.

In Ukraine, the requirements for a corporate report-out-of-government entity apply only to public interest entities that are prescribed in the Law of Ukraine 'On Accounting and Financial Reporting in Ukraine'.

Besides, SMEs take a special place in the national corporate law of EU Member States. Most EU countries have their own criteria for classifying businesses as SMEs. Moreover, the appearance of single-members private LLCs has led to the creation of the harmonized conditions for SMEs operation across borders.

2.1.2. Classification of companies based on the mode of incorporation

There are no precise criteria for the classification of companies. Scholars highlight various criteria in different countries. National legislative acts provide for own categorizing. One of the criteria is the mode of incorporation that has been become popular in common law countries. The

[107] "Twelfth Council Company Law Directive 89/667/EEC of 21 December 1989 on single-member private limited-liability companies," EUR-Lex, Acessed 1 March 2020, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31989L0667.

[108] "Directive 2009/102/EC of the European Parliament and of the Council of 16 September 2009 in the area of company law on single-member private limited liability companies," EUR-Lex, Accessed 7 February 2020, https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32009L0102.

main reason for such classification is to maintain the homogeneity and to analyze the current situation on the contemporary incorporation of companies in Europe in the present-day conditions.

The incorporation is a legal process concerning the formation of a new company. The common law system defines such companies on the mode of incorporation as chartered, statutory and registered companies. Chartered companies were one of the first created companies. "A Company is incorporated by a charter granted by Monarch and is regulated by that charter. The powers and nature of the business of a chartered company are defined by the charter which incorporates it. A chartered company has wide powers. It can deal with its property and bind itself to any contracts that any ordinary person can. In the case when the company deviates from its business as prescribed by the charter, the Sovereign can annul the latter and close the company."[109] Examples of chartered companies are East India Company in 1600; German East Africa Company in 1884; *Companhia de Moçambique* in 1888, etc.

In addition, "the state's veto power over incorporation can be traced to the incorporation of state-chartered companies in the Middle Ages. For companies to be recognized as independent legal entities and for them to freely sell their shares, they required state approval (concession)."[110]

A statutory company is created and governed by the provisions of the special legislative act. This company does not have any memorandum or articles of association. "They derive their powers from the Acts constituting them and enjoy certain powers that companies incorporated under the Companies Act have."[111] A good example is the Industrial Finance Corporation of India (IFCI).

The last kind of company is registered companies. The company starts existing in the event of the registration of certain documents under the company acts. Such companies are considered as a company only when they are registered, and a certificate of incorporation has been issued by the Registrar. This is the common mode of incorporating a company in Europe.

As an example, "the shift from the concession to the free registration system in France in 1867 was induced by the expansion of activities of English companies on the continent. Germany soon followed suit with an amendment of the general commercial code for all of Germany in 1870."[112] The evolution of the principle of free incorporation was different in the United States

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[109]Manjeet Sahu, "Classification of companies," *SSRN Electronic Journal* (2012): 3, https://www.researchgate.net/publication/272300622_Classification_of_Companies.

[110] Pistor, K. *et al*., "The Evolution of Corporate Law: a Cross-Country Comparison," *The University of Pennsylvania Journal of International Economic Law* 23, 4 (2002): 13, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=419881.

[111]Manjeet Sahu, "Classification of companies," *SSRN Electronic Journal* (2012): 3, https://www.researchgate.net/publication/272300622_Classification_of_Companies.

[112] Pistor, K. *et al*., "The Evolution of Corporate Law: a Cross-Country Comparison," *The University of Pennsylvania Journal of International Economic Law* 23, 4 (2002): 14, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=419881.

(without special state confirmation). "When different states began to enact general corporate laws, most companies were incorporated by a special bill adopted by parliament."[113] Therefore, States adopted corporate legal acts and allowed companies to be registered under these laws.

When establishing the registration method, a legal entity (inter alia, company) is considered to be created since its registration by the authorized state body. The registration procedure for the creation of commercial and sometimes non-commercial legal entities is provided in almost all foreign countries. It is the registration procedure that creates the majority of legal entities (including companies) in Ukraine.

Taking into account the fact that companies may operate at national and supranational levels in the EU, they have some special features of the mode of incorporation. Generally, legal entities (especially, companies) are incorporated according to national law, operate and locate throughout the country with the possibility to create branches, subsidiaries, etc. in other Member States. Every country provides own forms of companies and the precise procedure of incorporation. Also, there are supranational corporate forms in the EU that have special rules for the registration and operate in a different way than national legal entities. First of all, their status is managed by the Council Regulations, that is EU law, not national legislation of one of EU Member States (but matters not provided for in the Regulation shall be governed by the law of the country in which the registration of the legal entity was completed and in which it has its legal address - it is prescribed in the article 2 of the Council Regulation on EEIG [114]). Secondly, the mode of incorporation has own specific features. For example, the supranational corporate form of a legal entity as European Economic Interesting Grouping is formed through the conclusion of a contract between its members and its subsequent registration in a Member State in which it has an official address (articles 1 and 6 of the Council Regulation on EEIG).[115] Participants in the EEIG can be both legal entities and individuals (article 4 of the Council Regulation on EEIG). In view of the supranational nature of this legal entity (encompassing several states), it is necessary for at least two of its members to be registered in different Member States. Moreover, the legal address of the grouping must be in the territory of the European Union. The EEIG may transfer its location to another Member State in compliance with the minimum formalities, which distinguishes this organizational form from classical legal entities whose cross-border movement is difficult and sometimes impossible.

[113] Russel Carpenter Larcom, THE DELAWARE CORPORATION, (1937) at 2. New York was the first state to enact a general corporate law as early as 1811. See "An Act Relative to Incorporations for ManufacturingPurposes", of 22 March 1811, NY Laws, 34th Session (1811) chap LXCII at 151, quoted in Pistor, K. *et al.*, "The Evolution of Corporate Law: a Cross-Country Comparison," *The University of Pennsylvania Journal of International Economic Law* 23, 4 (2002): 14, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=419881.

[114] "Council Regulation № 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG)," EUR-Lex, Accessed 20 April 2020, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31985R2137&from=EN.

[115] Ibid.

Information on the creation or dissolution of any EEIG, other than national publication, shall be published in the Official Journal of the European Union (article 11 of the Council Regulation on EEIG).

An example of supranational company is a European Company (SE). The essence of this company we will view in subchapter 2.2.2. It is worth mentioning that the registration of such a company is to be published in the Official Journal of the European Union. There is no official union-wide register, as they are registered in the nation in which their corporate seats are located.[116] Companies registered in Member States can generally operate freely in Europe today without the bureaucratic delays they have previously encountered. Instead of having several subsidiaries or branches registered in Member States, the European Company solve this inconvenience. The free movement regime in the European Union leads to the need to create a mechanism by which businesses can easily move around Europe. A European Company incorporated in Estonia can conduct business in the UK, for example, without the need to register a branch or subsidiary in the UK.

Thus, we could indicate that there is a division into national and supranational companies in the EU that have some distinctive peculiarities of incorporation as well as operation.

The key disputes of the development of EU company law heard by the ECJ concerning the initial choice of jurisdiction to set up a company and the subsequent transfer of the company's central management to another country that, however, was not accompanied by the transfer of the company's registered location.[117]

For example, in the case of *Centros Ltd v Erhvervs-selskabsstyrelsen*[118] on an attempt to evade the requirements of the Danish minimum share capital by registering a company in the UK, with a subsequent business in Denmark on behalf of a British company, one rule was stipulated that the company is able to operate in another Member State through a branch, subsidiary or agency. Another case is *Camera van Koophandel en Fabrieken voor Amsterdam v Inspire Art Ltd.*[119] The case concerned some further aspects of the same problem as in the previous case, but the Netherlands was the place of business. In addition, this case obliged Member States not to impose the same duties on the branch of another Member State's company as on own incorporated companies.

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[116] "Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE)," EUR-Lex, Accessed 11 March 2020, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32001R2157.

[117] Davies, P.L. et al., *Gower and Davies' Principles of Modern Company Law* (London: Sweet&Maxwel, 2008),143.

[118] "Centros Ltd v Erhvervs-selskabsstyrelsen, Case C-212/97," EUR-Lex, Accessed 30 March 2020, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61997CJ0212

[119] "Camera van Koophandel en Fabrieken voor Amsterdam v Inspire Art Ltd, Case C-167/01," EUR-Lex, Accessed 30 March 2020, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62001CJ0167

The Court's decision in all the cases referred to the fact that the Court had taken into account the real location of the companies. Thus, Article 69 of the Statute for the European Company is based on court decisions and allows a company to have its registered office in one country and a central governing body in another.[120]

"A common feature for all European jurisdictions is the register of incorporated limited companies. Such a register is sometimes kept by the Chamber of Commerce but in most cases by another body (e.g. Companies House in England) despite the co-existence of a Chamber of Commerce."[121] Incorporation procedure in England requires the submission of the Articles of Association, but in addition, it demands registration of some other documents, for example, Declaration of Compliance and Statement by the First Directors and Secretary, information about the registered office of a company and payment of the fees, etc. (part 7 of Companies Act 2006).[122]

In some countries, registration is conducted by both the public registrar and the Chamber of Commerce. In Ukraine, companies are registered in the United State Register of Legal Entities, Individual Entrepreneurs and Public Organizations of Ukraine.

In the era of global transparency, more and more information about companies and their owners fall into various registers and become available to any Internet user. Each country or region has its own reporting rules and requirements for the provision of certain information to be added to the registers. These requirements also differ depending on the legal form of the company. European business registers are quite comprehensive and accessible, as the European Union is one of the main promoters of global tax transparency.[123]

On 13 June 2012, the European Parliament adopted the Directive (2012/17/EU) aimed at establishing a system for the integration of commercial registers. The Directive emphasizes the need to create a common standard for combining business registers[124].

The leading codified act in the field of EU corporate law is the Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification)[125]. In accordance with the last Directive, companies and their branches

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[120] "Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE)," EUR-Lex, Accessed 11 March 2020, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32001R2157.

[121] "Company incorporation in Europe," European Law firm, Accessed 22 March 2020, https://www.european-law-firm.com/guide/incorporating-a-limited-company-in-europe2017.pdf

[122] "Companies Act 2006," Legislation – Gov, Accessed 11 April 2020, http://www.legislation.gov.uk/ukpga/2006/46/contents

[123] Ibid.

[124] "Directive 2012/17/EU of the European Parliament and of the Council of 13 June 2012 amending Council Directive 89/666/EEC and Directives 2005/56/EC and 2009/101/EC of the European Parliament and of the Council as regards the interconnection of central, commercial and companies register," EUR-Lex, Accessed 22 March 2020, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012L0017.

[125] "Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law," EUR-Lex, Accessed 9 February 2020, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017L1132.

opened in other EU Member States must have a unique identifier that allows them to be uniquely identified within the European Union. The identifier is intended to be used for communication between registers through the system of interconnection of registers.[126]

As a result, the Directive regulates the general provisions on the creation, registration and declaration of nullity of a limited liability company; the procedure for entering data on companies with limited liability in public registers, the amount of data entered in such registers and the exchange of public data between different public registers; the law applicable to the branches and representative offices of limited liability companies opened in a Member State other than the country of incorporation, and also if such branches and representative offices are opened in a country which is not governed by the EU law; standardized capital requirements for limited liability companies; the procedure for the merger and separation of limited liability companies.

Multiple-member companies are also considered in the Directive that has significance when national laws of an EU Member State require a company to be formed by more than one member.[127]

Thus, the criterion of the mode of incorporation is used in common law countries under which scholars define chartered, statutory and registered companies. At present, the company is understood as a registered entity and could be divided into national and supranational types (SE as a form of supranational company) in EU countries.

We have analyzed, according to the case law, that a company can have its registered office in one country and a central governing body in another as well as it could be incorporated in one country and conduct a business through branches, subsidiaries and agencies in another. The establishment of companies is subjected to certain procedures of incorporation accepted in certain jurisdictions. It has been established that the foundation of companies is based on the mode of incorporation. It is up to every country to choose what the information should be placed into the register. Nevertheless, the EU is one of the main promoters of global tax transparency. That is why there were steps to create a common standard for combining business registers, especially with regard to limited liability companies.

2.2. Public and private companies: distinctive rules

The main typology defined in the legislation and legal doctrine of all countries is a division into private (close) and public (open) companies. In Ukraine and EU Member States' (but

[126] Марущак Я. С., "Нові організаційно-правові форми товариств в Європейському Союзі," *Юридичний науковий електронний журнал*, 3 (2017): 48.
[127] Ibid.

not in all cases) law, the term “public company” is used to refer to JSCs and the term “private company” usually means LLCs.

Before reform 2017, bearing shares transferability and possibilities to trade them on the stock exchange in mind, private companies were limited liability companies (‘*товариства з обмеженою відповідальністю*’) and private joint-stock companies (‘*приватні акціонерні товариства*’), public companies were public joint-stock companies (‘*публічні акціонерні товариства*’) in Ukraine. Nowadays, LLCs are private companies (they will be analyzed in the next Chapter) while public and private JSCs are public companies in Ukraine under the notion ‘private and public companies’ in EU Member States. So, we have conducted a comparative analysis concerning the distinction between public and private companies in EU countries.

Also, in this paragraph it is necessary to review the legal regulation of private and public joint-stock companies in the Law of Ukraine ‘On Joint-Stock Companies’ and determine the amendments after reforms that positively affected on understanding the distinctive features of the public and private companies in Ukrainian legislation.

2.2.1. Legal Regulation in the Law of Ukraine ‘On Joint-Stock Companies’ before and after reform 2017

It should be noted that Ukraine's corporate law legislation has been significantly reformed recently. For a long time, the norms adopted in the 1990s that did not meet the needs of the market were in force. Business representatives have repeatedly stated that one of the main obstacles to its development is the imperfection of corporate law[128].

The aim was to make the investment climate in Ukraine more attractive by facilitating its business activities, improving corporate governance and implementing certain legal institutions specific to jurisdictions in which the corporate law field is well developed. [129] It all began with the long-awaited adoption of the Law of Ukraine ‘On Joint-Stock Companies’ on 17 September 2008[130], which became the basis for a radical reform of the system of legal regulation of joint-stock companies. The law provided an opportunity to solve urgent corporate problems on the basis of a direct profile law and aimed to minimize the occurrence of corporate conflicts.

[128]Бершадський А.О. та Юрчишена, Л.В.,“Акціонерні товариства: тенденції, проблеми функціонування та дивідендна політика,“ *Східна Європа: економіка, бізнес та управління*, 3 (2017): 95.
[129] “Development of Corporate Governance in Ukraine: Legislation and Practices,” Springer, Accessed 28 February 2020**,** https://link.springer.com/chapter/10.1007/978-3-030-39504-9_13.
[130]“Про акціонерні товариства," Законодавство України, Accessed 28 February 2020, https://zakon.rada.gov.ua/laws/show/514-17.

On 22 July 2014, the National Commission on Securities and Stock Market adopted Decision No. 955 'On Approval of the Principles of Corporate Governance'.[131] At this stage, there was a problem of non-compliance with the requirements in the legal regulation of the activities of companies in Ukraine and the European Community.

Under the Ukrainian Law 'On Joint-Stock Companies', JSC can be understood as "an economic company, which share capital is divided into the established quantity of shares of equal per value, corporate rights of which are certified by the shares".[132] The Law of Ukraine 'On JSCs' defines the procedures of JSC's creation and procedures of activity. This Law determines the legal status, rights and responsibilities of shareholders. In addition, the Law regulates the activities of the JSC, namely: the order of shares alienation of a joint-stock company; increase or decrease of the share capital; issues of securities, their payment; payment of dividends; volumes and methods of disclosure on the stock exchange and annual regular volumes of information; suspension and termination of an activity; concept and functional characteristics of the governing bodies such as general meeting, supervisory board, executive body, audit committee and the rest.

Two main types of JSC are distinguished as private and public which earlier were called close and open before the enactment of the Law of Ukraine 'On JSCs'. Before amendments of 2015 and 2017, they had the following distinctive features:

> Article 5. Types of joint-stock companies
> 1. There shall be public and private joint-stock companies. There shall be no more than 100 shareholders in a private JSC.
> 2. A public JSC may perform public and private placement of shares. A private JSC shall perform only private placement of shares. If the general meeting of a private joint-stock company decides to perform public placement of shares, the articles of association shall be amended accordingly, including a change of the company type from a private company to a public one. Changing the company type from private to public shall not be considered its transformation.[133]

Based on a paper "Private and Public Companies under Ukrainian Laws: Notion and Types" written by I. Romashchenko[134], the distinctive features of private and public JSC were that public JSCs could make a public offer and sell shares on the stock exchange in contrary with private JSCs and they differentiated between each other in numbers of shareholders (no more than 100 shareholders in private JSCs). Private companies, thus, included limited liability and private joint-

[131]"On Approval of the Principles of Corporate Governance," OSCE, Accessed 28 February 2020, https://www.osce.org/ru/pc/71420.
[132]"Про акціонерні товариства," Законодавство України, Accessed 28 February 2020, https://zakon.rada.gov.ua/laws/show/514-17.
[133]"Про акціонерні товариства," Законодавство України, Accessed 28 February 2020, https://zakon.rada.gov.ua/laws/show/514-17.
[134] Romashchenko, I., "Private and Public Companies under Ukrainian Laws: Notion and Types," *Taras Shevchenko National University of Kyiv*, (2015): 7.

stock companies. Public companies were public joint-stock companies.[135] Nowadays, the criterion to distinguish these types of companies by the number of participants is abolished by the Law 'On Amending Certain Legislative Acts of Ukraine on Protection of Investors' that was adopted on 7 April 2015 and became effective on 1 May 2016.[136] Thus, before this date, "*only public JSCs may have shares traded on a stock exchange and may have more than 100 shareholders. If a private JSC wishes to have more than 100 shareholders and/or to have its shares traded on a stock exchange, it must be converted into a public JSC*, […] ("and after the adoption of the said-above Law"), *both public and private JSCs may have more than 100 shareholders. Only public JSCs may have their shares traded on a stock exchange*."[137] So, before reform 2017, only public JSCs might have their shares traded on stock exchanges while the shares of private JSCs were sold and acquired without involving stock exchanges. Private JSCs were related to private companies as well as LLCs.

On 16 November 2017, the parliament of Ukraine adopted the Law of Ukraine 'On Amending Certain Legislative Acts of Ukraine on the Simplification of Business and Attraction of Investments by Securities Issuers', № 2210-VIII [138] that is designed to ensure proper protection of shareholders' rights and increase the level of transparency of joint-stock companies It has come into force and some provisions have been effective partially in 2018 and then gradually up to 2019.[139]

The Law of Ukraine 'On Joint-Stock Companies' introduced the division of joint-stock companies into public and private, which is generally consistent with the practice of regulating the specified legal form in EU Member States' law. However, the criteria for such separation were the method of placement of shares and the number of shareholders, while, in accordance with EU law, the criterion for recognizing a public company is a public offer for the sale of securities of such company. It should be noted that the corporate rights of members of publicly traded companies (listed companies) are precisely the subject of harmonization with European law. In view of this, one of the main prerequisites for further successful harmonization of domestic corporate legislation with European legislation was to review the dichotomy of the division of joint-stock companies into public and private ones and to introduce a single criterion for their separation –

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[135] Ibid.

[136] "Про внесення змін до деяких законодавчих актів України щодо захисту прав інвесторів," Законодавство України, Accessed 12 March 2020, https://zakon.rada.gov.ua/laws/show/289-19.

[137] Ivan Romashchenko, *Related Party Transactions and Corporte Groups: When Eastern Europe Meets the West* (The Netherlands: Kluwer Law International BV, 2020), https://books.google.com.ua/books?id=2QXaDwAAQBAJ&hl=uk&source=gbs_navlinks_s.

[138] "Про внесення змін до деяких законодавчих актів України щодо спрощення ведення бізнесу та залучення інвестицій емітентами цінних паперів," Законодавство України, Accessed February 20, 2020, https://zakon2.rada.gov.ua/laws/ show/2210-19.

[139] Фасій, Б., та Д. Московчук., "Аналіз сучасних змін законодавства про акціонері товариства в України," *Господарсько право і процес*, (2019): 70.

whether the issuer undergoes the listing procedure. This allowed to avoid unnecessary burdening of the lion's share of domestic publicly traded companies, which were only formally public.[140]

The positive amendments provide for the refusal of fixing the type of companies in their name. The new wording of the law states that the full name of a joint-stock company should contain only its organizational and legal form – 'joint-stock company'.[141] Their types (private or public) are mentioned only in the articles of association. Furthermore, according to the new provisions both private and public joint-stock companies can carry out public placement of securities using the infrastructure of stock exchanges, but only public joint-stock companies can make a public offer of securities.

We should understand that under the Law №2210-VIII that came into force on 6 January 2018, those companies whose securities have been listed on the stock exchange (have undergone a listing procedure), or which have issued a public offer of securities in accordance with the procedure established by the National Commission on Securities and Stock Exchange are considered as public. Paragraphs 4,5,6 of part II of ending and transitional provisions of the Law №2210-VIII stipulate that "4.All issuers (except institutes of common investment) that carried out public placement of securities before this Law took effect are considered as the ones that have not made public offer of securities, except those issuers that made an announcement that they made a public offer of securities in the order established by the National Commission on Securities and Stock Exchange. 5.Issuers who securities are in listing when this Law takes effect are viewed as the ones that have made a public offer of securities. 6. To joint stock companies that have not made a public offer of securities the requirements of the Law of Ukraine 'On JSCs' is applied in part of regulation of private JSCs."

So, we have a situation when both private and public JSCs (all JSCs) may have their shares traded on stock exchanges, but only public JSCs can make an offer of securities to public, therefore have their securities listed on stock exchanges, and be regarded as listed companies. Based on such changes, public JSCs today should be considered as listed public companies, and private JSCs as non-listed public companies. Thus, JSCs as public companies could be listed and non-listed.[142] At

[140] "Про внесення змін до деяких законодавчих актів України щодо спрощення ведення бізнесу та залучення інвестицій емітентами цінних паперів," Законодавство України, Accessed February 20, 2020, https://zakon2.rada.gov.ua/laws/ show/2210-19.

[141] "Зміни в діяльності акціонерних товариств – спрощення ведення бізнесу чи залучення інвестицій?" SAAD Legal, Accessed 22 April 2020, https://www.saad.legal/zmini_2210/.

[142] Ivan Romashchenko, *Related Party Transactions and Corporte Groups: When Eastern Europe Meets the West* (The Netherlands: Kluwer Law International BV, 2020), https://books.google.com.ua/books?id=2QXaDwAAQBAJ&hl=uk&source=gbs_navlinks_s.

present, according to the part 2 of article 5 of the current Law 'On JSCs', a public offer is the main one feature to distinguish private and public JSCs.[143]

To summarize, after 6 January 2018 "both public and private JSCs may have more than 100 shareholders and may have their shares traded on a stock exchange. Public JSCs are JSCs that have made or are presumed to have made the public offering of their shares. Their characteristics are such that they may also be referred to as listed companies."[144]

Unfortunately, there were the so-called 'formal' public JSCs that had not made a public offering of the shares, their shares had not been listed and they had not notified the National Commission on Securities and Stock Exchange that they are considered to be public. They just did not bring their names and constituent documents to change. So, in fact, they are not public JSCs and, accordingly, they cannot be considered as listed companies and subject to requirements for private joint-stock companies, because their securities were sold on the stock exchanges, but not listed. During 2018, some public JSCs made an announcement to the National Commission on Securities and Stock Exchange to view them as public JSCs according to the Order 'On Publication of a Notice by the Issuers of Securities Who Are Considered as Those Who Made a Public Offer of the Securities', adopted by the above-mentioned Commission.[145] But, in practice, we could assume that not all of them made such an announcement and still subject to requirements for private JSCs.

All in all, private and public JSCs differentiated by the number of shareholders (before 2016) along with other criteria as carrying out public offering, trading shares on the stock exchange, etc. Private JSCs were essentially private companies in the line with LLCs while public JSCs – public companies. After reform 2017, the amendments gave the possibility to private JSCs to trade their shares on the stock exchange. Thus, both public and private JSCs are public companies according to Ukrainian law. To be more concrete, public and private placement of shares is allowed in private and public JSCs, but public offering is allowed only in public JSCs. In pursuant to our research, private JSCs could be considered as non-listed companies while public JSCs are listed due to the fact that only public JSCs can make an offer of securities to public, therefore have their securities listed on stock exchanges, and be regarded as listed companies. Generally, to distinguish public and private JSCs, the criterion of a possibility to perform a public offer is employed.

[143] "Про акціонерні товариства", Законодавство України, Accessed 28 February 2020, https://zakon.rada.gov.ua/laws/show/514-17.
[144] Ibid.
[145] "Порядок оприлюднення повідомлення емітентами цінних паперів про те, що вони вважаються такими, що здійснювали публічну пропозицію цінних паперів," Законодавство України, Accessed 20 April 2020, https://zakon.rada.gov.ua/laws/show/z0296-18#n15.

2.2.2. Key differences according to EU Member States' legislation

Nowadays, private and public companies are the most distributed forms of business in Europe.

Recently, an understanding of the European company (SE), a legal entity established in accordance with the Statute of a European Company, has been developed in the EU (adopted by the Council of Europe Regulation No. 2157/2001)[146] with a minimum capital of 120,000 euros. It is an example of a supranational public limited company in Europe. The main features are: the capital shall be divided into shares; no shareholder shall be liable for more than the amount he has subscribed; it shall have legal personality (article 1 of the Regulation).

A European Company can be established in 4 ways[147]: 1. through the merger of joint-stock companies, if at least two of them are subject to the law of different EU members; 2. through the establishment of a holding by joint-stock companies or limited liability companies. At the same time, the main governing bodies of at least two holding members must be subordinate to the law of different EU members (at least two); 3. through the establishment by legal entities of a joint subsidiary, if at least two of the founders are subject to the law of different EU members; 4. through the transformation into a European Company of joint-stock companies with at least two years having a branch in another EU country.

Obviously, the procedure for registering a European Company is not simple and can also cost considerable time and money. For start-ups, it is extremely difficult (in many ways even impossible) to establish a European Company. Separately, it is worth noting that the process of registration of a European Company may differ in some specifics depending on the jurisdiction. The established European Company may have a dualistic (supervisory-board and governing body-a board) or monistic structure of bodies (only a board). The dualistic model is characterized by the fact that the management and control functions are separated from each other and assigned to different bodies - the executive body and the supervisory body, respectively. The monistic approach divides the management functions among the members of one administrative body.[148] It is worth noting that EU corporate law does not consider the general meeting of shareholders as a representative body of a legal entity. But the general meeting has the relevant competence as a

[146] "Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE)," EUR-Lex, Accessed 11 March 2020, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32001R2157
[147] A. Arlt et al.,"The Societas Europaea in Relation to the Public Corporation of Five Member States (France, Italy, Netherlands, Spain, Austria)," *European Business Organization Law Review (EBOR) 3 ,4* (2002): 737, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2404620.
[148] Ibid.

governing body and is largely regulated by the national legislation of the EU Member States, where the company has its registered address.[149]

A change in the country of registration accordingly entails a change in the applicable law. A large number of questions remained unresolved by the rules of the Regulation. The calculation of taxes and the provision of financial statements, the regulation of relations between companies belonging to the European Company, the specific structure and competence of the governing bodies, the procedure for convening a general meeting and making decisions, liquidation, bankruptcy, termination procedures and much more fall under the jurisdiction of national law. On the one hand, this allows companies to choose the jurisdiction most suitable for running their business, on the other hand, the initial meaning of creating the legal form of a legal entity free of national legal regulation is lost.[150]

A company may have a registered office in one of the Member States, while its actual location may be in another Member State. This enables companies to change their location according to their activities at the same time without the need to change their registered office. In this regard, a European Company can have its registered office in any EU state, acting freely throughout the EU.[151]

Unfortunately, a SPE (European private company) has not been officially approved in the EU. So, only SE as a public limited company functions within the EU level. Nevertheless, every EU member country has legal forms for public and private companies. In the EU, as a general rule, a public company is understood as a joint-stock company whose shares could be freely traded on the stock market, without restrictions, and are able to make a public offer. As a rule, the national legislation on the regulation of the stock market imposes certain requirements for the disclosure of information to companies whose shares may be offered for purchase to an unlimited circle of persons and/or circulated on the stock market. Companies that fulfill these requirements could be called public companies.

From the investor's point of view, shares of a public company can be considered as a more liquid asset than shares of non-public companies, for the following reasons:

- shares may be offered for sale to an unlimited circle of persons;
- a potential buyer can evaluate the company on open (including independent) sources;

[149] "Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE)," EUR-Lex, Accessed 11 March 2020, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32001R2157.
[150] Fleischer, H., "Supranational corporate forms in the European Union," *Common Market Law Review* 47 (2010): 1678, https://www.kluwerlawonline.com/abstract.php?area=Journals&id=COLA2010070.
[151] "Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE)," EUR-Lex, Accessed 11 March 2020, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32001R2157.

• shares of a public company are traded on an exchange where it is easier for a seller to find a buyer than on an unorganized market;

• information on transactions completed on the organized market (price and volume of a transaction) is available in open sources for both the buyer and the seller and can be used as a basis for evaluating a package for sale.[152]

We should pay attention to the key differences between public and private companies in the EU. Public company is mostly characterized by the public market for shares, freely transferable shares, stricter regulation, etc. Private company - lack of public market for shares, more flexible requirements, share transfer restrictions, etc.[153]

Jong defines that the tradability of shares is the core criterion for distinction[154]. It is restricted in private companies. Scholar explored that in the Netherlands, there are restrictions on the tradability of shares in private limited companies (‘*besloten vennootschap’*). So, this criterion distinguishes private and public companies there. Nevertheless, as the author observed, in the UK all shares are tradable in private and public companies. It is not a criterion for distinction. To separate two types of companies, the attention is paid on if the company can make a public offer or not.[155]

Generally, four types of companies can be registered in England within private and public classification[156]:

(1) Private companies limited by shares. A shareholder is liable no more than the amount of unpaid shared he owns. Each share when it is issued has a certain value, for example one hundred shares with established values for the capital of the company.

(2) Private company limited by guarantee. A shareholder in this company is liable for the amount agreed to contribute to the company’s total assets. As a rule, this form of incorporation is typical for charitable work and cannot be used for commercial purposes.

(3) Private unlimited company. It is a type of private company which is not limited in regard to its members’ liability.

(4) Public limited company. It is a company, which shares can be offered for sale or transferred to the public, but at the same time shareholder similarly to the private limited companies are not entitled to exceed the amount unpaid on shares they own.

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[152] Grundmann & Glasow, *European company law* 2nd ed. (Cambridge: Intersentia, 2012), 11.

[153] *Introduction to European and International Company Law*, Presentation prepared by Virginijus Bite 09.09.2019.

[154] Bas J. de Jong, “The distinction between public and private companies and its relevance for company law. Observations from the Netherlands and the United Kingdom,” European Business Law Review 1-23, (2016): 19, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2507726

[155] Ibid.

[156] *Company incorporation in the United Kingdom and England*. n.d., Accessed 12 March 2020, https://www.miralux.ch/socingl_ing.htm

For comparison, in Lithuania, an open joint-stock company with limited liability (*akcinė bendrovė, AB*) can be established by one person, and without limitation on the maximum number of shareholders (e.g. individuals and legal entities, residents and non-residents of Lithuania). Company shares are freely transferable to third parties. In order to provide public trade of shares on the stock exchange, each open company is required to register with the Lithuanian Securities Commission.[157] But it also may decide not to be listed. So, this type of companies has strict regulation. It should be noted that the transfer of private limited company (*uždaroji akcinė bendrovė, UAB*) shares did not require a notarial form earlier. The material shares and share certificates of a company are transferred by the endorsement and the dematerialized shares – under a written contract and records in the personal securities accounts of the transferor and the transferee.[158] But now, if the shareholder is willing to transfer 25% of shares and more or the price is over 14 500 EUR, the notarial form is compulsory (BUT: according to paragraph 3 part 1 article 1.74 of the Lithuanian CC, this rule is not applicable in case of a privatization transaction of state or municipal ownership and when personal securities accounts of the shareholders have been transferred to a professional keeper of securities).[159] As we could see, share transferability of private limited companies in Lithuania falls under some restrictions.

Mainly, open or public companies are corresponded to companies with freely tradable shares while private or close companies have restrictions on the tradability. John Amour and others define two more distinctions, in addition to the tradability of shares: "First, the shares of open corporations may be listed for trading on a stock exchange, in which case we will refer to the firm as a "listed" or "publicly traded" corporation, in contrast to an "unlisted" corporation. Second, a company's shares may be held by a small number of individuals whose interpersonal relationships are important to the management of the firm, in which case we refer to it as "closely held," as opposed to "widely held.""[160] Overall, a public corporation could be listed or unlisted as it wishes, a private corporation is always unlisted, but both of them may be closely or widely held.

Thus, the internationalization of permanent economic activity in the European Union is realized through the public limited company as a European Company that may transfer to or merge with companies in other Member States more easily. For each EU country, there are specific features in the private and public forms of companies that can have both common basic

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[157] *Организационно-правовые формы предприятий в Литве.* б.д., Accessed 12 March 2020, http://www.vneshmarket.ru/content/document_r_1A4EFAA4-7E91-4CA4-90F0-F2AF855383E6.html

[158] Virginijus Bitė, "Agreement on sale of close company shares: requirements of form and significance of registration," *Jurisprudence*, (2012): 546.

[159] "The Civil Code of the Republic of Lithuania," E-Tar, Accessed 12 March 2020, https://www.e-tar.lt/portal/lt/legalAct/TAR.8A39C83848CB/asr.

[160] John Amour et al., *The anatomy of corporate law: a comparative and functional approach*, 3th edition (Oxford University Press, 2017), 10-11.

features and significant differences. We agree with Jong, who stipulates that "the difference between public and private companies is seen more in terms of the degree of flexibility, where there are less mandatory rules for private companies so that the articles can be tailored more to shareholders' wishes."[161] *We could definitely say that the ability to make a public offer and trade shares on the stock exchange are the core distinctions between private and public companies in EU countries.*

[161] Bas J. de Jong, "The distinction between public and private companies and its relevance for company law. Observations from the Netherlands and the United Kingdom," *European Business Law Review 1-23*, (2016): 19, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2507726

3. COMPARATIVE ANALYSIS OF THE FUNCTIONING OF COMPANIES IN DIFFERENT BUSINESS FORMS IN UKRAINE AND EU MEMBER STATES

3.1. Notion of "business form" and its correlation with related concepts

The concept of a business form is one of the fundamental concepts of law. It is explained by its influence on the legal regulation of institutional foundations of social development and the creation of the proper basis for the institutional changes in every country.[162]

The clarification of the meaning of the term 'organizational and legal form of a legal entity' is relevant, since the possibility of different interpretations of the same term not only leads to differences in its use, but is also one of the corruption risks, which significantly affects the quality of administrative services.[163] In practice, the definition of a legal form is essential in the process of legal entity legalization. 'Business forms', 'organizational and legal forms' or just 'legal forms' or 'organizational forms' could be considered as synonyms. So, they are examined below.

In the light of the research raised, it should be noted that in the EU, in the field of company law, the purpose was never to unify the system of legal forms of legal entities in the EU Member States. In this regard, the TFEU[164] defines the concept of "companies" in its most general form, leaving out the questions of the specific organizational and legal forms in which such a company can be created and giving them the characteristics of legal personality at the discretion of national legislatures[165].

The Ukrainian corporate legislation operates with such concepts as organizational forms, organizational and legal forms, types of legal entities and enterprises. Each of them is used to classify companies according to certain characteristics.

The Civil Code of Ukraine[166] does not define the concept of 'business form'. Only the Classification of Organizational Legal Forms of Management, approved by the Order of the State Committee of Ukraine On Technical Regulation and Consumer Policy No. 97 of May 28, 2004,[167]

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[162] Снісаренко Л.Ю., "Організаційно-правова форма юридичної особи: теоретичне поняття та проблеми практичного застосування," *Державне управління: удосконалення та розвиток*, (2015): 371.
[163] Ibid.
[164] "Consolidated version of the Treaty on the Functioning of the European Union," EUR-Lex, Accessed 11 March 2020, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT
[165] Ozeran A., "Dyrektyva 2013/34/YeS shchodo richnoi finansovoi zvitnosti: dyskusiini pytannia ta napriamy yii implementatsii v normatyvnu bazu Ukrainy," *Bukhhalterskyi oblik i audyt*, 5, (2015): 6.
[166]"Цивільний кодекс України," Законодавство України, Accessed 1 March 2020, https://zakon.rada.gov.ua/laws/show/435-15
[167] "Про затвердження національних стандартів України, державних класифікаторів України, національних змін до міждержавних стандартів, внесення зміни до наказу Держспоживстандарту України від 31 березня 2004 р. N 59 та скасування нормативних документів. Державний комітет України з питань технічного регулювання та споживчої політики. № 97," LIGA-zakon, Accessed 14 February 2020, http://search.ligazakon.ua/l_doc2.nsf/link1/FIN10242.html

establishes that the business form is a form of conducting economic, in particular entrepreneurial activity, with the appropriate legal basis that determines the nature of the relationship between the founders/participants, the regime of property liability for the obligations of the enterprise, the order of incorporation, reorganization, liquidation, management, distribution of profits, possible sources of funding and others. However, this act enshrines over 60 business forms of economic activity in Ukraine.

Undoubtedly, this only adds to the argument to justify the need to consolidate a comprehensive list of business forms of legal entities and unify business forms of companies in the Civil and Economic Codes of Ukraine.[168]

Opryshko states: "a legal entity is an organization that is established and registered in accordance with the specified legal procedure. Due to the official registration, the legal entity enjoys all civil rights and capacities. For example, it can be a defendant or claimant in the court proceeding." Among the most important features peculiar to the legal entity, Opryshko distinguishes as follows:

> (1) *Unity of organization*. It means that the legal entity has its own management system and bodies of control which act to ensure the entire company's operation. […]
> (2) *Compulsory state registration*. Legal entities created mostly to perform commercial activities are required to pass through the state registration procedure. […]
> (3) *Responsibility for liabilities*. According to the general rules, the owners and members of a legal entity are not liable for its obligations, and the legal entity is not liable for member's obligations as well. […] As a result, the assets of the legal entity are separated from the assets of its owner or members.[169]

Therefore, the concept of 'business form' is, first of all, connected with the form of incorporation. Companies are regarded as entities having official legal status. They can enter into contractual relations, acquire property and execute the other rights and privileges.[170]

Some scholars define the 'business form' through the ownership. As stated by Pylypenko, 'business form' can be interpreted as "the organizational or legal structure in which the legal entity operates, envisaged or authorized by law, seeing its essence in the classification of legal entities depending on the three forms of ownership and methods of differentiation in the enterprises of separate forms of ownership and property management".[171] "(In our view, this position is controversial, because it cannot be considered as business form through the lens of ownership)".

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[168] Менджул, М. В. та Е. Ю. Імре., "Система непідприємницьких товариств в Україні: окремі проблеми," *Закарпатські правові читання: матеріали VII Міжнародної науково-практичної конференції* (Ужгород: Вид-во УжНУ «Говерла», 2015), 33.
[169] Ibid.
[170] Berkman Solutions, "*What are the Types of Business Entities?",* Accessed 28 February 2020, https://www.berkmansolutions.com/entities/business-entities.
[171] Пилипенко А. Я., та В. С. Щербина. *Господарське право: курс лекцій* (Київ: Вентурі (1996), 41.

Business form is a well-defined legal form of economic activity, which can exist in all forms of ownership including private, public and municipal.[172]

It is difficult to understand the meaning of the concept of the 'business form' and the fact that the legislator in addition to this term also uses the term 'type', without distinguishing them. Part 4 of article 83 of the Civil Code states the forms of legal entities as organizations and institutions. Article 84 divides entrepreneurial companies into economic companies and production cooperatives without identification they are types or business forms.[173] "(Other regulations do not add clarity)". In particular, article 63 of the Economic Code of Ukraine, about the 'Types and Organizational Forms of Enterprises' should clarify and define what a 'type' is and what an 'organizational form' is, by the way, it is unclear whether the term 'organizational form' means the same concept as 'legal form'. However, the mentioned article gives a list of 'types' of enterprises: private enterprise; an enterprise operating on the basis of a collective ownership; municipal enterprise; state-owned company; an enterprise based on a mixed-ownership; and a joint enterprise.[174] It is noteworthy that the list of 'types of enterprises' contains different concepts. For example, a specific legal entity can act as a private enterprise, but a collective enterprise is a general category that includes several varieties of legal entities.

From the content of the article 63, it is unclear where it is referred to the heading 'organizational forms'. The article deals with unitary and corporate enterprises etc., but they are exactly identified neither types nor organizational forms.[175]

> Article 63. Types and organizational forms of enterprises
> 1. Depending on the forms of ownership provided by law, the following types of enterprises may operate in Ukraine:
> a private enterprise operating on the basis of the private property of a citizen or commercial entity (legal entity);
> an enterprise operating on the basis of collective property (an enterprise of collective property);
> a municipal enterprise operating on the basis of property of a territorial community;
> state-owned enterprise operating on the basis of state property;
> an enterprise based on a mixed form of ownership (on the basis of combining property of different forms of ownership);

[172] Цюцик, О. В.,"Організаційно-правові форми сільськогосподарських товаровиробників," *Форум права*, (2010), 565.
[173]"Цивільний кодекс України," Законодавство України, Accessed 1 March 2020, https://zakon.rada.gov.ua/laws/show/435-15
[174]"Господарський кодекс України," Законодавство України, Accessed 1 March 2020, https://zakon.rada.gov.ua/laws/show/436-15
[175] Снісаренко Л.Ю., "Організаційно-правова форма юридичної особи: теоретичне поняття та проблеми практичного застосування," *Державне управління: удосконалення та розвиток*, (2015): 377.

> a joint enterprise operating on a contractual basis for joint financing (maintenance) of the respective territorial communities – the subjects of cooperation.[176]

Also, part 4 of the above-mentioned article says that corporate enterprises are cooperative enterprises, enterprises created in the form of economic companies, as well as other enterprises, including those based on the private property of two or more persons. It is unclear they are types or forms of corporate enterprises. But from this provision we can define business forms of companies such as: production cooperatives, economic companies (limited and additional liability companies, joint-stock companies, general and limited partnerships), farm enterprises and private enterprises.

In the absence of a list of all organizational and legal forms at the level of the laws of Ukraine, state registrars are obliged to use the Statistical Classifier of Organizational Forms of Management. This classifier is imperfect. In particular, the name of this act implies that it refers to the organizational forms of commercial entities, but along with commercial entities, there are political parties, public organizations, trade unions, religious organizations and even public authorities and local self-government authorities, which are not commercial entities.

In addition, the Classifier of organizational and legal forms contains a significant number of general categories that do not designate specific legal entities, but are used to refer to certain groups of legal entities, such as ‘state-owned enterprise’, ‘entrepreneurial companies’, ‘religious organizations’ and others. In other words, there is the same lack of a unified approach to defining the organizational and legal forms of legal entities as in the aforementioned legislative acts.[177] This entails problems in practice.

To compare with the Law ‘On Companies’ of the Republic of Lithuania, Article 72 stipulates such legal forms as follows:

> A public limited liability company may be converted into a legal person of the following legal forms:
> 1) private limited liability company;
> 2) state enterprise;
> 3) municipal enterprise;
> 4) agricultural company;
> 5) co-operative company;
> 6) general partnership;
> 7) limited partnership;
> 8) individual enterprise;
> 9) public establishment;
> 10) small partnership.[178]

[176]“Господарський кодекс України,” Законодавство України, Accessed 1 March 2020, https://zakon.rada.gov.ua/laws/show/436-15

[177]Цюцик О. В.,”Організаційно-правові форми сільськогосподарських товаровиробників,” *Форум права*, (2010), 565.

Thus, Lithuanian Law 'On Companies' provides generally two legal forms of companies (private and public limited liability companies), one of which can be converted into other defined forms. But neither the Civil Code of the Republic of Lithuania[179] nor the Law 'On Companies' do not give the definition of a 'legal form'. Also, this Law operates such term as 'business form' and from provisions we could see a precise, but not exhaustive list of legal forms, that exist in Lithuania.

"Entrepreneurs and investors within the EU can choose between the different corporate legal forms of the various Member States when deciding where and how to carry out their business. It is now no longer uncommon to use foreign business forms instead of those provided for by the resident country. […] the transfer of the registered office of a company from one Member State to another under perpetuation of its legal personality will enhance the globalization of corporate business forms."[180] This leads to the creation of the unification of business forms all over the world. The first step was made – the formation of *Societas Europea* (SE).

Thus, the absence of a unified approach to understanding the business form of companies creates practical differences in the establishment of the companies' legal status. From the above-mentioned information, it is possible to conclude that the legal regulation of the organizational and legal forms in Ukraine is unsatisfactory. It is difficult to understand the meaning of the concept of 'business form' and the fact that the legislator in addition to this term also uses the term 'type', without distinguishing them. The CC and EC of Ukraine provide different lists of business forms of companies. It is recommended to unify and systematize organizational and legal forms in which legal entities (especially, companies) can actually function in both the Civil and Economic Codes of Ukraine for the clear and identical understanding of what business forms of companies exist in Ukraine.

3.2. Types of business forms in Ukraine, Lithuania and other selected EU Member States

The issue of classification of companies in the laws of Ukraine and foreign countries is ambiguous. The presence of different systems of division of business forms is related, first of all, to the national peculiarities of the legislation in different countries, as well as to the specifics of

[178]"Law On Companies of the Republic of Lithuania," E-seimas, Accessed 16 February 2020, https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.106080/ijtiWHwizy

[179]"Civil Code of the Republic of Lithuania," *WIPO*, Accessed 28 January 2020, https://www.wipo.int/edocs/lexdocs/laws/en/lt/lt073en.pdf

[180] Frank Dornseifer. *Corporate business forms in Europe: a compendium of public and private limited companies in Europe* (Berne: Munchen: Staempfli ; Sellier European Law Publishers, 2005): Preface.

individual families of legal systems. The particular attention is paid to limited liability companies (private companies) and joint-stock companies (public companies) due to the fact that they are one of the most popular forms of companies. For example, they take the highest positions in the list of registered legal entities made by the State Statistics Service of Ukraine.[181] At present, there are 680692 registered LLCs (the first place in the list) and 13864 registered JSCs (the fourth place after private and farm enterprises). Other forms where the corporate relations exist will be taken into consideration as well.

3.2.1. Comparison of a private limited company and joint-stock company

On February 6, 2018, the long-awaited Law of Ukraine 'On Limited and Additional Liability Companies'[182] was adopted by the Parliament of Ukraine. The lack of special regulation for one of the most common organizational and legal forms of conducting small and medium-sized business did not contribute to the creation of proper business conditions, attracting investment and to protect the rights of the founders and members according to the Law 'On Economic Companies' (1991), Civil and Economic Codes (2003).

According to Mogilevsky,[183] the following features are characteristic of this type of organizational and legal form of a legal entity as a LLC:

- it is a legal entity;
- it is a commercial organization;
- it is a company whose share capital is divided into shares;
- it is an organization that combines under the contract persons or created by one person whose liability is limited.

According to the legislation of Ukraine, it cannot be said that the LLC unites persons on the basis of the contract, since if the company is created by several persons, they may conclude a contract on the creation of the company in writing if it is necessary to determine the relationship between them. However, such an agreement is generally valid until the date of state registration of the company (unless otherwise stipulated by the agreement or does not follow from the essence of the obligation).[184]

In our opinion, it is advisable to divide the characteristics of a limited liability company into two groups:

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[181] "Number of legal entities by organizational and legal forms of management," State Statistics Service of Ukraine, Accessed 11 April 2020, http://www.ukrstat.gov.ua/.
[182] "Про товариство з додатковою та обмеженою відповідальністю," Законодавство України, Accessed 11 March 2020, https://zakon.rada.gov.ua/laws/show/2275-19
[183] Могилевский С. Д. *Общества с ограниченной ответственностью*, 5-е изд (М.: Дело, 2018).
[184] Ibid.

- general features that a company is endowed with as a legal entity and an economic company. This group includes the features we have mentioned above. For example, LLC, like all other companies, is a legal entity created for profit, that is entrepreneurial in nature, formed by combining the assets of the founders, and the property of the company is divided into shares between its participating members in business activities and so on;

- special features that collectively distinguish a limited liability company from other companies. We can distinguish the following special features inherent in LLC: members of the company are not responsible for its obligations and bear the risk of losses related to the activities of the company within the value of their contributions (part 3 of article 80 of the Civil Code)[185]; under its own obligations, the company is responsible for all property belonging to it on the property right (part 1 of article 3 of the Law)[186]; the number of members of the company is not limited (article 4 of the Law); the constituent document of the company is the articles of association (part 1 of article 11 of the Law); a company may be formed and act on the basis of a model articles of association; division of property of the company into shares, the size of which is indicated in the United State Register of legal entities, individual entrepreneurs and public organization; participation of members in the management of the affairs and distribution of profits of the company depends, as a rule, on the size of their shares in the share capital of the company.[187]

Earlier the article 50 of the Law of Ukraine 'On Economic Companies'[188] contained a limit on the maximum number of participants of LLC in 100 persons. The presence of this rule led to the fact that in excess of the specified number of participants, the company was subject to transformation into a public joint-stock company within one year, in fact against the will of its founders/participants, and with the expiration of this term - liquidation in court, if the number of its participants does not decrease to the established limit (part 1 of article 141 of the CC).

Now the number of members of the LLC is not limited. This is a positive thing because it will allow majority owners of joint-stock companies who no longer wish to conduct business in such an organizational and legal form to turn them into LLC. The law also abolishes the restrictions set by the Civil Code of Ukraine on the number of companies in which LLC may be a sole participant (sole ownership of several companies), and the fact that LLC may not have a single entity with another entity of which one person is a party. While the abolishing of the maximum

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[185]"Цивільний кодекс України," Законодавство України, Accessed 1 March 2020, https://zakon.rada.gov.ua/laws/show/435-15

[186] "Про товариства з додатковою та обмеженою відповідальністю," Законодавство України, Accessed 11 March 2020, https://zakon.rada.gov.ua/laws/show/2275-19

[187] "Law of Ukraine on limited liability and additional liability companies – new possibilities for business," https://aequo.ua/publication/law_news/law_of_ukraine_on_limited_liability_and_additional_liability_companies_new_possibilities_for_business/

[188]"Про господарські товариства," Законодавство України, Accessed 1 March 2020, https://zakon.rada.gov.ua/laws/show/1576-12

number of shareholders in LLCs is a positive novelty, the fact that there are no restrictions now on the number of companies where LLC may be a sole participant is rather a step backward. Here, the Law 'On LLCs and ALCs' of Ukraine deviated from the EU Directive on single-member companies and urgent changes are necessary to make Ukrainian regulation in the line with the Directive 2009/102/EC on single-member private limited liability companies.[189]

The current legislation of Ukraine does not set requirements for the size of the share capital of the LLC, which allows the owners to determine it independently depending on the volumes and types of activity of the future company. According to Ukrainian law, LLC is a private limited liability company.

The adoption of the said Law 'On LLCs and ALCs' made it possible to regulate in this field the requirements of the Directive 2017/1132[190] concerning certain aspects of company law, as well as other EU Directives.

A Ukrainian legislator abolished the maximum number of participants in LLC to increase the flexibility of operations of LLCs. As an example, earlier in Lithuania, part 4 of article 2 of the Law 'On Companies' stipulated that "[…] It must have less than 250 shareholders. […]".[191] In the current Law 'On Companies'[192], such a restriction has been repealed.

According to the current legislation of Ukraine, except a private limited company as LLC, joint-stock companies as private and public JSCs exist that have already been described in Chapter 2. Before reforms of 2015 and 2017 in Ukraine, LLC and private JSC were deemed to be private limited companies. Nowadays, LLC is a private company, private JSC – a public company. They had and have a good number of distinctive and some similar features.

It is worth noting that a joint-stock company is an economic company, the share capital of which may not be less than 1250 minimum wages and the corporate rights of shareholders are certified by shares. There are differences concerning the minimum share capital in LLCs and JSCs.

In case if shares of private joint-stock companies are exclusively distributed among the shareholders, they will in no way differ from, for example, the certificate received by each participant of a limited liability company, upon full submission of its parts as the contribution to the share capital of the company. Nevertheless, private JSC and LLC are separate forms. The main

[189] "Directive 2009/102/EC of the European Parliament and of the Council of 16 September 2009 in the area of company law on single-member private limited liability companies," EUR-Lex, Accessed 7 February 2020, https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32009L0102.

[190] "Directive (EU) 2017/1132 of the European Parliament and of the council of 14 June 2017," EUR-Lex, Accessed 12 March 2020, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017L1132

[191]"The Law on Companies," E-seimas, Accessed 12 March 2020, https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/2af0c0d049b811e68f45bcf65e0a17ee?jfwid=rivwzvpvg

[192]"The Law on Companies," E-seimas, Accessed 12 March 2020, https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.106080/ijtiWHwizy

distinction is that joint-stock companies are subject to much stricter regulatory requirements established by the National Commission on Securities and Stock Exchange.

The mode of circulation of shares of private joint-stock companies and shares of LLCs is similar in that it concerns the pre-emptive right of other shareholders (participants) to purchase shares during their alienation by shareholders or participants. But according to the article 7 of the Law 'On JSCs'[193], shareholders are able not to prescribe the pre-emptive rights in the articles of association, but for participants of LLC (article 7 of the Law 'On LLCs and ALCs'[194]) the pre-emptive rights are generally mandatory to carry out (there are some exceptions: sale of shares at the auction and if the corporate agreement stipulates otherwise).

A significant difference between private JSCs and LLCs is in the order of raising share capital and attracting additional investments. The issue of additional shares by private joint-stock companies is subject to registration by the regulator (National Commission on Securities and Stock Exchange) that has the right to refuse registration in the event of even insignificant non-compliance with the procedure. The share capital increase of the LLC is carried out without the involvement of the regulator. This gives the LLC a significant advantage over private JSC. Also, we could say that LLC is a simplified form because of minimal and flexible requirements.

In industrialized countries, including the EU countries, the participation of the regulator in the process of raising share capital by companies (public or private) is not foreseen, except when public companies attract investments in organized capital markets.[195]

On November 1, 2008, the Federal Law 'On the Modernization of the Law on Limited Liability Companies' in Germany[196] was adopted. This reform made it possible to run a business by setting up an entrepreneurial company (limited liability company) - *Unternehmergesellschaft*. Of course, entrepreneurial (limited liability) companies are not a new legal form - they are subject to certain special provisions of the Law 'On Limited Liability Companies'.[197] The main difference is that theoretically entrepreneurial limited liability companies can be created with a minimum share capital of one euro.

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[193]"Про акціонерні товариства," Законодавство України, Accessed 28 February 2020, https://zakon.rada.gov.ua/laws/show/514-17.

[194] "Про товариства з додатковою та обмеженою відповідальністю," Законодавство України, Accessed 11 March 2020, https://zakon.rada.gov.ua/laws/show/2275-19

[195] Yefymenko, A., "Corporate Governance under Ukraine's New Joint-Stock Company Law," *SSRN* (2009): 11, http://ssrn.com/abstract=1387360.

[196]Метелиця, В.М., "Регуляторна конвергенція бухгалтерської професії в Європейському Союзі," *Accounting and Finance*,2 (64) (2014): 44.

[197] "Gesetz betreffend die Gesellschaften mit beschränkter Haftung, GmbHG," Accessed 11 March 2020, https://www.gesetze-im-internet.de/englisch_gmbhg/englisch_gmbhg.html.

Thus, the Law makes it easier and simpler to approach the formation and put into operation of *GmbH. GmbH* (*UG Mini-GmbH*) designed specifically to meet the needs of small and medium-sized businesses (often family businesses).

It should be noted that the German legislature did not intend to radically change the forms of legal entities, primarily because such forms have for many years been able to prove their effectiveness in the economic sphere.[198] However, it was allowed to create a new kind of limited liability company, the advantage of which was, above all, the absence of a legislative requirement for a minimum amount of share capital. At the same time, the classic form of a limited liability company has not changed and the requirements for a minimum share capital of 25,000 euros remain valid.

Limited Liability Company (*GmbH*) is the most common legal form in Austria. The reason for this popularity is indicated by the name itself: liability is limited to the company. This legal form is best suited to unite partners who want to cooperate within the company but at the same time want to limit the risk of losses.[199] The minimum capital is €35,000. The company can be established by only one person or more. In addition, the company must be registered at the Austrian Commercial Register and at the municipal or district authority of the location of the company.[200]

The example of public JSC is *AG*. It comes into legal existence after the state registration and can be established by one or more shareholders. The minimum share capital is EUR 70,000. The shares may be listed on the stock exchange. The share capital can be divided either in par-value or non-par-value shares.[201]

In Lithuania, among the variety of legal forms of private legal entities, a close joint-stock company is used (*UAB*). The share capital of *UAB* must be at least 2500 €. The number of participants is unlimited. Also, in Lithuania there is another less common legal form as *AB – a* joint-stock company. Such a company may put up its shares for a public offer and trade them on the stock exchange. The number of shareholders is unlimited. The share capital is EUR 25,000.[202]

In France, according to the Commercial Code[203], we could define *La société à responsabilité limitée* (*SARL*) as a private company and *La société anonyme* (*SA*) as a public

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[198] Fohlin, Caroline, "Chapter 4: The History of Corporate Ownership and Control in Germany," In Morck, Randall K., *A History of Corporate Governance around the World: Family Business Groups to Professional Managers* (University of Chicago Press, 2005), 223.

[199] Franks, Julian anda Colin Mayer, "Ownership and Control of German Corporations," *The Review of Financial Studies*, Oxford University Press 14, 4 (2001): 943.

[200] Walter Brugger and Keine Anwendung, "Österreichische Notariats zeitung," *Notar.At* 11 (2015): 405, http://www.profbrugger.at/publ/Brugger_Keine_Anwendung_Nachschuss_GesbR_GmbH_AG_NZ_2015.pdf.

[201] Ibid.

[202]"The Law on Companies," E-seimas, Accessed 12 March 2020, https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.106080/ijtiWHwizy.

[203]"The Commercial Code," Legifrance, Accessed 12 March 2020, https://www.legifrance.gouv.fr/Media/Traductions/English-en/code_commerce_part_L_EN_20130701.

one. Also, French Law stipulates the simplified form of SA - *La société par actions simplifies (SAS)*. It is a JSC that is created and operates in a simple way. The specific features are: no requirements for minimum share capital, minimum numbers of members – 1, maximum - are not determined by law. *SAS* created and managed by 1 shareholder is called a *SASU* ("*Société par Actions Simplifiée Unipersonnelle*"). The shareholders freely choose in the by-laws or agreements on how the management of the company is to be organized. The company is managed by a *Président* who may delegate its powers to one or more Managing Directors.[204] All other characteristics are introduced below:

Indicator	La société à responsabilité Limitée (The limited liability company)	La société anonyme (The public limited company)	La société par actions simplifies (The simplified public limited company)
Number of founders (persons)	From 2 to 100	From 7	From 1 (the maximum is not set)
Share capital	From 1 €	From 37 000 €	From 1 €

All in all, nowadays, LLC is a private company, private JSC – a public company. Nevertheless, before reforms they were both private companies. The differences between private JSCs and LLCs are manifested, first of all, much stricter regulatory requirements established by the National Commission on Securities and Stock Exchange for public companies. These forms are distinguished in the way of the formation of share capital, the mode of share circulation, etc.

LLCs have flexible requirements and it is the popular form for establishment among Ukrainians. The corresponding changes concerning LLCs which we described above were positive because the pre-existing restrictions, in fact, created artificial obstacles to the activities of the LLCs and had no practical justification or benefit. Nevertheless, urgent changes are necessary to make Ukrainian regulation in line with the Directive 2009/102/EC, in particular concerning restrictions on the number of companies where LLC may be a sole participant.

As we have examined above, LLCs (private companies) and JSCs (public companies) are one of the most popular forms of companies. The requirements vary from country to country. EU countries harmonized their national law in the legal regulation of forms of public and private companies and their distinction regardless of the number of members.

[204] "La société par actions simplifiée (SAS), un statut souple et une responsabilité limitée aux apports," Le portail de l'Économie, des Finances, de l'Action et des Comptes publics, Accessed 12 March 2020, https://www.economie.gouv.fr/entreprises/societe-actions-simplifiee-SAS.

3.2.2. Other forms of companies

In Ukrainian and European law, the various business forms of companies are differentiated by their nature of the activity and organizational structure, their classification is carried out on different grounds. In all countries, the law and legal doctrine, above all, distinguish between public and private companies' forms.

While exploring the EU's diversity of corporate legal forms, one should agree with the views of Kibenko[205], who set out the approaches to the classification of companies: "*companies themselves and other corporate entities (general and limited partnerships, cooperatives, and other common forms of corporation*)"[206]. The vast majority of corporate rights and obligations are governed by the rules of national law and local corporate acts of companies, and their specific content and scope depends on the chosen legal form.

The choice of a specific organizational and legal form depends on many factors, namely the purpose of creation, the intentions of the founders, the features of legislative regulation of the activities of such companies. The other forms of companies can be represented by *private enterprises, farm enterprises and production cooperatives*.[207] Under Ukrainian Economic Code, those forms are combined by the notion 'corporate enterprises'. Also, the Resolution of the Higher Economic Court 25.02.2016 № 4[208] states that "in view of the systematic analysis of the provisions of article 84 of the Civil Code of Ukraine, part 5 of article 63, parts 1 and 3 of article 167 of the Civil Code of Ukraine, the Law of Ukraine 'On Economic Companies', the Law of Ukraine 'On Joint Stock Companies', articles 1, 19 and parts 1, 6 of article 20 of the Law of Ukraine 'On Farm Enterprise', articles 6, 8, 19 and 21 of the Law of Ukraine 'On Cooperation', corporate relations arise, in particular, in economic companies, production cooperatives, farm enterprises, private enterprises based on the ownership of two or more persons".

Nowadays, there are 200342 registered private enterprises[209]. It takes the second position after LLCs.

From the Economic Code of Ukraine (article 113), *private enterprise* is "an enterprise acting on the basis of private property of one or several citizens of Ukraine, foreigners or stateless

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[205]Кібенко О. Р., "Сучасний стан та перспективи правового регулювання корпоративних відносин: порівняльно-правовий аналіз права ЄС, Великобританії та України" (дисертація, Нац. юрид. акад. України ім. Я. Мудрого, 2006), 12.

[206] Ibid.

[207] Мостенська Т. Л., Н. С. Скопенко, Н. А. Шекмар, та І. А. Бойко, *Корпоративне управління* (Київ: НУХТ, 2010), 4.

[208]"On some issues in the practice of resolving disputes arising from corporate relationships," Законодавство України, Accessed 28 February 2020, https://zakon.rada.gov.ua/laws/show/v0004600-16

[209] "Number of legal entities by organizational and legal forms of management," State Statistics Service of Ukraine, Accessed 11 April 2020, http://www.ukrstat.gov.ua/.

persons with their own and hired labor".[210] Private enterprise is also an entity acting on the basis of the private property of a legal entity.[211] This article contradicts with the above-mentioned Resolution. Private enterprise has to be based on the ownership of two persons and more, not one as the article prescribed.

The EC of Ukraine does not impose any requirements for the minimum share capital of a private company. The structure of corporate governance and the property mode are determined by its founder on his discretion (he decides whether create the executive body or represent an enterprise by himself). Also, this form operates under the articles of association, is liable for debts by own property only, has the right to conclude agreements on its own behalf, to be the owner of movable and immovable property and to act as a plaintiff and defendant in court, etc.[212]

Nevertheless, there is no explicit possibility of share capital division in parts, prescribed by law. So, it is impossible to divide a single share of one participant into several parts and increase the number of participants. In comparison with the LLC which is an economic company, a good example of share capital company, private enterprises can be attributed to both a unitary and corporate type organization that creates problematic issues with the definition of the legal status of private enterprises in practice. Unitary enterprises according to the part 4 of article 63 of the Economic Code[213] are created with one founder and its share capital not divided into parts. Thus, we can conclude that private enterprises could be considered as unitary enterprises according to the article 113 of the EC.

Moreover, a Ukrainian scholar, Korchak proposed to "consolidate the possibility of creating a private enterprise only by one natural person on the basis of property belonging to him on the right of private ownership or on the right of joint ownership of spouses, and thus define a private enterprise solely as unitary."[214] So, in such a case, the private enterprise could not be viewed as a company.

Following the article 114 of the Economic Code of Ukraine, *farms (farm enterprises)* are enterprises that operate on the private property of one or several citizens. The participants of farm enterprises can also be foreigners and stateless persons, similar as in cooperatives. A farm enterprise is regarded as an enterprise engaged in agricultural activity. It includes production, processing and distribution of the agricultural products. For comparison, Lithuania allows citizens

[210]"Господарський кодекс України," Законодавство України, Accessed 1 March 2020, https://zakon.rada.gov.ua/laws/show/436-15

[212]Трегубенко, Г.П. *Господарське право* (Полтава: ПолтНТУ (2018).

[213]"Господарський кодекс України," Законодавство України, Accessed 1 March 2020, https://zakon.rada.gov.ua/laws/show/436-15

[214] Корчак Н.М. та Вертузаєва І.М., "*Особливості правового становища приватних підприємств у світлі Господарського Кодексу України,"* Юридичний вісник №4(9) (2008): 57.

full private ownership on the agricultural land. The restrictions are vested on the private ownership by foreign legal entities and natural persons because Lithuania's land can be owned only by its citizens, legal entities and state.[215]

Under the Law of Ukraine 'On Farm Enterprises' (2003), farms are forms of business that have usually legal status and are incorporated to produce agricultural products and then process and sell them to obtain profits on their land plots.[216] In compliance with this Law, the farm can be founded by the citizens of Ukraine which are relatives or the members of one family. The farm is liable for debts only within its property. Its activity is stipulated by the articles of association. Article 4 says that "the head of the farm is its founder or other person defined in the articles of association." The head of the farm represents the farm and concludes agreement on its behalf and takes other legally significant actions in accordance with the legislation of Ukraine. The head is able to transfer his obligations to other persons.

The property of the farm (a compound capital) may include: buildings, equipment, tangible assets, securities, products created by the economy as a result of economic activity, income received, other property acquired on non-prohibited grounds, the right to use land, water and other natural resources as well as other property rights (including intellectual property), contributions of members made to the farm capital (article 19). In practice, sometimes members do not make contributions, that is why the company status of farm is in question.

It should be mentioned that part 2 of article 5 of the said Law states that farm enterprises can be created without the status of a legal entity: "A farm enterprise without legal personality is organized on the basis of the activity of an individual entrepreneur and has the status of a family farm enterprise, provided that the labor of members of such enterprise who are exclusively an individual entrepreneur and his family members." In this case, it could not be viewed as a company.

In the Economic Code of Ukraine (article 95), *production cooperatives* operate on the basis of articles of association. They can perform such types of economic activity as production, supply, procurement and others which are established by law. Production cooperative is founded based on the voluntary association of citizens as members. Their purpose is joint economic and industrial activity. The results of activity in the form of incomes are distributed among the members of cooperative and

[215] Prosterman, R. and L. Rolfes, "Agricultural Land Markets in Lithuania, Poland and Romania: Implications for accession to the European Law," *Rural Development Institute* (1999), 4.
[216] "Про фермерське господарство," Законодавство України, Accessed 28 February 2020, https://zakon.rada.gov.ua/laws/show/973-15

in accordance with their participation.[217] "In pursuant to the Law of Ukraine 'On Cooperation'[218] production cooperatives perform their activity by such principles as voluntary membership; personal labor participation of each member in the cooperative's activity; democratic type of cooperative governance; distribution of incomes between members in accordance with their property share in the cooperative. In Ukraine, the founders of production cooperative can be citizens of Ukraine, foreigners and stateless persons. The production cooperative is liable for its obligations by all property in its ownership. In relation to the cooperative members, they bear subsidiary responsibility for the cooperative debts with their property in the amount no less than their share contribution."[219]

In the EU legal system, cooperatives represent the alternative business forms as competition to the investor-owned entities or traditional commercial entities. Cooperatives are related to autonomous associations of individuals who join efforts to execute economic activity through joint-owned enterprise.[220] Additionally, there is a supranational form as *Societas Cooperativa Europaea (SCE)* that has legal personality.[221] "It is an optional legal form of a cooperative. It aims to facilitate cooperatives' cross-border and trans-national activities."[222] Inter alia, there is no need to establish a subsidiary in every Member States where such a company operates. The main features are: it is a legal entity, the members have to be residents from several EU countries (it could be natural or legal persons), the minimum capital (it is divided into shares)– EUR 30,000, it must be registered in the EU country, its corporate structure could be one-tier (administrative body) or two-tier (supervisory and executive boards), its members may be limited liable, etc. In accordance with part 3 of article 1 of the above-mentioned Regulation, the main objective of the SCE is to meet the needs of its participants and to promote their economic or social activities. Due to this feature it is a pretty much similar to a service cooperative in Ukraine that differs from production cooperatives and is not a company because of non-profit orientation.

The term cooperative, as a rule, is followed by two characteristics listed below: "(1) a cooperative is a social movement of farmers that seeks to reduce unemployment, to improve the education of farmers and their professional training, to improve their living and cultural level, to

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[217]"Господарський кодекс України," Законодавство України, Accessed 1 March 2020, https://zakon.rada.gov.ua/laws/show/436-15.

[218]"Про кооперацію," Законодавство України, Accessed 1 March 2020, https://zakon.rada.gov.ua/laws/show/1087-15

[219] Ортинський В. Л. *Основи держави і права України* (Київ: Знання, 2008).

[220] Borst, A., "Agricultural Production Cooperatives in the E.U.: Explaining Variation in Cooperative Development," (2017), 1.

[221] "Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE)," EUR-Lex, Accessed 24 March 2020, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32003R1435.

[222] "Internal Market, Industry, Entrepreneurship and SMEs," European Commission, Accessed 24 March 2020, https://ec.europa.eu/growth/sectors/social-economy/cooperatives/european-cooperative-society_en.

create conditions for farmers to have more free time, vacations, etc.;[223] (2) a cooperative is an organizational-legal form of an enterprise that has economic goals and does not actually deal with social problems."[224]

Except traditional forms, some countries introduce hybrid, modified or simplified forms in their national legal system. "For example, there are companies with less formal requirements and enjoy more freedom to insert tailor-made provision into the companies' articles. The enhanced flexibility is offset by the imposition of limitations, such as the prohibition of using the capital market for funding and issuing shares in bearer form."[225] Examples are the *SAS - Société par actions simplifiée* in France and *GmbH* – a private limited company in Germany.[226] Also, a good example of a simplified company is *SLNE* ('*Sociedad Limitada Nueva Empresa*')[227] in Spain with regard to the establishment procedure and decision-making peculiarities. Generally, modified and simplified companies exist with full protection of creditors, third parties, shareholders themselves and are preferable for small and medium-sized enterprises.

Moreover, a good example of a simplified private company is *società a responsabilità limitata semplificata* in Italy. It is created by a notarial deed, the minimum share capital must be EUR 1 and cannot exceed EUR 10,000.[228]

According to Ukrainian legislation, we could name LLCs and ALCs as simplified companies. The Law of Ukraine 'On Limited and Additional Liability Companies'[229] excluded the information on the size of the share capital and the list of members of the company from the list of information, which were obligatory to be fixed in the articles of association. This requirement conflicted with the mechanisms regulating the alienation or transfer of shares of participants because, regardless of the reasons for acquiring the rights of the shareholder, it required amendments to the articles of association and created an unacceptable risk for many investors to register the changes in the composition of participants and violated the rights of the person who acquired the share legally. Therefore, instead of including the information on the share capital and

[223] Ramanauskas, J.; Stasys, R.; Conto, F., "The Main Obstacles and Possibilities of the Cooperative Movement in Lithuania," *Organizaciju Vadyb Sisteminiai Tyrimai* (2017), 101-117.
[224] Ramanauskas, J. *Kooperacijos pagrindai*. (Kaunas: Spalvų kalvė 2007).
[225] Dorresteijn A. et al., *European Corporate Law*, 3rd edition, (Wolters Kluwer,2017), 13, quoted in Frank Woolbridge, 'Some New Types of Company and Partnership in France and Germany', *International and Comparative Corporate Law Journal* 3, no.2 (2001): 211.
[226]Article L227-1 of French Commercial Code https://www.legifrance.gouv.fr/Media/Traductions/English-en/code_commerce_part_L_EN_20130701 and Gesetz für kleine Aktiengesellschaften und zur Deregulierung des Aktienrechts vom 02.08.1994
[227] "Ley 7/2003, de 1 de abril, de la sociedad limitada Nueva Empresa por la que se modifica la Ley 2/1995, de 23 de marzo, de Sociedades de Responsabilidad Limitada," Agencia Estatal Boletin Oficial del Estado, Accessed 24 March 2020, https://www.boe.es/eli/es/l/2003/04/01/7.
[228] Article 2463bis(3) Italian Civil Code. Serra, L. *Società a responsabilità limitata semplificata* ,AltalexPedia, 2013.
[229] "Про товариства з додатковою та обмеженою відповідальністю," Законодавство України, Accessed 11 March 2020, https://zakon.rada.gov.ua/laws/show/2275-19

participants in the articles of association, the Law provides for the display of this information in the Unified State Register and clear rules that protect the rights of all interested persons. In addition, there is still a contradiction between the Law of Ukraine 'On LLCs and ALCs' and article 82 of the Economic Code of Ukraine[230], where the requirements for the companies' constituent documents, including the requirement to mention participants in the articles of association, are provided. Despite the contradiction, we apply the Law of Ukraine 'On LLCs and ALCs' as a special act in this sphere.

In Ukraine, additional liability companies are not widespread (there are only 1512 registered ALCs today[231]). The legal regulation is the same as in LLCs. The main difference is that the participants of the additional liability company are also liable for their own property in the event of the company's insolvency. Nevertheless, the requirements for the minimum threshold for the share capital of a limited liability company in Ukraine have not been established.

The fact that in these companies the share capital is divided into shares of certain sizes. However, the participants are liable with its debts not only for its contributions to the share capital, but also, in the case of the failure of these amounts, additional property belonging to them (in the same size for all participants fold to the contribution of each participant). The maximum amount of liability of the participants shall be stipulated in the founding documents. To create such a company, the members should have the property that they can offset the additional liability. "Operation of a company with supplementary liability in Ukraine has shown that this form of economic companies was actively used in the event of the privatized property certificates in the form of so-called trusts when there was an opportunity under the stated additional responsibility to accumulate significant amounts of privatized property certificates and to invest in privatized enterprises. Additional responsibility requires the ability to "answer" additionally for the liabilities that were not identified in many trusts and it became the basis of a fraud with a criminal tinge."[232] This form of economic company was popular in Ukraine in the middle of the 1990s, but in recent years it is not.

Therefore, companies with additional liability have no significant corporate characteristic such as limited liability and their relevance to corporations is extremely doubtful. So, the establishment of an additional liability company is not reasonable in Ukraine.

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[230]"Господарський кодекс України," Законодавство України. Accessed 1 March 2020. https://zakon.rada.gov.ua/laws/show/436-15.

[231] "Number of legal entities by organizational and legal forms of management," State Statistics Service of Ukraine, Accessed 11 April 2020, http://www.ukrstat.gov.ua/.

[232]Євтушевський В.А., *Основи корпоративного управління* (Київ: Знання-Прес, 2002), https://buklib.net/books/34390/.

As we could see, corporate relationship exists not only in LLCs and JSCs or other economic companies but also in such corporate enterprises as private and farm enterprises, production cooperatives. It is not an exhaustive list. In every country, there are own specific forms (hybrid, modified, etc.) of companies for flexible and convenient running a business as well as SCE (a supranational corporate form) for trans-border activities.

In Ukraine, it is recommended to abolish dualistic provisions concerning the legal regulation of private enterprises and deprive the status of the company from these enterprises.

Also, Ukraine should repeal such a legal form as ALC and use a simplified form of a private company as LLC.

3.3 Possible ways to improve the legal regulation of companies in Ukraine according to European legislation

The issue of adaptation of the legislation of Ukraine to the legislation of the European Union has arisen after signing of the Partnership and Cooperation Agreement (PCA) between Ukraine and the European Communities and their Member States on June 14, 1994.[233] Shortly after this Framework Agreement came into force in 1998, Ukraine began to establish an institutional mechanism for adaptation and to formulate a legal framework for the consistent and effective implementation of this important vector of legal reform. In the year of entry of PCA into force, the President of Ukraine by his decree approved the Strategy of Ukraine's integration into the European Union, in which the approximation of Ukrainian legislation to the EU norms and standards was recognized as one of the main priorities of the integration process. In the same year, the Cabinet of Ministers of Ukraine defined a mechanism for adapting Ukrainian legislation to EU legislation, in which the Ministry of Justice of Ukraine was responsible for coordinating the process in the executive branch.[234] In 2014, the notable act signed and approved was the Association Agreement between Ukraine and the EU[235], which is much more important and provides for more integration of the EU with Ukraine. This is now the key document that defines past and future reforms in the corporate sphere. Under the Association Agreement between

[233] "Partnership and Cooperation Agreement between the European Communities and their Member States, and Ukraine" (1994), Accessed 16 February 2020, http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=217

[234] Мармазов В. *Адаптація законодавства України до acquis Європейського Союзу: підсумки п'ятирічного шляху*, без дати., Accessed 16 February 2020, https://minjust.gov.ua/m/str_1702

[235] "Угода про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським співтовариством з атомної енергії і їхніми державами-членами, з іншої сторони" [Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part], Законодавство України, Accessed 1 March 2020, https://zakon.rada.gov.ua/laws/show/984_011.

Ukraine and the EU, Ukraine has undertaken to adapt its legislation to the EU legislation in priority areas that include company law.

Since that time, Ukraine has adopted new legal acts which more and less is approximate to EU law. Nevertheless, we could say anything about the 'perfect approximation' due to the peculiarities of the national system that influenced by traces of the Soviet Union. The process of making Ukrainian legislation better takes and will take a lot of time. It is necessary to understand what amendments we could make in order to harmonize Ukrainian legislation with EU Member States' legislation in the field of corporate law.

At the present stage, the European Union forms effective and flexible legal regulation to better cooperation between Member States. According to the article 21 of the Treaty on European Union, it contributes to promote "democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law".[236] We consider all branches of law to deal with the above-prescribed principles. These principles also relate to corporate law. For example, they provide the protection of creditor's and investor's rights and freedom to conduct business under chosen legal forms.

The important element of legal reform in Ukraine on the way to the EU integration is the unification of the legislation with European laws. In the opinion of Mahinchuk, reforming the Ukrainian legislation, as a necessary prerequisite for the unification of legislation, can be done in the following ways:

> (1) Repeal of the Economic Code of Ukraine with the simultaneous adoption of the relevant law on the peculiarities of regulation of the economic relations with state-owned enterprises. Such an approach to reforming Ukrainian law will testify to Ukraine's return to the monistic principles of regulating private legal relations that are inherent in the vast majority of post-Soviet countries, who have never known or professed the dualism of private law. […]
> (3) Any other way of reforming the current Economic Code of Ukraine may be related to the introduction of appropriate amendments to the current Economic Code of Ukraine and the removal from the last certain contradictory duplicate provisions which exist in the civil legislation. [237]

If we look at the problem identified through the lens of the European Community, then it has drawn attention to the problem of harmonization of corporate law for over half a century. It should be noted that the regulation of legal issues in the territory of the EU by the unified legislation is fragmented. EU corporate law regarding national companies is currently being

[236] "Consolidated versions of the Treaty on European Union," EUR-Lex, Accessed 7 Februaru 2020, https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF
[237] Махінчук В. М., "Дуалізм приватного права: до постановки питання," *Приватне право і підприємництво*, (2009): 56.

applied subsidiarily. Many issues remain open and unsettled. Corporate legal Directives and EU Regulations governing the formation of different types of companies are the main mechanism for implementing the regulation of legal entities.[238] On the whole, legal regulation of the activities of companies in the EU is carried out at the national level as we mentioned in the Introduction, and the Directives prescribe only facilitating the activity of companies by eliminating the barriers arising from differences existing between national legal systems.

Today, all European countries have pledged to reform the national legislation in line with EU law. Ukraine is also working in this direction. Much has been done within the framework of the program to adapt the corporate law of Ukraine to the law of EU companies. "The adaptation of the legislation of Ukraine to the EU legislation is recognized as a priority component of the process of integration of Ukraine into the EU and aims at achieving compliance of the legal system of Ukraine with EU laws on companies, taking into account the criteria put forward by the EU to the states that intend to join it."[239]

As can be seen from the analysis, not all of the concepts of a legal entity are clearly regulated by Ukrainian law. This situation arises because such concepts as 'company', 'organization', 'corporation' are derived from a foreign language. In the current conditions of globalization, foreign terminology continues to correlate with the words of Slavic origin that is why there is such confusion in the use of terms.[240] It is clearly stated that in the Civil Code of Ukraine the legal entities are divided into entities of private and public law. But there is no exact division of companies into public and private. It is defined that entrepreneurial companies are legal entities of private law and consist of economic companies and production cooperatives. The Economic Code does not operate such a notion as 'legal entities', instead of it, the terms 'subject of management' ('*суб'єкт господарювання'*) and 'enterprises' ('*підприємство*') are used. In the Economic Code of Ukraine, the corporate enterprises are companies which are characterized by the corporate relations. They include private enterprises, farm enterprises, productive cooperatives and economic companies (general and limited partnerships, LLCs, ALCs and JSCs). Thus, even there are divergences in the classification of the companies in Ukrainian legislation. It should be understood that corporate enterprise and entrepreneurial companies are covered by the notion 'company' in pursuant to Ukrainian law.

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[238] Ventoruzzo M. et al., "Comparative Corporate Law: Look No Further," *Bocconi Legal Studies Research Paper No. 2626021* (2015): 35-36.

[239] Волощеннко Т. М.,"Корпоративне законодавство: на шляху до гармонізації з законодавством ЄС," *Актуальна юриспруденція*, (2017).

[240] Бєляєва Н. С.,"Компанія, корпорація, організація, підприємство, установа, фірма: законодавче обґрунтування застосування понять," *Проблеми системного підходу в економіці* (2019): 172.

In addition, in the light of the above, it should be noted that the most important problem is the harmonization of basic civil law institutions, especially the term 'legal entities' with 'subjects of management'. The fundamental question of the two Codes is the issue of the participants of the legal relations. According to part 1 of article 55 of the Economic Code of Ukraine, "subjects of management are recognized as participants of economic relations that carry out economic activity, realizing economic competence (a set of economic rights and responsibilities), have separate property and are liable for its obligations with this property, except the cases provided by law." This term is covered by features of the legal entities under the Civil Code of Ukraine. Nevertheless, the term 'subject of management' includes not only legal entities, but also individual entrepreneurs. So, it would be wise to implement the term 'company' ('*компанія*') instead of definitions 'entrepreneurial companies' (they are legal entities of private law under the CC) and 'corporate enterprises' (they are subjects of management under the EC) in both Codes and define their types and forms to provide the same understanding of the concept 'companies' in Ukrainian legislation. Because, nowadays, there is unclearness in Ukrainian corporate terminology.

There are various legal acts that regulate the activity of companies in Ukraine, except the Economic and Civil Codes. The law 'On Economic Companies'[241] was adopted in 1991 and now is in effect in the part of legal regulation of general and limited partnerships. Other provisions concerning LLCs, ALCs and JSCs are inappropriate because such acts as the Law 'On JSCs'[242] and the Law 'On LLCs and ALCs'[243] now exist. It is recommended to abolish duplicated provisions concerning the legal regulation of companies in these acts. There is no need to repeat legal norms that regulate GPs and LPs in both Codes or stipulate rules for LLCs, ALCs and JSCs for which there are separate laws that regulate their activities.

Moreover, as a general rule, a legal entity is entrusted with the pursuit of those interests that are individually impossible or difficult to realize. Understanding the concept and nature of a legal entity is one of the most difficult problems in theoretical jurisprudence because there are many theories by which lawyers have tried to answer the question: what is the essence of the legal entity, to identify its essential features.[244] It is necessary because all companies are legal entities. To understand the legal status of companies is possible thought defining the essence of legal entities.

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[241]"Про господарські товариства," Законодавство України, Accessed 1 March 2020, https://zakon.rada.gov.ua/laws/show/1576-12

[242]"Про акціонерні товариства," Законодавство України, Accessed 28 February 2020, https://zakon.rada.gov.ua/laws/show/514-17

[243] "Про товариство з додатковою та обмеженою відповідальністю," Законодавство України, Accessed 11 March 2020, https://zakon.rada.gov.ua/laws/show/2275-19

[244] Дашковська О. О.,"Юридична особа як суб'єкт правовідносин: загальнотеоретичний підхід," *Порівняльно-аналітичне право* (2013): 21.

According to the European Commission, the number of problems appears as a result of companies' operation in the environment of the other legal system: "All Member States have traditionally accepted a certain degree of economic activity by foreign companies in their territory without imposing their own company law rules on them. Member States differ, however, in their (traditional) legal responses to foreign companies establishing particular intense links with their territories."[245]

The ECJ stated a right of freedom of establishment for companies. For example, *Uberseering case* shows that the company is recognized as such in all Member States, even if it does not conduct any activities in the state of incorporation.[246] The ECJ's practice (it has been analyzed in the subchapter 2.1.2) permits to establish companies in one Member State and carry out business in another Member States.

The main reason to unify the concept, types and forms of companies to the EU legal system is globalization processes and expansion of the international trade which create unfavorable circumstances for foreign companies.[247] For example, Lando states:

> These differences complicate foreign trade. At least one party to an international contract has to be subject to an alien legal system and will often have to invest a great deal of time, effort and money to become familiar with the foreign law. Venturing into a foreign market is risky, and many companies, especially small and medium-sized businesses, are wary of doing so. The legal differences are therefore obstacles to the free movement of goods, people and services, obstacles which are fundamentally irreconcilable with the principle of a common market.[248]

At the same time, it should be understood that in the course of adaptation of Ukrainian legislation to EU legislation there will be a considerable number of problems, without which it will be impossible to fulfill the set tasks. We share the opinion of academician Voloshchenko, stating that the harmonization of national and European law systems cannot be carried out mechanically. Firstly, the principle of state sovereignty of each country continues to act. Secondly, these countries have many features that they protect and do not want to lose during integration processes. Thirdly, universal organizational mechanisms for harmonizing relevant legal systems have not yet been established.[249]

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[245] Carsten, G. et al., *Study on the Law Applicable to Companies*. European Commission (2016), 26.
[246] "Uberseering BV v. Nordic Construction Company Baumanagement GmbH, Case C-208/00," (2002). Curia-Europe, Accessed 20 March 2020, http://curia.europa.eu/juris/liste.jsf?language=en&num=C-208/00.
[247] Apaydin, E. and D. Apaydin. "The Unification efforts in EU Civil Law," *Marmara Journal of European Studies*, (2018): 35.
[248] Lando O., "The rules of European contract law," *Working Paper Legal Affairs Series JURI103 EN* (1999): 127.
[249] Волощенко Т. М., "Корпоративне законодавство: на шляху до гармонізації з законодавством ЄС," *Актуальна юриспруденція* (2017).

Finally, today there are a lot of contradictory legislative acts that contain rules governing the procedure for establishing and operating companies such as the Economic and Civil Codes of Ukraine, the Law 'On Economic Companies', the Law 'On JSCs', the Law 'On LLCs and ALCs', etc. This creates the duplication in the legal regulation of relations in this area, in particular, in matters of formation and termination of companies, etc. Due to the fact that the unification and harmonization with EU law are the main vectors for Ukraine, it should abolish ambiguous and duplicated provisions in company law acts. Thereby, this contributes to the formation of a single space for conducting business by companies of EU Member States nowadays as well as supranational companies on the territory of Ukraine when it is the one of EU Member States.

All in all, we see such possible ways for improving the legal status of companies:

1) *To combine the terms 'corporate enterprises' and 'entrepreneurial companies' under the definition 'companies' in the Civil and Economic Codes;*
2) *To abolish duplicated provisions concerning the legal regulation of companies in all acts that contain company law norms.*

CONCLUSIONS

Having studied the concept, types and business forms of companies in Ukraine and selected EU Member States, it can be concluded that:

1. The precise notion of corporation varies from country to country, but the main understanding is the same everywhere. Summarizing the definitions of a corporation and taking into account the main features, it can be determined as a commercial legal entity that is created under the law, based on share capital and separated from its members who support, own, manage its activities and are not responsible for its debts and obligations. All companies are legal entities, but not every legal entity could be a company since there are various types of legal entities, including, for instance, non-profit organizations.
2. Legislation of Ukraine and EU Member States are different in the status of 'general and limited partnerships'. According to Ukrainian legislation, the company includes partnerships because of the legislative prescription and all of them are legal entities. In the EU, partnerships are an option another than the company due to distinctive features. They are characterized mostly by the contractual basis, usually an absence of legal personality and unlimited liability.
3. There is a significant discrepancy between the number of criteria used to classify companies in Ukraine under the Economic Code (two versus three in the EU) and the values of annual income for micro, small, medium and large enterprises to those imposed by the Directive 2013/34/EU. However, the Law of Ukraine 'On Amending the Law of Ukraine 'On Accounting and Financial Reporting in Ukraine' concerning the improvement of certain provisions' put this classification in the line with EU law, particularly, provided the same categories and indicators for micro, small, medium and large companies as in the above-mentioned Directive. The Law of Ukraine 'On Accounting and Financial Reporting in Ukraine' is applicable as a special act in this sphere.
4. The appearance of single-members private LLCs has led to the creation of the harmonized conditions for SMEs operation across borders. SMEs take a special place in the national corporate law of EU Member States as well as Ukraine.
5. The main classification of companies is the division into public and private ones. The difference is that a public company can trade shares on the stock exchange and make a public offer. According to Ukrainian law, LLCs are private companies, private and public JSCs are public companies. Nowadays, the number of members is not taken into consideration concerning the distinction between these kinds of companies in Ukraine as well as EU Member States.

6. It was established that business forms of companies have specific national peculiarities in Ukraine and EU Member States. Corporate relations exist in economic companies (LLCs, JSCs, ALCs, LPs, GPs), production cooperatives, farm and private enterprises under Ukrainian law. It is arguable whether all of them could be covered by the notion 'company'.
7. In some countries, there are the simplified and modified companies, such as a simplified joint-stock company in France (*SAS*), a simplified form of LLC in Germany (*mini-GmbH*), LLC in Ukraine ('*товариство з додатковою обмеженістю*'), LLC in Lithuania ('*uždaroji akcinė bendrovė*') and others that are characterized by the flexibility of formation leading to be the most popular forms for running a business.
8. Under Ukrainian law, it is difficult to understand the meaning of the concept of 'business form' and the fact that the legislator in addition to this term also uses the term 'type', without distinguishing them. The CC and EC of Ukraine provide different lists of business forms of companies. In addition, these legal acts operate different terms with regard to the notion 'company'.
9. Due to the fact that the unification and harmonization with the EU law are the main vectors in Ukraine and in today's context, it is essential for Ukraine to create the single legal space within which it is effective to cooperate with the EU requirements in the sphere of company law.

RECOMMENDATIONS

1. It is advisable to unify and systematize organizational and legal forms in which legal entities (especially, companies) can actually function in both the Civil and Economic Codes of Ukraine for the clear and identical understanding of what business forms of companies exist in Ukraine.
2. It is recommended to combine the terms ‘corporate enterprises’ and ‘entrepreneurial companies’ under the definition ‘companies’ in Ukrainian legislation. Moreover, it is essential to separate ‘partnerships’ from the notion ‘economic companies’ under the Law of Ukraine ‘On Economic Companies’. It would be better to abolish this act and to adopt a new act in regard to the legal regulation of partnerships as alternatives to companies that will be in compliance with the relevant EU Member States’ legislation.
3. In Ukraine, it is needed to abolish ambiguous provisions that exist because of traces of Soviet times, particularly concerning the legal regulation of private enterprises and deprive the status of the company from these enterprises. Also, Ukraine should repeal such a legal form as ALC and use only such a simplified form as LLC and get rid of duplicated provisions concerning the legal regulation of companies in all acts that contain corporate norms in order to unify and harmonize the legal regulation in Ukrainian company law.

LIST OF BIBLIOGRAPHY

Legal acts and case law:

1. "Camera van Koophandel en Fabrieken voor Amsterdam v Inspire Art Ltd, Case C-167/01." EUR-Lex. Accessed 30 March 2020. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62001CJ0167.
2. "Centros Ltd v Erhvervs-selskabsstyrelsen, Case C-212/97." EUR-Lex. Accessed 30 March 2020. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61997CJ0212.
3. "Civil Code of the Republic of Lithuania." *WIPO*. Accessed 28 January 2020. https://www.wipo.int/edocs/lexdocs/laws/en/lt/lt073en.pdf.
4. "Companies Act 2006." Legislation – Gov. Accessed 11 April 2020. http://www.legislation.gov.uk/ukpga/2006/46/contents.
5. "Consolidated version of the Treaty on the Functioning of the European Union." EUR-Lex. Accessed 11 March 2020. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT.
6. "Consolidated versions of the Treaty on European Union." EUR-Lex. Accessed 7 Februaru 2020. https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF.
7. "Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE)." EUR-Lex. Accessed 24 March 2020. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32003R1435.
8. "Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE)." EUR-Lex. Accessed 11 March 2020. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32001R2157.
9. "Council Regulation № 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG)." EUR-Lex. Accessed 20 April 2020. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31985R2137&from=EN.
10. "Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law." EUR-Lex. Accessed 9 Februaru 2020. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017L1132.
11. "Directive 2007/36/EU 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 12 March 2020. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32007L0036.

12. “Directive 2009/102/EC of the European Parliament and of the Council of 16 September 2009 in the area of company law on single-member private limited liability companies.” EUR-Lex. Accessed 7 Februaru 2020. https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32009L0102.

13. “Directive 2012/17/EU of the European Parliament and of the Council of 13 June 2012 amending Council Directive 89/666/EEC and Directives 2005/56/EC and 2009/101/EC of the European Parliament and of the Council as regards the interconnection of central, commercial and companies register.” EUR-Lex. Accessed 22 March 2020. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012L0017.

14. “Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings.” EUR-Lex. Accessed 11 March 2020. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013L0034.

15. “Gesetz betreffend die Gesellschaften mit beschränkter Haftung, GmbHG.” Gesetze. Accessed 11 March 2020. https://www.gesetze-im-internet.de/englisch_gmbhg/englisch_gmbhg.html.

16. “Handelsgesetzbuch.” TRANS-Lex. Accessed 12 February 2020. https://www.trans-lex.org/600200/_/german-commercial-code/.

17. “Impact Assessment Accompanying the document Proposals for a Directive of the European Parliament and of the Council on single-member private limited liability companies.” EUR-Lex. Accessed 25 March 2020. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014SC0124&from=EN.

18. “Law on Companies of the Republic of Lithuania.” E-Seimas. Accessed 16 February 2020. https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.106080/ijtiWHwizy.

19. “Model Business Corporation Act.” American Bar. Accessed 1 March 2020. https://www.americanbar.org/content/dam/aba/administrative/business_law/corplaws/2016_mbca.authcheckdam.pdf.

20. “On Approval of the Principles of Corporate Governance.” OSCE. Accessed 28 February 2020. https://www.osce.org/ru/pc/71420.

21. “On some issues in the practice of resolving disputes arising from corporate relationships.” Законодавство України. Accessed 28 February 2020. https://zakon.rada.gov.ua/laws/show/v0004600-16.

22. “Partnership and Cooperation Agreement between the European Communities and their Member States, and Ukraine.” Accessed 16 February 2020.

http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=217.

23. “Salomon v Salomon [1897] – Case Summary.” Lawteacher.net. Accessed 1 March 2020. https://www.lawteacher.net/cases/salomon-v-salomon.php?vref=1

24. “The Commercial Code.” Legifrance. Accessed 12 March 2020. https://www.legifrance.gouv.fr/Media/Traductions/Englishen/code_commerce_part_L_EN_20130701.

25. “Treaty establishing the European Community (Consolidated version 2002).” EUR-Lex. Accessed 1 March 2020. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12002E%2FTXT.

26. “Twelfth Council Company Law Directive 89/667/EEC of 21 December 1989 on single-member private limited-liability companies.” EUR-Lex. Acessed 1 March 2020. https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31989L0667.

27. “Uberseering BV v. Nordic Construction Company Baumanagement GmbH, Case C-208/00.” Curia-Europe. Accessed 20 March 2020. http://curia.europa.eu/juris/liste.jsf?language=en&num=C-208/00.

28. “Господарський кодекс України.” Законодавство України. Accessed 1 March 2020. https://zakon.rada.gov.ua/laws/show/436-15.

29. “Конституція України.” Законодавство України. Accessed 28 February 2020. https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80

30. “Порядок оприлюднення повідомлення емітентами цінних паперів про те, що вони вважаються такими, що здійснювали публічну пропозицію цінних паперів.” Законодавство України. Accessed 20 April 2020. https://zakon.rada.gov.ua/laws/show/z0296-18#n15.

31. “Про акціонерні товариства.” Законодавство України. Accessed 28 February 2020. https://zakon.rada.gov.ua/laws/show/514-17.

32. “Про бухгалтерський облік та фінансову звітність в Україні.” Законодавство України. Accessed 11 March 2020. https://zakon.rada.gov.ua/laws/show/996-14.

33. “Про внесення змін до деяких законодавчих актів України щодо захисту прав інвесторів.” Законодавство України. Accessed 12 March 2020. https://zakon.rada.gov.ua/laws/show/289-19.

34. “Про внесення змін до деяких законодавчих актів України щодо спрощення ведення бізнесу та залучення інвестицій емітентами цінних паперів.” Законодавство України. Accessed February 20, 2020. https://zakon2.rada.gov.ua/laws/ show/2210-19.

35. “Про внесення змін до Закону України “Про бухгалтерський облік та фінансову звітність в Україні” щодо удосконалення деяких положень.” Законодавство України. Accessed 11 March 2020. https://zakon.rada.gov.ua/laws/show/2164-19

36. “Про господарські товариства.” Законодавство України. Accessed 1 March 2020. https://zakon.rada.gov.ua/laws/show/1576-12.

37. “Про затвердження національних стандартів України, державних класифікаторів України, національних змін до міждержавних стандартів, внесення зміни до наказу Держспоживстандарту України від 31 березня 2004 р. N 59 та скасування нормативних документів. Державний комітет України з питань технічного регулювання та споживчої політики. № 97.” LIGA-Zakon. Accessed 14 February 2020. http://search.ligazakon.ua/l_doc2.nsf/link1/FIN10242.html.

38. “Про кооперацію.” Законодавство України. Accessed 1 March 2020. https://zakon.rada.gov.ua/laws/show/1087-15.

39. “Про товариства з додатковою та обмеженою відповідальністю.” Законодавство України. Accessed 11 March 2020. https://zakon.rada.gov.ua/laws/show/2275-19.

40. “Про фермерське господарство.” Законодавство України. Accessed 28 February 2020. https://zakon.rada.gov.ua/laws/show/973-15.

41. “Угода про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським співтовариством з атомної енергії і їхніми державами-членами, з іншої сторони.” Законодавство України. Accessed 1 March 2020. https://zakon.rada.gov.ua/laws/show/984_011.

42. “Цивільний кодекс України.” Законодавство України. Accessed 1 March 2020. https://zakon.rada.gov.ua/laws/show/435-15.

Doctrine:

43. “Company incorporation in Europe: Guide.” European Law firm. Accessed 22 March 2020. https://www.european-law-firm.com/guide/incorporating-a-limited-company-in-europe2017.pdf.

44. “Internal Market, Industry, Entrepreneurship and SMEs.” European Commission. Accessed 24 March 2020. https://ec.europa.eu/growth/sectors/social-economy/cooperatives/european-cooperative-society_en.

45. “La société par actions simplifiée (SAS), un statut souple et une responsabilité limitée aux apports.” Le portail de l'Économie, des Finances, de l'Action et des Comptes publics.

Accessed 12 March 2020. https://www.economie.gouv.fr/entreprises/societe-actions-simplifiee-SAS.

46. "Number of legal entities by organizational and legal forms of management." State Statistics Service of Ukraine. Accessed 11 April 2020, http://www.ukrstat.gov.ua/.

47. "Организационно-правовые формы предприятий в Литве." Accessed 12 March 2020. http://www.vneshmarket.ru/content/document_r_1A4EFAA4-7E91-4CA4-90F0-F2AF855383E6.html.

48. A. Arlt et al.. "The Societas Europaea in Relation to the Public Corporation of Five Member States (France, Italy, Netherlands, Spain, Austria)." *European Business Organization Law Review (EBOR) 3 ,4* (2002): 733-764. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2404620.

49. Adriano, Elvia. "Natural persons, juridical persons and legal personhood." *Mexican Review Law* (2014): 101-118.

50. Alexander N et al. **"**Sector Non-profit Organizations in the Management of Socio-Economic Systems." *Journal of Legal, Ethical and Regulatory Issues*, 20, 1 (2017). https://www.questia.com/library/journal/1P4-1987378733/sector-non-profit-organizations-in-the-management.

51. Amity University. "4 perpetual existence a company is a stable form of business organization." Accessed 1 March 2020. https://www.coursehero.com/file/pd9fap/4-Perpetual-Existence-A-company-is-a-stable-form-of-business-organization-Its/.

52. Apaydin, E. and D. Apaydin. "The Unification efforts in EU Civil Law." *Marmara Journal of European Studies* (2018): 25-67.

53. Armand Krasniqi. "Legal or business personality of the commercial companies according to business law in Kosovo." *International Journal of Sciences: Basic and Applied Research* (2016): 1-8.

54. Bas J. de Jong. "The distinction between public and private companies and its relevance for company law. Observations from the Netherlands and the United Kingdom." *European Business Law Review* (2016): 1-23. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2507726.

55. Belinfanti, Tamara and Stout. "Contested Visions: The Value of Systems Theory for Corporate Law." *University of Pennsylvania Law Review* (2018): 579-631.

56. Berkman Solutions. "What are the Types of Business Entities?" Accessed 28 February 2020. https://www.berkmansolutions.com/entities/business-entities.

57. Bitė, Virginijus. "Agreement on sale of close company shares: requirements of form and significance of registration." *Jurisprudence* (2012): 543-560.

58. Bité, Virginijus. “Impact of EU Membership on regulation of Lithuanian close companies: enrichment or legal irritants?” quoted in The Consequences of Membership in the EU for new Member States – structural, political and economic changes, by Barbara Mielnik,101-109. E Publishing. Legal and Economic Digital Library. Faculty of Law, Administration and Economics of the University of Wroclaw (2017): 101-119.

59. Blumberg Phillip. “The Transformation of Modern Corporation Law: The Law of Corporate Groups.” *Connecticut Law Review* (2005): 605-617. https://opencommons.uconn.edu/law_papers/192.

60. Butler, H. “The Contractual Theory of the Corporation.” *George Mason Law Review* (1989): 99-123.

61. Davies, P.L. et al. *Gower and Davies' Principles of Modern Company Law*. London: Sweet&Maxwel, 2008.

62. Davoudi, L., Ch. McKenna and R. Olegario. “The historical role of the corporation in society.” *Journal of the British Academy* (2018): 1-31.

63. Dorresteijn A. et al. *European Corporate Law*. 3rd edition. Wolters Kluwer, 2017.

64. Eric Orts. *Foundations of the Firm I: Business Entities and Legal Persons.* United Kingdom: Oxford University Press, 2013.

65. Fleischer, H. “Supranational corporate forms in the European Union.” *Common Market Law Review* 47 (2010): 1671–1717. https://www.kluwerlawonline.com/abstract.php?area=Journals&id=COLA2010070.

66. Fohlin, Caroline. "Chapter 4: The History of Corporate Ownership and Control in Germany." Quoted in Morck, Randall K. *A History of Corporate Governance around the World: Family Business Groups to Professional Managers*. University of Chicago Press, 2005.

67. Frank Dornseifer. *Corporate business forms in Europe: a compendium of public and private limited companies in Europe*. Berne: Munchen: Staempfli: Sellier European Law Publishers, 2005.

68. Franks, Julian and Colin Mayer. "Ownership and Control of German Corporations." *The Review of Financial Studies*. Oxford University Press 14, 4 (2001): 943-977.

69. Grundmann & Glasow. *European company law* 2nd ed. Cambridge: Intersentia, 2012.

70. Harold Joseph Berman, *Law and Revolution* (vol. 1)*: The Formation of the Western Legal Tradition*. Cambridge: Harvard University Press, 1983.

71. Hogan Lovells. “Doing Business in Germany.” Accessed 26 February 2020. https://www.hoganlovells.com/~/media/germany_folder-for-german-team/broschueren/brochure_doing_business_in_germany.pdf.

72. Holov, S. “Rehuliuvannia bukhhalterskoho obliku i audytu v YeS ta vyklyky dlia Ukrainy.” *Bukhhalterskyi oblik i audyt*,10 (2014): 3-13.

73. Ilchuk, P. and O. Korolieva. “Corporate Governance: Historical aspects.” *National university lviv polytechnic*, (2009): 180-182.

74. *Introduction to European and International Company Law*, Presentation prepared by Virginijus Bite 09.09.2019.

75. Ivan Romashchenko. *Related Party Transactions and Corporte Groups: When Eastern Europe Meets the West*. The Netherlands: Kluwer Law International BV, 2020. https://books.google.com.ua/books?id=2QXaDwAAQBAJ&hl=uk&source=gbs_navlinks_s.

76. Kenton, W. ”Corporation.” Accessed 29 January 2020. https://www.investopedia.com/terms/c/corporation.asp.

77. Klaus Hopt. *Modern Company Law Problems: A European Perspective Keynote Speech. A Comparative Outlook of Current Trends*. Stockholm, Sweden: Organization for Economic Cooperation and Development, 2000.

78. Kraakman, R. et al. *The anatomy of corporate law – a comparative and functional approach*. Oxford: Oxford University Press, 2009.

79. Kuchhal M.C. & Kuchhal Vivek. *Business Law*. 7th Edition. Vikas Publishing House, 2018. https://books.google.ru/books?id=64akDwAAQBAJ&hl=ru.

80. Lando, O. “The rules of European contract law.” *Working Paper Legal Affairs Series JURI103 EN* (1999). https://www.cisg.law.pace.edu/cisg/biblio/lando2.html.

81. Lin, Lin, and HY, Yeo. “Limited partnership: new business vehicle in People’s Republic of China.” *Butterworths Journal of International Banking and Financial Law*, 25,2 (2010): 104-108.

82. Manjeet Sahu. “Classification of companies.” *SSRN Electronic Journal* (2012): 1-21. https://www.researchgate.net/publication/272300622_Classification_of_Companies .

83. Mäntysaari P. *Organising the Firm: Theories of Commercial Law, Corporate Governance and Corporate Law*. Springer: Berlin. Heidelberg, 2012. https://link.springer.com/book/10.1007%2F978-3-642-22197-2.

84. New Internationalist. “A Short History of Corporations.” Accessed 1 March 2020. https://newint.org/features/2002/07/05/history.

85. Opryshko, Dariia. “Enterprise and Union of Enterprises in Ukraine.” *Revista Chilena de Derecho* (2014): 351-365.

86. Ozeran, A. “Dyrektyva 2013/34/YeS shchodo richnoi finansovoi zvitnosti: dyskusiini pytannia ta napriamy yii implementatsii v normatyvnu bazu Ukrainy.” *Bukhhalterskyi oblik i audyt*, 5 (2015): 2-10.

87. Ozeran, A. “Zvit kerivnytstva vs Zvit pro upravlinnya: problemy vidpovidnosti zakonu pro bukhhalterskyy oblik ta svitovoyi praktyky.” *Bukhhalterskyy oblik i audit,* 10-11 (2017): 2-12.

88. P.Lynch, J. Rothchild, J. Wiley & Sons. *Learn to Earn: A Beginner's Guide to the Basics of Investing and Business*. New York, 1997.

89. Pistor, K., *et al*. “The Evolution of Corporate Law: a Cross-Country Comparison.” *The University of Pennsylvania Journal of International Economic Law* 23, 4 (2002): 791-871. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=419881.

90. Prosterman, R. and L. Rolfes. “Agricultural Land Markets in Lithuania, Poland and Romania: Implications for accession to the European Law.” *Rural Development Institute* (1999): 4-17.

91. Ramanauskas, J. *Kooperacijos pagrindai*. Kaunas: Spalvų kalvė 2007.

92. Ramanauskas, J., Stasys, R. and Conto, F. “The Main Obstacles and Possibilities of the Cooperative Movement in Lithuania*.” Organizaciju Vadyb Sisteminiai Tyrimai* (2017): 101-117.

93. Reinier Kraakman et al. *The Anatomy of Corporate Law. A Comparative and Functional Approach.* Third Edition. Oxford University Press, 2017.

94. Ribstein, L.“Limited Liability and Theories of the Corporation.” *Marryland Law Review* (1991): 80-130.

95. Riccardo Ghetti**.** “Unification, Harmonisation and Competition in European Company Forms.” *European Business Law Review* 29, 5 (2018): 813–842, https://www.kluwerlawonline.com/abstract.php?area=Journals&id=EULR2018031.

96. Rodeck, David. “How Successful Are Sole Proprietorships?” Accessed 28 January 2020. https://smallbusiness.chron.com/successful-sole-proprietorships-24539.html.

97. Romashchenko, I. “Private and Public Companies under Ukrainian Laws: Notion and Types.” *Taras Shevchenko National University of Kyiv* (2015): 1-13.

98. Solaiman, S. M.“Legal personality of robots, corporations, idols and chimpanzees: a quest for legitimacy.” *Artificial Intelligence and Law* (2017): 155-179.

99. Springer. “Development of Corporate Governance in Ukraine: Legislation and Practices.” Accessed 28 February 2020. https://link.springer.com/chapter/10.1007/978-3-030-39504-9_13.

100. Šumylė D. and Ribašauskienė E. “Servitization of Lithuanian agricultural cooperatives. Management Theory and Studies for Rural Business and Infrastructure Development*” Vadybos mokslas ir studijos – kaimo verslų ir jų infrastruktūros plėtrai* 39, 4 (2017):510-523. https://www.laei.lt/?mt=mokslo-publikacijos&straipsnis=1239&metai=2017.

101. Tičar, Bojan. “Persona Sine Anima – Towards an Innovative Classification of Legal Persons.” *Journal of Criminal Justice and Security* (2016): 164-177.

102. Ventoruzzo et al.. “Comparative Corporate Law: Look No Further”. *Bocconi Legal Studies Research Paper No. 2626021* (2015): 35-40.

103. Vermeulen, E. P. M. *The Evolution of Legal Business Forms in Europe and the United States: Venture Capital, Joint Venture and Partnership Structures*. The Hague: Kluwer Law International, 2003. 1-378. https://books.google.lt/books?id=rGbN_R9-PmgC&pg=PP1&lpg=PP1&dq=Vermeulen+The+Evolution+of+Legal+Business+Forms+in+Europe+and+the+United+States:+Venture+Capital,+Joint+Venture+and+Partnership+Structures&source=bl&ots=6grtqasUhr&sig=ACfU3U1gSxDCA8-dMaiS2DBA0P1dASyphw&hl=lt&sa=X&ved=2ahUKEwjVyt7lga7oAhXwAxAIHYpLDIYQ6AEwAnoECA4QAQ#v=onepage&q=Vermeulen%20The%20Evolution%20of%20Legal%20Business%20Forms%20in%20Europe%20and%20the%20United%20States%3A%20Venture%20Capital%2C%20Joint%20Venture%20and%20Partnership%20Structures&f=false.

104. Walter Brugger and Keine Anwendung. “Österreichische Notariats zeitung.” *Notar.At* 11 (2015): 405-412. http://www.profbrugger.at/publ/Brugger_Keine_Anwendung_Nachschuss_GesbR_GmbH_AG_NZ_2015.pdf.

105. Warth & Klein Grant Thornton. “Doing Business in Germany.” 2017. https://www.grantthornton.lt/globalassets/1.-member-firms/lithuania/pdf/doing-business-in-germany-2017.pdf.

106. Wooldridge, F. *The general partnership in German law*. Amicus Curiae, 2009.

107. Yefymenko, A. “Corporate Governance under Ukraine's New Joint-Stock Company Law” *SSRN* (2009): 1-11. http://ssrn.com/abstract=1387360.

108. Zubilevych, S. "Oblikova Dyrektyva YeS, yii vplyv na sklad i zmist zvitiv yevropeiskykh kompanii ta perspektyvy dlia Ukrainy" [Account the EU Directive, its impact on the structure and content of the reports of European companies and prospects for Ukraine], *Bukhhalterskyioblikiaudyt*, 7 (2014): 3-15.

109. Бершадський, А.О. та Юрчишена, Л.В. “Акціонерні товариства: тенденції, проблеми функціонування та дивідендна політика.” *Східна Європа: економіка, бізнес та управління*, 3 (2017): 95—102.

110. Бєляєва, Н. С.”Компанія, корпорація, організація, підприємство, установа, фірма: законодавче обґрунтування застосування понять.” *Проблеми системного підходу в економіці* (2019): 164-172.

111. Болтянська, Л. О., Л. О. Андреєва, та О. І. Лисак. *Економіка підприємства*. Херсон: Олді-плюс, 2015.

112. Бутрин, Наталія Степанівна. *Правочин як підстава виникнення та припинення корпоративних прав.* Київ, 2014. http://dspace.tneu.edu.ua/handle/316497/840.

113. Волощеннко, Т. М. "Корпоративне законодавство: на шляху до гармонізації з законодавством ЄС." *Актуальна юриспруденція*, (2017).

114. Воронюк, О. О. "Критерії класифікації юридичних осіб," *Університетські наукові записки* (2008): 133.

115. Дашковська, О. О."Юридична особа як суб'єкт правовідносин: загальнотеоретичний підхід." *Порівняльно-аналітичне право* (2013): 21.

116. Дзюба, С. Г. "Правові основи систематики видів підприємств." *Зовнішня торгівля: економіка, фінанси, право* (2014): 156-167.

117. Євтушевський В.А., *Основи корпоративного управління*. Київ: Знання-Прес, 2002. https://buklib.net/books/34390/.

118. Жалинский А., та А. Рёрихт. *Введение в немецкое право.* Москва: Спарк, 2001.

119. Жорнокуй, Ю. "Корпорація: Сучасний стан Законодавства в Україні та Європейському Союзі." *Цивільне право і процес, 1* (2018): 13-17.

120. Зеліско А.В. "Підприємницькі юридичні особи приватного права як суб'єкти цивільних правовідносин." Дисертація, Науково-дослідний інститут приватного права і підприємництва імені академіка Ф. Г. Бурчака Національної академії правових наук України, 2017. https://www.twirpx.com/file/2393277/.

121. Калініна О. "Передумови, напрями та процес реформування корпоративного права Європейського." *Український часопис міжнародного права: науково-практичний журнал*,3 (2012): 69−73.

122. Кібенко, О. Р. "Сучасний стан та перспективи правового регулювання корпоративних відносин: порівняльно-правовий аналіз права ЄС, Великобританії та України." Дисертація, Нац. юрид. акад. України ім. Я. Мудрого, 2006. https://www.twirpx.com/file/1520121/.

123. Клименко С.В. та Даниш Я.В. "Організаційно-правові форми юридичних осіб: порівняльний аналіз законодавства України та іноземних держав." *Порівняльно-аналітичне право*, 6 (2016):77-80. http://www.pap.in.ua/6_2016/23.pdf.

124. Колібабчук, Н. К. "Історія виникнення і розвитку підприємництва на Україні в XVIII – на початку XX ст." *Часопис цивілістики* (2015): 199-203.

125. Корчак Н.М. та Вертузаєва І.М. “Особливості правового становища приватних підприємств у світлі Господарського Кодексу України.” *Юридичний вісник, 4(9)* (2008): 53-58.

126. Костур, О. Д. “Особливості правового статусу аграрних госпордарських товариств в Україна та країнах СНД.” *Вісник Ужгородського Національного Університету* (2014): 448-452.

127. Лукач, І. “Історія становлення корпоративного права в європейських країнах континентальної системи права.” *Вісник Київського національного університету мені Тараса Шевченка* (2012): 42-45.

128. Магданов П. В. *История возникновения корпораций до начала XX в*., № 4. Ars Administrandi, 2012.

129. Макарова, О. А. *Корпоративное право*. Москва: Волтерс Клувер, 2005.

130. Мармазов, В. **“**Адаптація законодавства України до acquis Європейського Союзу: підсумки п’ятирічного шляху.” Accessed 16 February 2020. https://minjust.gov.ua/m/str_1702.

131. Марущак, Я. С. “Нові організаційно-правові форми товариств в Європейському Союзі.” *Юридичний науковий електронний журнал*, 3 (2017): 23-45.

132. Махінчук, В. М. “Дуалізм приватного права: до постановки питання.” *Приватне право і підприємництво* (2009): 56-59.

133. Мелех Л. В. та К.І. Круць. “Проблематика правового регулювання корпоративних правовідносин: перспективи використання законодавчого досвіду Європейського союзу в правовому полі України.” *Науковий вісник Львівського державного університету внутрішніх справ* (2016): 102-108.

134. Менджул, М. В. та Е. Ю. Імре. “Система непідприємницьких товариств в Україні: окремі проблеми.” *Закарпатські правові читання: матеріали VII Міжнародної науково-практичної конференції*. Ужгород: Вид-во УжНУ «Говерла», 2015.

135. Метелиця, В.М. “Регуляторна конвергенція бухгалтерської професії в Європейському Союзі.” *Accounting and Finance*,2 (64) (2014): 41–55.

136. Мовчан, О. О. “Поняття «компанія» та його тлумачення в законодавстві Європейського союзу та України.” *Наукові записки* (2003): 245-247.

137. Могилевский С. Д. *Акционерные общества*, 5-е изд. М.: Дело, 2018.

138. Мостенська, Т. Л., Н. С. Скопенко, Н. А. Шекмар, та І. А. Бойко. *Корпоративне управління*. Київ: НУХТ, 2010.

139. Нашинець-Наумова, А.Ю. “Поняття та передумови виникнення корпоративного управління.” *Проблеми системного підходу в економіці,* 1 (2007): 3. http://jrnl.nau.edu.ua/index.php/EPSAE/article/view/3904

140. Ортинський, В. Л. *Основи держави і права України*. Київ: Знання, 2008.

141. Пилипенко, А. Я. та В. С. Щербина. *Господарське право: курс лекцій*. Київ: Вентурі, 1996.

142. Руденко, В. В. “Корпорації в Україні та за кордоном: сутність і характерні ознаки.” *Науковий вісник Ужгородського національного університету* (2015): 145-148.

143. Снісаренко, Л.Ю. “Організаційно-правова форма юридичної особи: теоретичне поняття та проблеми практичного застосування.” *Державне управління: удосконалення та розвиток* (2015): 371-379.

144. Трегубенко, Г.П. *Господарське право*. Полтава: ПолтНТУ, 2018.

145. Фасій, Б. та Д. Московчук. “Аналіз сучасних змін законодавства про акціонері товариства в України.” *Господарсько право і процес* (2019): 70-74.

146. Фіронова, В. “Виникнення та розвиток систем корпоративного права.” *Державний вищий навчальний заклад Українська академія банківської справи Національного банку України* (2009): 222-233.

147. Функ Я. И. *Виды хозяйственных обществ и товариществ в праве Республики Беларусь*. Минск: Ред. Промышленно-торговое право. 2004.

148. Цюцик, О. В. ”Організаційно-правові форми сільськогосподарських товаровиробників.” *Форум права* (2010): 564-572.

149. Шимон, С. І. *Цивільне та торгове право зарубіжних країн.* Київ: КНЕУ, 2004.

150. Юркевич, Ю. М.”Правовий статус учасників повних товариств та повних учасників командитних товариств за законодавством України.” *Науковий вісник Херсонського державного університету* (2015): 118-122.

151. Ягмурджи А. “Еволюція становлення та розвитку корпорацій: організаційно-економічний аспект.” *Вісник економічної науки України,* 13 *(*2008): 128-131.

ABSTRACT

The research identifies the nature, types and forms of companies in Ukraine in comparison with the legislation on companies in Lithuania and other EU Member States and studies the necessary changes to the legislation of Ukraine. In particular, the author: (1) discloses the history and essence of the company as a form for running a business; (2) identifies the typology of companies existing in the business market; (3) highlights the specificity of the Ukrainian and European companies' functioning in the different business forms.

In the light of achieving the goals of the study, recommendations for further improvement of Ukrainian corporate legislation are elaborated to build an optimal model for the development of domestic corporate law and propose approaches to modify the corporate law regulation in a way of the adoption of a new legal act for determining the partnership's status, the abolishment of the outdated concepts and ambiguous provisions.

Keywords: company, legal entity, partnership, business form, corporation.

SUMMARY

The master thesis “Concept, types and business forms of companies in Ukraine, Lithuania and other EU Member States” is aimed at identifying the essence, types and business forms of companies in Ukraine in comparison with company laws in Lithuania and other EU Member States and investigate what amendments are necessary in Ukrainian legal acts. The objectives of the study are formulated in accordance with the necessity to review Ukrainian corporate law in a line with EU Member States. They are as follows: to disclose the history and legal nature of a company as a form for running a business; to identify a typology of companies existing in the business market; to highlight the specificity of the Ukrainian and European companies’ functioning in the different business forms and develop recommendations for improving Ukrainian corporate law.

Structurally, this paper is divided into 3 Chapters: *1 – The Company as a form of doing business in present-day conditions.* The author studies the history of the concept of ‘company’ development as legal entities. For these purposes the nature of the first corporate entities and definitions of ‘corporation’ are explored. The author highlights the legal status of companies and outlines the features of a company as a legal entity. The distinctions between commercial entities’ forms are summarized. It is recommended to separate ‘companies’ from ‘partnerships’ in Ukrainian legislation. *2 – Typology of companies in the business market.* The legislative criteria of companies’ classification are researched. This section contains a description of types of companies based on the mode of incorporation and the size of companies. The legal norms of the Law of Ukraine ‘On Joint-Stock Companies’ are analyzed ranged before and after reforms. The comparison of public and private companies in EU Member States’ legislation is provided. *3 – Comparative analysis of the functioning of companies in different business forms in Ukraine and EU Member States.* The functioning of companies of the different business forms is analyzed with respect to the legislation of Ukraine and selected EU Member States. Recommendations on how to improve legal regulations of business forms of companies in Ukraine are given, especially with regard to the systematization of the list of business forms in legal acts, deprivation of the company status from private enterprises and additional liability companies, abolishment of duplicated provisions in order to unify and harmonize Ukrainian corporate law.

HONESTY DECLARATION

03/05/2020
Vilnius

I, VIKTORIIA MOROZ, student of Mykolas Romeris University (hereinafter referred to University),

Mykolas Romeris Law School, Institute of Private Law, Private Law Programme

(Faculty /Institute, Programme title)

confirm that the Bachelor / Master thesis titled

" Concept, types and business forms of companies in Ukraine, Lithuania and other EU Member States":

1. Is carried out independently and honestly;
2. Was not presented and defended in another educational institution in Lithuania or abroad;
3. Was written in respect of the academic integrity and after becoming acquainted with methodological guidelines for thesis preparation.

I am informed of the fact that student can be expelled from the University for the breach of the fair competition principle, plagiarism, corresponding to the breach of the academic ethics.

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(signature) *(name, surname)*