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COMPANY LAW IN UKRAINE: RECENT REGULATORY DEVELOPMENTS

Introduction. Ukrainian company law is undergoing a substantial review of its regulatory framework, and is being gradually brought into line with the EU legislation and best international standards in the area of company law. The adoption of the Civil Code of Ukraine (2003), Commercial Code of Ukraine (2003) and the Law of Ukraine "On Joint-Stock Companies" (2008) should be considered as important milestones in the development of the Ukrainian company law towards European integration.

After the Revolution of Dignity and signing the Association agreement acceleration of the reforms towards harmonization of Ukrainian legislation with the EU law in all areas of law, including company law, has been observed, the fact that has been repeatedly mentioned in the academic literature [1]. In particular, the Law of Ukraine No. 289-VIII from April 7, 2015 "On Amendments to Certain Legislative Acts of Ukraine Regarding Protection of Investors Rights" [2], Law of Ukraine No. 1984 from March 23, 2017 "On Amendments to Certain Legislative Acts of Ukraine Regarding Corporate Contracts" [3]; Law of Ukraine No. 1983 from March 23, 2017 "On Amendments to Certain Legislative Acts of Ukraine on Enhancing Corporate Governance in Joint-Stock Companies [4]; the Law No. 2275-VIII from February 06, 2018 "On Limited Liability Companies and Additional Liability Companies" [5] were adopted and fundamentally change the entire framework of company law.

It should be noted that the problems of the Ukrainian company law reforming in the context of European integration processes has often been the subject of study of numerous scholars.

The first comprehensive analysis, which proved the necessity of the Ukrainian company law reforming in the direction of bringing it into line with the EU acquis communautaire as well as the development of a list of clear recommendations on adaptation of the Ukrainian company legislation to the European standards, was made by Kibenko (2004) [6].

Hereinafter, the scholars have provided assessment of the effectiveness of the Ukrainian legislation approximation to the European standards. In this relation, it is necessary to mention the work of Antonenko (2009) [7], which analyzes the example of the Law on Joint-Stock Companies of 2008 and proves that the Ukrainian legislation adaptation to the EU standards is not always positive. The reason for the failure of approximation is explained with reference to the concept of demand for law developed in comparative law theory. The author points out that the Ukrainian legislation adopted many standards, developed in more advanced economies, the need for which in Ukraine no longer exists.

The report of the expert working group, which includes Radwan, Nadzon and Zdiruk, has analyzed development of the Ukrainian company legislation over the last 25 years, taking into account historical, social and economic conditions of its formation, the influence of foreign legislation, as well as, provision of assessment of its

adaptation to the EU standards, is a fundamental work in the area of the Ukrainian company law [8]. The authors of the Report conclude that nowadays there exists a conceptual dualism of the Ukrainian company law – the concurrent existence of the outdated legislation with Soviet repercussions and updated laws, which not only meet modern standards, but also show the necessity of their further reformation towards aligning with the European standards. In his another work Professor Radwan states, that Ukraine is gradually introducing a self-enforcing model (first mentioned by Black and Kraakman [9]. The scholar also points out the necessaty of further reforms until its complete implementation [10].

In continuation of the issues raised in the above-mentioned work of Radwan – conducting the company law reform in the context of European integration motives – there followed a research by Romashchenko [1, p. 217]. Analyzing company law legislation and drafts laws, that have been developed since the events known as Euromaidan, the author concludes that after the signing of the EU-Ukraine Association Agreement a significant acceleration of the company law reform has been observed. The scholar also defines the main directions of the reform – introduction of squeeze-out rules and changes to the limited liability companies regulation, and comes to the conclusion, that complete alignment of the Ukrainian company law with the European standards is vitally important.

The purpose of this article is to define the main trends of the current renewed company legislation, as well as, the extent to which the Ukrainian experience of company law reform is related to the similar processes in the EU. The main focus of the work is the analysis of major novelties introduced by the newly developed company laws, introducing changes in regulation of corporate contracts and limited liability companies as well as formation of the legal basis for the squeeze-out and sell-out transactions.

1. Law of Ukraine "On Amendments to Some Legislative Acts of Ukraine on Protection of Investors Rights" No. 289-VIII from April 7, 2015

The adoption of the Law of Ukraine "On Amendments to Some Legislative Acts of Ukraine on Protection of Investors Rights" No. 289-VIII from April 7, 2015, which came into force on May 1, 2016, can be considered to be one of the most important legislative developments in company law for the last several years.

According to the explanatory note to this Law, it was adopted as part of the fulfillment of the Action Plan on improvement of the position of Ukraine in the World Bank and International Financial Corporation ranking "Doing Business". Its main aim is strengthening minority shareholders protection and improvement of corporate governance. This Law implements the EU acquis requirements and best corporate governance standards in the area of company law, in particular, provisions of the Second Company Law Directive [11] and Recommendation of the European Commission on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board from February 15, 2005 [12].

The law introduces such important legislative changes as: abolishment of the requirement to the maximum number of shareholders in a private company; change in the order of the joint-stock company supervisory board formation; improvement of the procedure of determining the market value of shares; enhancement of self-interested

transactions regulation; specification of provisions as to the liability of company bodies' officers; introduction of a derivative claim regulation and provisions regarding independent directors.

Introduction of the derivative claim is of particular importance for the Ukrainian company law, as a reliable tool for minority shareholder protection is provided by the Law. According to Art. 54 of the Commercial Procedure Code of Ukraine, a shareholder (member), who owns more than 10% of the share capital (ordinary shares) is entitled on behalf of the company to file a claim on compensation of the damages, caused by officers of the company bodies.

Another important legislative change, introduced by the analyzed Law, is abolishment of the requirement to the maximum number of shareholders in a private company, which previously could not exceed 100. As initiators of this Draft Law pointed out in the explanatory note, it is directed to elimination of so called "quasi-public companies", which became such as a result of the above-mentioned requirements to the maximum number of shareholders and were not interested in being public.

Introduction of the institute of independent directors is a principal amendment. The Law No. 289-VIII gives a clear definition of an independent director; it also envisages that supervisory boards of public and state-owned public companies, when more than 50% of shares belong to the state, should include independent directors and their audit, remuneration and appointments committees should be formed mainly from independent directors. Such legislative changes are directed on the implementation of the Recommendation of the European Commission on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board from February 15, 2005 provisions.

As a whole, the provisions of the Law "On Amendments to Some Legislative Acts of Ukraine on Protection of Investors Rights" can be assessed positively, however, it draws our attention by a range of legal gaps.

Firstly, the Law doesn't always take into account the specificity of the Ukrainian stock market, subject to raider attacks. For instance, the existing derivative claim design (even in its new edition, introduced by the new Commerical Procedure Code) makes it still possible to use it as a tool for raiding attacks. In particular, dishonest shareholder may bring a lawsuit with an unreasonable claim for invalidation of a transaction or a company bodies decision, which is accompanied by measures to secure the claim by means of the company's property arrest, prohibition for the head, shareholders and officers of the company or company as a whole to take certain actions, which, in its turn, can block the activity of the company. In the literature existence various mechanisms for preventing such abuse in different legal systems is pointed out. For instanee, in Japan, the shareholder submitting the original claim must have a stake in the company for at least six months, and in Germany the shares must be purchased before a shareholder found the violation. At the same time, the Ukrainian legislation doesn't provide any remedies against such abuses prevention [13].

The Law also contains ambiguities as to derivative lawsuit provisions, which may lead to inefficiencies in the use of the legislative tool. In particular, it is unclear how the very fact of causing damage to the company and the causality with actions or inactivity of the official should be confirmed [13].

Another important issue, which can make provisions as to derivative lawsuit declarative, is quite a common practice in Ukraine when company officials do not have sufficient funds and property to recover damages. In many countries, such issues are solved by insurance of top management's liability [14].

Secondly, the mechanism of some legal rules realization is not fully developed. For instance, a positive effect of independent directors' institute can be reduced, as the Law No 289-VIII doesn't contain any provisions as to selection of independent directors, including requirements to their professional competence (some provisions are envisaged only for state joint-stock companies). Although, it is considered, that requirements to the competence of independent directors should be defined by shareholders themselves, but the lack of practice of this institute application, a low level of corporate culture of the majority of Ukrainian issuers and a high level of corporate abuses in Ukraine, gives me grounds to believe that minimum requirements to the professional competence of independent directors should be, at least, specified by the principles of corporate governance and clearly regulated by the law for state joint-stock companies. It is advisable to amend the Decision of the National Commission on Securities and Stock Market of Ukraine No 955 from July 22, 2014, which approved the Principles of Corporate Governance, and Resolution No. 142 from March 10, 2017 of the Cabinet Ministers of Ukraine "Some questions of management of the state unitary enterprises and economic societies in which authorized capital more than 50 percent of shares (shares) belong to the state" in order to provide for an extended list of requirements for the qualifications of independent directors, as stipulated, in particular, by para 11 Recommendation of the European Commission from February 15, 2005 on the role of non-executive or supervisory directors of listed companies. Otherwise, the independence of company directors will be formal.

Another problem as to introduction of the institute of independent directors is the lack of clarity in the formulation of criteria for independence, which may lead to ambiguous interpretations [15]. In particular, this applies to such a criterion of independence as the absence during the past year of significant business relations with the company or its subsidiaries. It would be advisable to clarify this criterion as envisaged by the Recommendation of the European Commission on the role of non-executive or supervisory directors of listed companies and of the committees of the (supervisory) board of 15 February 2005 (Annex II para 1 (e), namely to provide for "no significant business relationship with a company or associated company, directly or as a partner, shareholder, director or senior employee of an institution that has such relationships").

Thus, the Law No 289-VIII indicates the growth of the role of imperative of regulation of joint-stock companies. It gives stock market participants and investors reliable tools for protection of their rights, enhances company bodies' officers' liability and improves corporate governance system regulation, however, the existence of the above-mentioned legal gaps may make introduction of tools for company law modernization only a formality.

2. Law of Ukraine No. 1984 from March 23, 2017 "On Amendments to Certain Legislative Acts of Ukraine Regarding Corporate Contracts"

The main aim of the Law No. 1984 is bringing legal certainty into conclusion of shareholder agreements.

Before its adoption, the only legal rule that regulated shareholder agreements has been Art. 29 (1) of the Law of Ukraine on the Joint-Stock Companies, according to which the charter permited to compile a shareholder agreement, to impose additional obligations on shareholders to participate in general meetings, and to provide responsibility for the failure to comply. However, legal practice showed the difficulty in applicability of this legal rule. The main reason was a quite disputable interpretation of the provisions of the Law of Ukraine on the Joint-Stock Companies, offered by the High Commercial Court of Ukraine in its recommendations from December 28, 2007 "On the Court Practice of Consideration of Corporate Disputes" No. 04-5/14 (Part 6, paragraphs 6.1-6.6), which were later supported in the Resolution of the Plenary Supreme Court of Ukraine, No. 13 from October 24, 2008 "On Practice of Handling Corporate Disputes by the Courts" (paragraph 9). According to the above-mentioned recommendations the use of shareholder agreements was permitted only in cases clearly specified by the legislative acts. The Plenum mainly allowed conclusion of shareholder agreements provided that relations between the company and shareholders, and between shareholders concerning the activity of the joint-stock companies, and also corporate governance, were regulated by the laws of Ukraine and other normative legal acts. Recommendations also meant that shareholder agreements on the order of voting at general meetings, as well as, the procedure of election of management bodies might be considered invalid by the court. The same regulation also applied to transactions on the order of voting at meetings of management bodies.

Thus, the simple mentioning of the possibility of conclusion of shareholder agreements caused such a controversial court interpretation of these legislative provisions, which, in fact, made their conclusion undesirable.

The necessity of amending the proper legislative regulation of shareholder agreements towards strengthening investor protection and enhancing corporate governance in business associations got attention among legal scholars and practitioners [16–18]. And as a result, in 2016 two legislative proposals on regulating corporate contracts have been initiated and in 2017 the Draft of the Law of Ukraine No. 4470 has been adopted as a Law.

It is worth to note that the Law 1984 on corporate contracts was among not numerous legislative acts, which was developed together by the state authorities (National Commission on Securities and Stock Market together with the Ministry of Finance, the Ministry of Economic Development and Trade) and legal professionals, introduced by the Ukrainian Bar Association, with an involvement in a discussion of market participants [19]. As a result, this Law maximally reflects the interests of the latter ones.

The Law 1984 on corporate contracts implemented the best foreign practices regarding their regulation, however, an influence of the Russian law in the process of law drafting (which, in its turn, is based on the foreign practices) is also noticed.

It is noteworthy, that the Law No. 1984 amends the Laws of Ukraine "On Joint-Stock Companies" and "On Business Associations" in order to provide a more detailed regulation of the corporate contract issues. Application of such an approach is generally justified in the Ukrainian reality, as it can bring clear provisions into the law which, consequently, will nullify the possibility of abuse. Moreover, the Law No. 1984 brings

a number of substantial changes to the Civil Code of Ukraine by means of introduction of provisions as to irrevocable proxies, which, according to the initiators of the law, will create effective corporate governance and internal decision-making in conclusion of corporate contracts.

On the whole, the aforementioned Law No. 1984 is rather constructive and offers settlement of various aspects of a corporate contract.

First of all, in contrast to current legislation, the Law No. 1984 on corporate contracts has a broader scope and covers not only joint-stock companies but also limited liability companies.

In addition, the Law No. 1984 introduces an updated legal definition of the notion "corporate contract" (shareholder agreement), which is more expanded in comparison with the existing one; in particular, it specifies a wide range of issues that may be provided for in the shareholders' agreement: to vote at the general meeting of shareholders in a specified manner; to acquire or transfer shares at a predefined price and (or) under certain circumstances; to refrain from transferring shares until certain circumstances; and to perform other actions connected with management of the company, termination or a spin-off of the company. As it is possible to see, the list of issues that can be the subject of a shareholder agreement is not exhaustive.

A novelty introduced by the Law No. 1984 on corporate contracts, compared to the current regulation, is enlargement of the circle of actors between whom a shareholder agreement can be concluded: 1) between shareholders (members); 2) between shareholders and creditors/third parties (paragraphs 3 and 4).

The Law No. 1984 contains a provision on the duty of the notification of the company as to the conclusion of shareholder agreement and sets out clear terms of such notification – within 3 working days after its conclusion.

One more key aspect of the analyzed Law is the issue of disclosure of information as to the concluded corporate contracts, which is one of the most disputable ones. As a rule, information about a shareholder agreement is confidential. However, for the purposes of investor protection the Law No. 1984 provides a duty to disclose information when a person, who concluded a corporate contract, gets the right to determine the order of voting at the general meeting of shareholders (individually or jointly with the affiliates) and directly or indirectly gets the right to dispose of by more than 10, 25, 50 or 75% of the votes. I believe that investor protection should be a priority for policymaker and even disclosure of information of listed companies corporate contracts should be enhanced by means of their registration at the public register.

The Law No. 1984 on corporate contracts contains a provision that says that corporate contract is legally binding only for its parties, what complies with the international practice in this area. However, there is one exception: the contract concerning rights to shares and / or rights from shares concluded between shareholders in violation of the shareholder agreement may be declared invalid by a court if it can be proved that the other party of the contract knew or should have known about the restriction, stipulated by the contract between the shareholders.

One of the most important issues as to regulation of corporate contracts is the issue of their enforceability. In fact, a corporate contract is a contract, which may be

terminated at any time. The initiators of the Law No. 1984 on corporate contracts introduced two tools, aimed to enforce such contracts, namely, financial sanctions and irrevocable proxies. Such legal rules will also make corporate contracts more attractive to investors.

At the same time, it is necessary to remark, that introduction of irrevocable proxies is rather controversial due to absence of the proper legislative tools of principal's protection from abuse by their agents, for whom such a proxy is issued.

Thus, it should be noted, that the Law on corporate contracts and other tools, directed to its development, such as irrevocable proxies will strengthen the required dispositivity of regulation of the Ukrainian company law, which is settled in international practice, when shareholders (members) are entitled to regulate a vast range of the most important issues, and the required level of mandatory regulation is maintained only for listed companies, where an increased level of minority shareholder protection is necessary.

3. Law of Ukraine No. 1983 from March 23, 2017 "On Amendments to Certain Legislative Acts of Ukraine on Enhancing Corporate Governance in Joint-Stock Companies

The analyzed Law proposes to introduce such shareholder remedy as a squeeze-out tool, which gives a right to majority shareholders to force out the minority ones. According to the Art. 65-2 of this Law a shareholder, which as a result of acquisition of shares, that belong to it (or its affiliated entities), directly or indirectly becomes an owner of at least 95% of the ordinary shares in a company, is entitled to compulsorily acquire the remaining shares (the so called "squeeze-out right").

In addition, minority shareholders are given a corresponding right to force a shareholder, which possesses at least 95% of the ordinary shares in a company, to purchase their shares at a fair price (the sell-out right) (Art. 65-3).

Implementation of the aforementioned shareholder remedies into Ukrainian legislation is mandatory according to Article 387 of the EU-Ukraine Association agreement from June 27, 2014 [20] and its Supplement XXXIV, which mentions the necessity of the parties collaboration as to shareholder protection and adaptation of the Ukrainian corporate legislation to the provisions of the Directive 2004/25/EC of The European Parliament and of The European Council of 21.04.2004 on takeover bids [21], Articles 15 and 16 of which provide the squeeze-out and sell-out procedures, and should be done until November 1, 2018.

For Ukraine implementation of these remedies for joint-stock companies is a vital issue, especially taking into account the specificities of the corporate property in Ukraine. In legal literature there is a common opinion that these legal rules will solve two problems, namely, they will: 1) reduce a possibility of raider attacks and 2) cheapen corporate governance (at present there are a great number of shareholders, who became such as a result of privatization processes in 1990s, and whose non-participation in the management of the company puts it to excessive expenses) [22].

It is worth mentioning, that the first legislative attempt to introduce a squeeze-out rule was made in 2010 [23], but this Draft Law was vetoed by the President of Ukraine and returned to the Parliament with a proposal to exclude it on the ground that it allegedly violated Articles 41 (1, 4 and 5) and 24 (1) of the Constitution of Ukraine, namely,

constitutional property right, equality of constitutional rights and equality of citizens before the law [24].

The constitutionality of the squeeze-out right was questioned in the European Union too, but the European Court of Human Rights (case Bramelid and Malmström v. Sweden) issued a decision that a property right is not infringed if a shareholder receives a fair compensation [25]. The experts of the High Level Group in its Report on Takeover issues and the European Commission in its response to the Petition 0556/2006 by Jean-Pierre Zuryk (French?), opposing Directive 2004/25/EC on takeover bids 07.05.2007 came to the same conclusion [26; 27].

In addition, at first, professional stock market actors gave a negative assessment to this draft of law. Their main concern was possible reduction of traded shares as a result of squeeze-outs; as the amount of the most traded shares on the Ukrainian stock market is no more than 5%, which, in its turn, can reduce the existing low liquidity of the Ukrainian stock market and, in fact, kill it [28]. However, later on they changed their point of view and agreed on the following point: if the redemption price of stocks is fair, then investor interests are protected [29].

After signing the EU-Ukraine Association Agreement, the attempts to make amendments were renewed again. There have been five attempts to introduce squeeze-out rights at the legislative level and the last one was successful. On March 23, 2017 Law of Ukraine No. 1983 "On Amendments to Certain Legislative Acts of Ukraine on Enhancing Corporate Governance in Joint-Stock Companies was adopted.

A significant advantage of the Law No. 1983 on "squeeze-out and sell-out" is its much broader scope – all joint-stock companies; at the same time previous draft laws directed their application only to listed companies, which, in its turn, caused fair criticism (as the draft law would apply only to a small number of companies).

It is also worth mentioning, that if previous draft laws provided only a general meeting of shareholders` right to decide whether to grant the shareholder, the owner of 95 percent or more shares of public company the right to demand from all shareholders redemption of their shares for a fair price, the Law No. 1983 on "squeeze-out and sell-out" provides a simplified procedure of the squeeze-out offer; for the person who owns the dominant controlling stake it is enough to send a public irrevocable request to purchase shares from all shareholders to the company.

Unlike previous draft laws, which considered only cash, the Law No. 1983 on "squeeze-out and sell-out" provides a much broader list of types of redemption payment (cash, securities and combination of both; wherein one of the types of payment in the offer necessarily be cash).

The Law No. 1983 on "squeeze-out and sell-out" provides a minimum value of the offer price for each type of offer. Unlike previous draft law, which, determining the redemption price, took into account only their market value and the highest price of the acquired shares of the company, the latter also takes into account the highest price of the acquired shares of the shares of another legal entity, which directly or indirectly owns shares of this company.

Another advantage of this law, compared to the previous regulation is a clear sell-out mechanism, which provides the right of the minority shareholder to require re-

demption of their shares from the majority shareholder under the above mentioned circumstances.

Thus, there are all grounds to expect that the analyzed law will strengthen investor protection and will have a positive impact on the corporate governance and investment climate in Ukraine; as in case with corporate contracts, the regulation of squeeze-outs is detailed and aimed at prevention of ambiguity of legal rules interpretation.

4. The Law No. № 2275 from February 6, 2018 "On Limited Liability Companies and Additional Liability Companies"

The need for a law that would finally properly regulate the activities of limited liability companies in Ukraine has existed for a long time. Until recently, the activity of limited liability companies is regulated by the Laws of Ukraine: "On Business Association" (1991), The Civil Code of Ukraine (2003) and The Commercial Code of Ukraine (2003), while joint-stock companies are regulated by the updated legislation of 2008. Thus, there was an evident disbalance between regulation of joint stock companies and limited liability companies [10, p. 6]. The former have though imperfect, but mostly modern regulation in a number of respects, which incorporated the best standards of corporate governance; the latter were still regulated by the old, to a large extent filled with Soviet influences legislation.

In Ukraine there have been several attempts to adopt a separate law on regulation of limited liability companies, in particular, similar drafts laws were initiated in 2009 and 2013 and 2016. And only third attempt was successful.

On February 6, 2018 the Law of Ukraine № 2275 "On Limited Liability Companies and Additional Liability Companies" was adopted. It was worked out by the Commercial Law Center in cooperation with famous Ukrainian experts on corporate governance. As a draft of law it is reported to have caused heated discussions in the legal community and received rave reviews [30].

Compared to the previous draft laws on limited liability companies, the Law № 2275 from February 06, 2018 has a higher level of quality, implements the main conceptual and contemporary approaches of the EU member states legislation. Its peculiarities are as follows*: firstly, it is characterized by a higher level of dispositivity (optionality) of regulation;* it gives a high discretion of contract to company members (there is no detailed prescription as to the order of the foundation of the company; requirements prescribing the maximum number of shareholders are abolished; provisions as to corporate contracts are specified, there are no restrictions as to contributions to the share capital of the company and evaluation of contributions is exercised by the members of the company; requirements to the reserve fund are abolished*) and procedures of foundation of the company and transfer of shares are simplified* (there are no more requirements in the Articles of incorporation as to the names of members); *secondly, it strengthens members' rights* (convening of a general meeting, information rights), *thirdly, there is a trend of conversion of regulation limited liability companies with private joint-stock companies* (as a result, a supervisory body is introduced, new requirements to convening and holding of a general meeting of shareholders, related-party and significant transactions regulation; requirements to the safe-keeping of corporate documents are regulated).

One of the most principal changes in regulation of limited liability companies is abolishment of the requirements to the maximum number of members in these types of companies.

This change generally aims to make possible reorganization of the majority of joint-stock companies, which are not traded on the stock exchanges and don't wish to bear high expenses on disclosure of information and reporting, into a legal form of the limited liability companies. In addition, the limiting number of members of the limited liability companies is also a infringement of its members rights, and is, unlikely to be appropriate, in the conditions of dispositive regulation, when market participants themselves, not a policymaker, should determine the number of members. However, on the other hand, legislative regulation of any legal form takes into account the average number of its members. The average number of limited liablity company members does not exceed 50 in developed jurisdictions. That is why, its regulation is simplified and some decisions are taken unanimously. Thus, in case of abolishment of the maximum number of company members, the problem will not be solved; private joint-stock companies with a high number of members will not be able to use a legal form of the limited liability companies. That is why it is also rational to simplify regulation of private joint-stock companies or consider possibility of creation an additional legal vehicle, like SAS in France.

On the whole, but the appearance of the Law № 2275 is a positive response to the needs of business. This law will create a simple and clear conditions of doing business for a large number of small companies (currently, in Ukraine almost 500 thousand limited liability companies are registered (what constitutes 43% of all legal entities, registred in Ukraine)).

5. Company Legislation of Ukraine in the Context of the European Acquis Requirements

Today Ukrainian company law is being developed mainly in the direction of harmonization of the national legislation of Ukraine with the EU legislation through implementing the acquis communautaire.

The need for adaptation of the Ukrainian legislation to the European acquis requirements was provided for in the Agreement on Partnership and Cooperation between Ukraine and the European Communities and their Member States from June 14, 1994. However, the beginning of adaptation of the national company legislation can be connected with the adoption of The Civil and Commercial Codes of 2003. The adoption of the Law of Ukraine "On Joint stock Companies" should also be considered as an important step in this direction (2008).

At present, the order of the company law adaptation to the EU acquis communautaire is specified in the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, from June 26, 2014, which replaces the above mentioned Partnership Agreement. Unlike the latter, the EU-Ukraine Association Agreement establishes more detailed directions for implementation and determines the wider list of directives and regulations, which should be adopted for this purpose. According to Annexes XXXIV–XXXV to Chapter 13 of the Association Agreement, Ukraine should im-

plement 13 EU Company Law Directives, Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, OECD Corporate Governance Principles and two Recommendations in the realm of company law (Commission Recommendation of 14 December 2004 fostering an appropriate regime for the remuneration of directors of listed companies (2004/913EC) and Recommendation of the European Commission on the role of (independent) non-executive or supervisory directors from May 5, 2004.

In fact, harmonization of the Ukrainian company legislation with the EU law is directed on a cardinal restructuring of the company law of the latter one from imperative, when the state tries to lay down the ground for possibilities to use legal power from many aspects of functioning companies in the structure of legislation, to dispositive regulation, providing maximum freedom to participants in regulation of their relations and limiting state interference into companies activities to cases of public interest, strengthening minority investor protection and simplification of companies establishment and functioning procedures.

The analysis of the company legislation of Ukraine shows significant progress on adaptation of the Ukrainian company legislation to the EU acquis requirements, which was mentioned in the works by Radwan and Romashchenko referred to above.

However, it is essential to note that such implemention of the Directives is fragmentary. In addition, there has been a delay of the terms of implementation of the First [31], Second and Eleventh [32] EU company law directives, as the implementation period of these Directives expired on November 1, 2016, and the necessary amendments to the legislation have not yet been made).

It should also be noted that adaptation of the Ukrainian legislation primarily focuses on mandatory law Directives and Regulations, but the need to update the soft law is neglected by the legislator. In particular, the OECD Principles of Corporate Governance implementation. Although the Ukrainian Principles of Corporate Governance, approved by the Decision of the National Securities and Stock Market Commission from July 22, 2014, No. 955, were designed, on their basis, provisions for enabling functioning and transparency of the corporate control markets, protection of stakeholders in the process of corporate governance in access to current, complete and accurate information on a timely and regular basis, still require compliance with the OECD Principles of Corporate Governance. Proper implementation of international corporate standards is quite important for the Ukrainian policymaker, as they could bring a range of advantages for companies and improve investment climate in the country.

One of the main problems in implementation of the EU-Ukraine Association Agreement is formalism, which was already emphasized in legal literature, including the above-mentioned work by Antonenko. In fact, wrong perception of company law concepts of foreign jurisdictions is a frequent phenomenon and often peculiarities of the Ukrainian legal system, socio-economic conditions of the society development are not taken into account. In particular, we note the introduction of the concept of Ukrainian law derivative claim, without considering the specificity of the Ukrainian stock market, which, in its turn, can lead to market abuse and have a negative influence on law enforcement.

Among the current topical issues, there remains a timely response of the Ukrainian legislation to legal innovations in the EU company law. Today Ukrainian company law focuses mainly on the fullfillment of the EU-Ukraine Association Agreement, implementation of the basic EU directives into the Ukrainian legistation. As for the process to follow reforming EU company law, which includes: increasing transparency in companies – shareholders interation, reduction of administrative burdens for cross-border business, promotion of the long-term shareholder engagement and employee ownership and participation, digitalization of the company law [33; 34; 35], there exists only a partial compliance with them, particularly, in issues on implementation of the rules on independent directors, identification of shareholders by issuers, related party transactions and improvement of corporate governance.

Thus, currently the Ukrainian company law is undergoing a number of significant changes. The Ukrainian company law reformation keeps committed to the European integration vector. The analysis of the company law legislation shows significant progress in adaptation of the Ukrainian legislation to the EU acquis communautaire, as in one way or another practically all of the EU company law Directives have already been implemented, though it is often fragmentary. Also, there is a slight delay in the adaptation of the company law to the European acquis communautaire according to their commitments under the EU-Ukraine Association Agreement. It is remarkable that the adaptation of the Ukrainian legislation is mainly focused on mandatory law, but the legislators don't pay enough attention to the soft law. Another drawback of the adaptation process is its formality, quite often it is accompanied by blindly copying of foreign laws and practices, without taking into account the specificities of the Ukrainian national legal system.

Conclusion. To summarize, the modern Ukrainian company law reform is directed on creation of a comprehensive and effective system of corporate governance and company legislation. The analysis of the above mentioned legal acts allows to single out the following main trends in reforming of the Ukrainian company law: formation of a regulatory framework, corresponding to different types of business (a more prescriptive (imperative) approach in relation to public companies and a more liberal (dispositive) one to the limited liability companies); blurring the borders in regulation of private joint-stock companies and limited liability companies; dispositivity and freedom of regulation of joint-stock companies, limited liability and companies with additional liability; strong protection of investors (minority shareholders/members, prevention of corporate conflicts, improvement of corporate governance); adoption of the laws, which are, first of all, required by the EU-Ukraine Association agreement; some lag of the Ukrainian company law reform from the European one.

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Summary

Khort Yu. V. **Company law in Ukraine: recent regulatory developments.** – Article.

This article defines the main trends of the current renewed company legislation development, as well as, the extent to which the Ukrainian company law reform is related to the similar processes in the EU. The author analyzes the key aspects of the recently adopted changes in regulation of corporate contracts and limited liability companies as well as formation of the legal basis for the squeeze-out and sell-out transactions.

Key words: joint-stock companies, limited liability companies, corporate contract, squeeze-out and sell-out transactions.

Анотація

Хорт Ю. В. **Корпоративне право в Україні: останні законодавчі новації.** – Стаття.

Стаття визначає головні тенденції розвитку чинного корпоративного законодавства України, а також надає оцінку його відповідності подібним процесам, що відбуваються в ЄС. Автором аналізуються ключові аспекти нещодавно прийнятих змін щодо регулювання корпоративних договорів, товариств з обмеженою відповідальністю, а також формування законодавчої основи для squeeze-out та sell-out.

Ключові слова: акціонерні товариства, товариства з обмеженою відповідальністю, корпоративний договір, обов'язковий викуп акцій.

Аннотация

Хорт Ю. В. **Корпоративное право в Украине: последние законодательные новации.** – Статья.

Статья определяет основные тенденции развития действующего корпоративного законодательства Украины, а также проводит оценку его соответствия подобным процессам, происходящим в ЕС. Автором анализируются ключевые аспекты недавно принятых изменений по регулированию корпоративных договоров, обществ с ограниченной ответственностью, а также формированию законодательной основы для squeeze-out и sell-out.

Ключевые слова: акционерные общества, общества с ограниченной ответственностью, корпоративный договор, обязательный выкуп акций.