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CORPORATE LAW IN UKRAINE WITHIN THE FRAMEWORK OF APPROACHING THE EUROPEAN UNION STANDARDS

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Summary

Lyudmila Vakaryuk. Separate proposals for improving the regulatory support for legal regimes in labor law in the light of labor law reform.

The article is devoted to the formulation of proposals to increase the level of regulatory support of legal regimes in the labor law of Ukraine at the level of state regulation. It is emphasized that the legal regime is a static and dynamic phenomenon of objective reality, which concentrates in its substantive system the legal remedies used at certain stages of legal regulation in order to effectively secure it. The legal regime influences the employee and the employer as participants of the labor process, their consciousness and behavior, as a result of which the parties of labor relations optimize the motivation for work, their work activity, modify it or even stop it. However, despite the important role of the legal regime in the further development of labor law, this issue continues to be poorly researched, which negatively affects the effectiveness of legal regimes.

It is emphasized that the legal regime contributes to the creation and maintenance of a coherent system of regulatory influence, order, and, under the influence of appropriate means of legal regulation, functions to achieve the effective realization by individuals of their needs, subjective rights and interests and the fulfillment of their duties. Effectiveness of legal regulation is determined not only by a one-time result, but also by its stability, in this connection the legislator, forming, exercising the right, is obliged to take into account the adequacy of the chosen legal means for the stated purpose and task.

It is proposed to amend the Code of Labor Laws, which will contribute to a more effective implementation of the legal regime in practice. In particular, supplement the Code of Labor Law with articles on the notion of the labor-law regime, the purpose and objectives of the regime in labor law, as well as the criteria for the effectiveness of legal regimes in labor law. As such criteria, it is proposed to emphasize the validity of the fixing and functioning of the legal regime in labor law, the timeliness and urgency of fixing and change, the abolition of the legal regime in labor law, the reality of the legal regime in labor law. The skillful and effective use of the legal remedies, the well-defined purpose of the legal policy and the introduction of the appropriate legal regime will contribute to the effective realization of the socio-economic rights and interests of the subjects of labor relations and to the solution of the tasks facing the state and society as a whole.

Key words: labor regime, legal regime, legal means, state level of legal regulation, optimization of legislation, reform of labor legislation, labor law.

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CORPORATE LAW IN UKRAINE WITHIN THE FRAMEWORK OF APPROACHING THE EUROPEAN UNION STANDARDS

Problem definition. Adaptation of the Ukrainian legislation to the legislation of the European Union (hereinafter – the EU) is a priority component of the process of Ukraine’s integration into the EU, which in its turn is a priority area of Ukrainian foreign policy. The purpose of such adaptation is to achieve compliance of the Ukrainian legal system with *acquis communautaire*, considering the criteria set forth by the EU to the states intending to join it¹.

Corporate legislation of Ukraine is in an ongoing process of revision and updating. However, the changes do not ensure a solution to a number of theoretical and practical issues, particularly due to the archaic nature of certain doctrinal approaches; inconsistency and unconformity of such changes.

Commitment to EU corporate law when updating corporate legislation is justified not only by the European integration processes taking place in Ukraine, but also by the fact that EU corporate law is a useful example in the field of corporate regulation.

Analysis of recent research and publications. Regulatory framework for this article has been compiled of international treaties, EU acts, Civil Code of Ukraine² (hereinafter – CC of Ukraine), Economic Code of Ukraine³ (hereinafter – EC of Ukraine), specific legislation of Ukraine on legal entities, as well as instruments of legislation of individual EU countries. The following methods were used during the study: dialectical (in the analysis of doc-

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trinal approaches to the definition of “corporation”, “corporate organization”; “corporate law”, etc.); technical (when interpreting corporate law provisions); rather-legal (when comparing the EU corporate law with corporate law of Ukraine).

Corporate law of Ukraine is a topical issue of scientific research driven by the lack of a sustainable doctrinal approach to the basic concepts in the research area (in particular, “corporation”, “corporate law”, “law of corporations”), as well as the lack of a unified approach to the methodological framework for defining these concepts (for example, criteria for assigning an organization to the “corporation” term). Among recent scientific papers in corporate law the studies of the following persons should be noted: O.V. Bihniak⁴, O.I. Zozuliak⁵, Yu.M. Zhornokui⁶, A.V. Zelisko⁷, L.V. Sishchuk⁸.

Purpose statement. Purpose of the article is to investigate main approaches to the corporate legal nature in particular European systems of justice – in FRG, France, England. To detect significant differences between the legislation of Ukraine and legislation of the European Union countries based on the history of their development and peculiarities of specific national systems of justice.

In addition, a detailed analysis of the specialized directive in the field of EU corporate law is also promising (DIRECTIVE (EU) 2017/1132 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 June 2017 relating to certain aspects of company law (codification), which scope includes legal relations on creation, operation and termination of limited liability companies.

Statement of basic materials. It is impossible to fully adapt the corporate law of Ukraine to the EU corporate legislation without defining the content of statutory concepts that are integral part of these concepts in EU countries and in Ukraine, as well as without their comparison.

“Law of corporations” is not well-established concept in the civil law science of our country. The “corporate law (legislation)” fixed term is used to designate a branch of legislation governing the legal regime of legal entities, management of their activities and peculiarities of interaction with participants, creditors and third parties, as well as the issue of creating legal entities, their activities and termination. At the same time, with all the stability of the mentioned term, its content is defined differently in the civil doctrine⁹.

The most restricted approach to defining corporate law is to identify it with a system of corporate management regulations¹⁰. Another opinion was expressed by V.M. Kravchuk, who believes that corporate legislation is legal entities law determining the procedure for their creation, operation and liquidation¹¹. In the science of civil law, the opinion is expressed to extend the scope of corporate law regulation not only to legal entities of certain legal forms (for example, economic societies or corporations), but also to other legal entities. Justification for such approach is the existence of an ultimate similarity of relations between participants and legal entities, regardless of their type. In the given context, the “corporate law” term can be identified with “law of corporations” as it is understood in EU law¹².

Differences in the definition of “corporate law” term demonstrates another issue that needs to be considered within the study of adapting the national corporate law to the law of European Union’s corporations: inconsistency of corporate law system-forming concepts in the doctrine of civil law (for example, “corporation”, “corporate entity”, “corporate organization”), and correspondence of these terms to the “corporation” term used in European law.

National approaches to understand the term of “corporation” can be conveniently classified into “narrow” and “broad”. The “narrow” approach considers a corporation in conjunction with the definition of “corporate rights” contained in Article 167 of the EC of Ukraine. This regulation specifies the corporate rights as the rights of an entity, which share is stated in the *authorized capital (assets)* of a business organization, including the power of such entity to participate in the management of business organization, receive a certain part of profits (dividends) of such organization and assets in the event of liquidation of the latter in accordance with law, as well as other powers provided for by law and statutory instruments. Therefore, the narrow approach is characterized by the interpretation of the “corporation” concept through literal reproduction of the legitimate definition of “corporate rights”, which leads to the understanding of a corporation as an economic organization with authorized capital¹³.

The “broad” approach to understand the term of “corporation” is based on the output when qualifying the concept of “corporation” beyond business entities with authorized capital. It should be noted that the broad approach is heterogeneous in light of different methodological approaches to defining the “corporation” term: from identification of the “corporation” term with the concept of “economic societies” to extension of the “corporation” term to all types of legal entities.

Thus, N.S. Kozlova suggests that corporate relations arise between any legal entity, its founders and entities performing the function of its bodies, even if such legal entity falls in the category of institutions¹⁴. A distinctive feature of the corporation, according to V.I. Borysova, is its incorporation on the basis of membership and joint activity of its founders regardless of the legal form of such legal entity¹⁵.

Not only the meaning of the “corporation” term in national civil law is mixed, but also are the methodological basis of its definition. The grounds for qualifying a legal entity as a corporation are proposed to be the following:

(1) presence of a proprietary element in a legal relationship arising between a corporate entity and its founder (member). Under this approach, the proprietary element means the emergence of property corporate rights vested in the founders (members).

(2) legal relations regarding membership (participation). Herewith, a corporation can be formed within the same organization – a legal entity, particularly in the form of business entities, production cooperatives and at the level of a group of companies (in the form of holdings, investment and mutual funds, industrial-financial groups, etc., being a system of affiliates).

(3) corporate rights of the company members and, accordingly, emergence of corporate relations with their (members) participation. If such right exist, it is an organization with a corporate structure; and if these rights do not exist, the organization shall not be considered as corporation. So, corporations will be companies having authorized

capital divided into shares, which members are entitled to receive a part of profit of the company and to participate in its management. If a company members do not have some of the specified rights, such company cannot be recognized as corporation. Thus, the members of social businesses do not have property rights to participate in the distribution of profits (dividends), because these companies are not profitable. And even if they receive a profit from a certain activity, it is not distributed among the members. They also do not receive a part of the company's property either in the event of withdrawal or after liquidation.

(4) creation of property corporate rights (right to receive a part of the profit from the legal entity activity, right to receive a liquidation quota upon its liquidation) for the founders (members) as a result of participation in the legal entity shall be qualifying.

(5) individual scholars examine the concept of corporation through the lens of the corporate enterprise concept. Thus, L.V. Sishchuk by the corporation term as an independent legal entity understands a legal entity registered in accordance with the procedure established by law and incorporated by joining property and persons for the purpose of conducting business activities, which members are vested with corporate rights regarding it; so, she comes to the conclusion that the "corporation" term cannot be applied to social businesses¹⁶.

Let us remind about the doctrinal proposal to distinguish between "corporations" as classical entities, participation in which involve creation of a set of property and non-property rights, including joint stock companies, limited liability companies and additional liability companies, and "corporate legal entities": unlimited and limited companies, production cooperatives with addition of other possible legal forms of corporate enterprises set forth in the EC of Ukraine – private enterprises and farm enterprises operating on the basis of private ownership of several persons, consumer cooperatives formed by several consumer companies. It was also proposed to introduce the "corporate company" term into scientific use as opposed to "corporation". However, it should be agreed that the use of the "corporate company" term is not quite appropriate in terms of different approaches laid down in the CC of Ukraine and EC of Ukraine aimed to define the system of legal entities; and this term will not help to reconcile existing differences between them.

The issue of applying the "corporation" term to "social" businesses is controversial not only for national researches, but also for the corporate law of various foreign systems of justice. However, to make full comparison of national and foreign understanding of "entrepreneurial corporations" and "social corporations", it is necessary to present a few theses on legal structures in the field of corporate law.

Thus, it should be noted that Article 83 of the CC of Ukraine contains a provision stipulating the division of companies (but not legal entities) into entrepreneurial and social businesses. Such distinction between legal entities (and corporations) is formally unknown to European systems of justice. The nature of common purpose: either "material" or "eleemosynary" – does not matter for most of the corporate forms established by them. The mentioned division is a feature of corporate law in Ukraine. However, Western European law is acquainted with "eleemosynary corporations", which are unions not entitled to engage in business activities, whose status is therefore significantly different from the status of "trading corporations", as well as German "partnerships" and "European economic interest groupings". From this perspective, we can talk about the differentiation of Western European corporations.

Let us consider in detail the concept of "corporation" in some European systems of justice, since despite the widespread use of the "corporation" term, including its use as a form of structural identification of a legal entity, depending on the type of legal system, its use for subjective expression of a form of civil relations regulation takes on a different meaning¹⁷.

In the Romano-German law system, the "corporation" term is predominantly doctrinal. Without being enshrined in the laws of respective countries, by its essential feature, a corporation is a company created with a purpose to engage in entrepreneurial activity by raising capital for co-investing for profit or "associations" or "private companies" – both unlimited and limited; they are recognized as business entities only by commercial law, since their members act under general principles, and these corporations are subject to registration in the trade register and may make transactions on their own behalf, although their members bear joint unlimited personal liability to the corporation's creditors; any member may act on their behalf, which fact excludes the existence of special governing bodies, and thereby the specific organizational structure; in that sense, members themselves are "bodies" of the corporations to achieve the goal of public interest. Significantly, this position was enshrined in the German Civil Code (*Bürgerliches Gesetzbuch, (BGB) – a Systematic Compilation of German Civil Laws, also known as the German Civil Code of 1896*).

In its turn, commercial associations, detailed provisions on which are set forth in special statutory instruments, particularly in the German Trade Code, are divided into trading companies (unlimited (*Handelsgesellschaft* (§105) and limited companies (*Kommanditgesellschaft* (§161), silent partnership (*Stille Gesellschaft* (§230). Commercial associations also include joint stock companies (*Aktiengesellschaft*), companies limited by shares (*Kommanditgesellschaft auf Aktien*), limited liability companies (*Gesellschaften*), production and other cooperatives (*Genossenschaft*).

In French law, the concept of "corporation" has no legal regulation. The Commercial Code of France (*Code of Commerce de France – the body of commercial law of France 2000*) manipulates the definition of "commercial company", which means a legal person carrying out commercial acts in the ordinary course of professional activity (§L. 110-1, §L. 110-2, §L. 121-1). That is, it is capital association. These include cooperative (*les sociétés coopératives de commerçants détaillants*) (§L. 124-1), unlimited company (*les sociétés en nom collectif*), simple limited company (*les sociétés en commandite simple*), limited liability company (*les sociétés à responsabilité limitée*), joint stock companies (*les sociétés par actions*) (§L. 221-1), as well as French law economic interest groupings (*Les groupements d'intérêt économique de droit français*) (§L. 251-1) and European economic interest groupings (*Les groupements européens d'intérêt économique*) (§ L. 252-1). According to French law, non-profit companies or associations (*l'association*) are associations of persons pursuing a purpose other than distribution of profit¹⁸.

The science of civil law points out that a much narrower understanding of the corporation (company) has historically developed in English law as compared to continental European law. Not all corporate entities are included in this category, but only business corporation (or company) – an analogue of European capital associations. English corporate law also distinguishes partnerships resembling European trade associations, and companies, which are essentially similar to European corporations – capital associations. Herewith, the subject of English corporate law is exclusively the status of corporations (companies) recognized as legal entities, but not partnerships.

Thus, according to sections 3-6 of the Companies Act 2006, English companies are divided into limited liability companies (companies with liability limited by a contribution to the authorized capital) and unlimited liability companies (analogue of additional liability companies), private and public (companies with liability limited by shares or guarantee having share capital), companies limited by guarantee and companies with authorized capital (private companies), as well as public interest companies¹⁹.

Of special interest in the context of this study is such legal form of an English company as public interest company, which is a relatively new institute of English corporate law and falls somewhat outside the approach to define the “corporation” term mentioned above, since despite the founders of such company have an opportunity to gain profit from in the form of dividends, the profit cannot be the purpose of the company concerned. Therefore, a public interest company is a profitable company with no right to distribute profits between its founders, but with the right to use it for organizational purposes. This feature brings its meaning closer to a charitable organization, which founders are unwilling to register the legal form of such legal entity as a charitable organization.

Introduction of such legal form of a company (corporation) into the civil law discourse is a logical result of the development of legal entities doctrine in the relevant system of justice, since there is no division of legal entities into institutions and companies in the countries of the Anglo-Saxon system of law. Thus, O. R. Kibenko notes that an institution is not separated at all in the countries of the Anglo-Saxon system of law resulting in a corporation being identified with a legal entity²⁰.

Based on the aforesaid the following differences should be concluded: different denotative load of the “corporation” term in different European systems of justice; different terminology to refer to such corporate entities; significant differences in the statutory regulation of corporations, as well as the predominantly doctrinal meaning of the relevant concept.

Meanwhile, it should be noted that there is a general tendency to expand the forms of legal entities to which “European corporate law regulations” apply. For this purpose, such term should be used somewhat conditionally (as in national corporate law).

Here are the priority areas for unification of European corporate law at the supranational level. Directives aimed at harmonizing and unifying national legislation of EU Member States are recognized as the main instrument to adjust the activities of corporations in EU law.

Specialized directive in the field of EU corporate law is DIRECTIVE (EU) 2017/1132 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 June 2017 relating to certain aspects of company law (codification)²¹, which scope includes legal relations on creation, operation and termination of limited liability companies. The directive is designed to protect the rights and interests of members (shareholders) of limited liability companies, their creditors and third parties.

The following specific areas of harmonization of standards governed by the Directive are of particular importance within this study: (1) establishing additional requirements to publicity of information on limited liability companies, including statutes or instruments of incorporation (Preamble paragraph 4); (2) setting standards limiting the grounds for invalidity of obligations to which companies limited by shares or otherwise having limited liability are the parties (Preamble paragraph 5); (3) imposing restrictions on reduction of limited liability companies' authorized capitals (Preamble paragraph 40); (4) limiting the acquisition of own shares by a public limited company (Preamble paragraph 41); (5) strengthening the rules on judicial protection of creditors' interests in the event of reduction in limited liability companies' authorized capitals (Preamble paragraph 47), etc.

It can be said that the development of EU corporations law is carried out by harmonization of substantive rules aimed to comprehensively ensure the rights of all participants in corporate relations and to seek a balance between the rights of these participants, as well as harmonization of procedural standards, the purpose of which is disclosure of information on limited liability companies. Similar problems arise in the process of enforcement and development of the corporate law doctrine in Ukraine.

Another leading codified statute in the area of EU corporate law is DIRECTIVE (EU) 2017/1132 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 June 2017 relating to certain aspects of company law (codification)²².

The Directive regulates the general provisions on incorporation, registration and nullity of a limited liability company; the procedure for entering data on limited liability companies 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 State-non EU Member, and if such branches and representative offices are opened in a country not governed by EU laws; harmonized provisions regarding authorized capitals of limited liability companies; the procedure for merger and separation of limited liability companies.

The general trend of codification of EU corporations law is worth noting, which law was contained in separate EU instruments and had been forming from the 60s of the XX century before adoption of the above directives.

Separate issues of corporate law can be found in the Financial Reporting Directives.

These are (1) 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,

(amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC²³ and (2) Directive N 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts // OJ. 2006. L 157/87²⁴.

Subject of the Directive regulation as of July 26, 2013 concerns general rules on (1) the procedure for submission of annual reports of limited liability companies; (2) the contents of annual reports of limited liability companies; (3) ways of assessing the business activity of such companies; (5) the procedure for publication of such companies' annual reports; (4) the general rules for consolidated reporting (accounts submitted by a group of interdependent companies).

For instance, in addition to the traditional division of enterprises into large, medium and new companies, the Directive of July 26, 2013 proposes to consider a new legal category – micro-entities, separate financial reporting requirements to which are more flexible than to traditional civil law entities. (paragraph 2).

At the same time, the Directive proposes to strengthen the imperative approach to reporting formats, in particular layouts for the balance sheet, in order to make it easier to compare the financial situation of businesses within the EU (paragraph 20).

The category of “parent company and affiliates (subsidiaries)” is being extended in its interpretation, since, according to paragraph 31 of the Directive, the control over a “parent company” may be determined not only on the basis of majority of votes in the authorized capital of a “subsidiary”, but the control may also exist in case of agreement with other shareholders (members). In particular cases, the control can be effectively exercised if a parent company owns a minority or no share in the subsidiary.

In such cases, the criterion for the control of parent company is considered to be “management on single basis or joint administrative, management or supervisory body”. The above-mentioned tendency towards digitization of the forms of corporate rights realization is also observed.

DIRECTIVE 2007/36/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (OJ L 184 14.7.2007, 17)²⁵ is also worth noting, and it regulates the following corporate law issues: convening a general meeting of shareholders (not earlier than 21 days after the notification on it); the right of shareholders to bring issues on the agenda (the threshold number of voting shares is 5 percent).

The above regulations of EU corporation law should serve as a legal guideline during adaptation of the corporate legislation of Ukraine to the law of the EU, since they reveal new tendencies of legal regulation and requirements for such regulation in view of the development of technical process and globalization processes in the economy. Thus, the occasionally mentioned general tendency towards digitization, which should be reflected in formulation of the corporate law procedural rules, seems to be totally clear and justified.

In the scope of integration processes in the field of private law, some tendencies inherent in the corporate legislation of Ukraine should be noted. Thus, national corporate law is inconsistent: the corporate statutory provisions are contained in two codified instruments – the Civil Code of Ukraine and the Economic Code of Ukraine, a number of special laws (Law of Ukraine On Joint Stock Companies²⁶; Law of Ukraine On Limited and Additional Liability Companies²⁷; Law of Ukraine On Economic Societies²⁸ etc). Herewith, the scope of individual provisions is identical but their content is different. For example, the types of legal entities are regulated by both CC and EC of Ukraine and, at the same time, they contain a different concept of legal entities division into companies with commercial purpose and eleemosynary corporations (non-commercial).

Inconsistency of the corporate law regulations also exists within the EC of Ukraine. Thus, the normative definition of corporate rights (Article 167 of the EC of Ukraine) and normative definition of a corporation (Article 120 of the EC of Ukraine)⁴ are inconsistent with each other, since it cannot be claimed that corporate rights are vested in members of a corporation within the meaning of para. 3 article 120²⁹. The meaning of a corporate enterprise established by Article 63 of the EC of Ukraine is also mismatched, according to which the corporate enterprise features are the following: (1) incorporation, generally, by two or more founders under their joint decision (agreement); (2) joining the assets and/or business or employment of the founders (members); (3) joint management of business based on corporate rights, including through the bodies created by them; (4) participation of founders (members) in the distribution of income and risks of a company.

According to the EC of Ukraine, corporate companies include cooperatives, companies incorporated in the form of economic societies, as well as other companies, including those based on private ownership of two or more persons. Let us remind that civil law specifies that, according to part 2 art. 94 of the EU of Ukraine, “cooperatives” and “production cooperatives” are identical concepts.

The above facts demonstrate the need for a qualitative update of national corporate law and mutual harmonization of its provisions with each other and with the provisions of EU corporate law.

Let us emphasize the non-systematic changes made to corporate law that are sometimes unjustified. An example is the history of legislative changes concerning the term “reorganization”. Thus, persons drafted the CC of Ukraine have abandoned the “reorganization” term, which is considered by the national law in the meaning unusual to European systems of justice and includes data on termination of legal entities with succession. In our opinion, the fact that the authors of the draft of CC of Ukraine refused to use the “reorganization” term and just listed its specific forms envisaged the further development of legislation on comprehensive regulation of relations arising during merger, take-over, division and separation. However, along with further amendments to the CC of Ukraine, the “reorganization” term still “penetrates” into number of restated articles (for example, article 105 of the CC of Ukraine refers to “reorganization committee”). Subsequently, amendments were also introduced to article 104 of the CC of Ukraine, which recognized reorganization as a form of legal entities termination.

Similar metamorphoses occurred when adopting and amending the Law of Ukraine On Joint Stock Companies and the Law of Ukraine On Limited and Additional Liability Companies, which, when adopted, had accepted the

concept of the CC of Ukraine regarding refusal of the “reorganization” term, but then this term was added to separate regulations of the specified laws.

Another example of non-systematic lawmaking is the removal of the general provisions on certain forms of legal entities from the CC of Ukraine as the main codified instrument of private law in connection with the adoption of special legislation. Thus, in connection with the adoption of the Law of Ukraine On Limited and Additional Liability Companies, the regulations governing general provisions on limited liability companies and additional liability companies were removed from the CC of Ukraine (articles 140–151). Herewith, the CC of Ukraine regulates general provisions on other legal forms of legal entities, in particular, joint stock companies, which are also thoroughly regulated by an instrument of special legislation (the Law of Ukraine on Joint Stock Companies).

Furthermore, the regulation of general provisions legal forms of legal entities by the CC of Ukraine seems logical, given that it is the CC of Ukraine that regulates the legal status of civil law entities, including the legal status of entrepreneurial companies (Chapter 8), and the purpose of special legislation is detailing of the provisions on the civil law entities and regulation of their specific features.

Removal of a specific legal form of legal entities from the system of general regulations on private entities may have negative consequences for the further interpretation of their legal status outside the system set forth by the underlying instrument of national private law.

Opinions. The corporations law in European systems of justice is diverse in its meaning and subject of its regulation, given the different history of the formation of legal entities in different national systems of justice. The concept of “corporation” is also different. In continental European law, the concept of “corporation” refers to all legal entities characterized by corporate structure (capital association) and partnerships with the purpose to gain profit. In English law, the concept of “corporation” is the same as the “company” and has narrower meaning, because it does not include European “partnerships”. At the same time, English law tends to expand the concept of “corporations”, because the Companies Act 2006 introduced a new type of company – “community interest company”, the main purpose of which can not be profit. Generally, the concept of “corporation” is doctrinal.

European Union corporation law means a system of “supranational law” of the European Union, the main instrument of which is the adoption of directives. The trend towards codification of corporate regulations is noticeable in the EU corporation law. Commitment to the European Union supranational corporation law under adaptation of national corporate law to European law seems justified only in view of the generally recognized high level of the European Union corporation law, but doctrinal practices should still remain the basis for qualitative progress.

National corporate law requires updating not only in view of the legislative requirement to gradually adapt the Ukrainian law to the law of the European Union, but also due to its inconsistency and permanent and non-systemic changes. Particularly, it is the necessity to include regulations in the CC of Ukraine, that would secure basic concepts. Within the system of private law legal entities, the place of corporations should be secured as entrepreneurial legal entities, which not only direct their activities to generate income, but also are entitled to own it by way of distribution among their members. The qualifying categories of corporate law also include the notion of corporate rights, which should be fixed in the codified instrument of private law. Otherwise, any discussions on attributing corporate relations to the subject matter of private law regulation should be withdrawn.

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⁶ Зозуляк О.І. Непідприємницькі юридичні особи як суб'єкти цивільного права: теоретичні та практичні аспекти: монографія. Тернопіль: Підручники і посібники. 2017. 432 с.

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Резюме

Васильєва В.А., Коструба А.В. Право корпорацій в Україні в контексті наближення до стандартів Європейського Союзу.

Стаття присвячена адаптації корпоративного законодавства України до права корпорацій ЄС. Особлива увага приділена визначенню понять «корпорація» та «корпоративне право». Зроблено висновок щодо відсутності усталеного розуміння наведених понять у національній юридичній науці та досліджено основні доктринальні підходи до їх визначення.

Детально розглянуто основні підходи до правової природи корпорації в окремих європейських правопорядках – у ФРН, Франції, Англії. Констатовано наявність істотних відмінностей між законодавством України та країн ЄС, що зумовлені історією їх розвитку й особливостями конкретних національних правопорядків. Розглянуто регулювання корпоративних відносин в Європейському Союзі на наднаціональному рівні. Зроблено висновок, що саме наднаціональне право ЄС є його “правом корпорацій” або “корпоративним правом”. Досліджено пріоритетні напрями уніфікації європейського права корпорацій на наднаціональному рівні. Основним інструментом врегулювання порядку діяльності корпорацій у праві ЄС визначено директиви, спрямовані на гармонізацію та уніфікацію національного законодавства країн-членів ЄС.

Детально проаналізовано профільну директиву у сфері права корпорацій ЄС – DIRECTIVE (EU) 2017/1132 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 June 2017 relating to certain aspects of company law (codification), предметом регулювання якої є правовідносини створення, діяльності та припинення компаній з обмеженою відповідальністю (limited liability companies). Окрема увага приділена діджиталізації корпоративного права ЄС. У контексті інтеграційних процесів у сфері приватного права визначено окремі тенденції, властиві корпоративному законодавству України. Зокрема, звертається увага на неузгодженість норм корпоративного законодавства України, які містяться у двох кодифікованих актах – ЦК України та ГК України, а також у низці спеціальних законів. При цьому, сфера дії окремих норм є тотожною, а їх зміст – різним. Зроблено висновок щодо необхідності системного оновлення корпоративного законодавства України не лише з огляду на законодавчо закріплену вимогу поступової адаптації права України до права ЄС, а й у зв'язку з його неузгодженістю та перманентними та несистемними змінами.

Ключові слова: право корпорацій, корпорація, адаптація законодавства до права ЄС, компанія, корпоративні правовідносини.

Резюме

Васильєва В.А., Коструба А.В. Право корпораций в Украине в контексте приближения к стандартам Европейского Союза.

Статья посвящена адаптации корпоративного законодательства Украины к праву корпораций ЕС. Особое внимание уделено определению правовой природы корпорации. Сделан вывод об отсутствии устойчивого понимания приведенных понятий в национальной юридической науке.

Подробно рассмотрены основные подходы к правовой природе корпорации в отдельных европейских правопорядках – в ФРГ, Франции, Англии. Констатировано наличие существенных различий между законодательством Украины и стран ЕС, обусловленные историей их развития и особенностями конкретных национальных правопорядков.

Рассмотрены регулирования корпоративных отношений в ЕС на наднациональном уровне. Сделан вывод, что именно наднациональное право ЕС является его корпоративным правом.

Исследованы приоритетные направления унификации европейского права корпораций на наднациональном уровне. Основным инструментом урегулирования порядка деятельности корпораций в праве ЕС определены директивы, направленные на гармонизацию и унификацию национального законодательства стран-членов ЕС.

Ключевые слова: право корпораций, корпорация, адаптация законодательства к праву ЕС, компания, корпоративные правоотношения.

Summary

Valentyna Vasylieva, Anatolii Kostruba. Corporate law in Ukraine within the framework of approaching the European Union standards.

The article is devoted to adaptation of the national corporate law to the law of European Union's corporations. Special attention has been given to define the legal nature of the corporation. It is concluded that there is no established understanding of the above concepts in national legal science.

The main approaches to the corporate legal nature in particular European systems of justice – in FRG, France, England – are considered in depth. Significant differences between the legislation of Ukraine and legislation of the European Union countries based on the history of their development and peculiarities of specific national systems of justice are detected.

The regulation of corporate relations in the European Union at supranational level is considered. It is concluded that the European Union supranational law is its corporate law.

The priority areas for unification of European corporate law at the supranational level are analyzed. The main instruments to adjust the activities of corporations in EU law are identified to be the Directives aimed at harmonizing and unifying national legislation of EU Member States.

Key words: Law of corporations, corporation, adaptation of legislation to EU law, corporate legislation, company.

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**ПІДСТАВИ ВИХОДУ УЧАСНИКА З ТОВАРИСТВ З ОБМЕЖЕНОЮ
ВІДПОВІДАЛЬНІСТЮ ТА ЮРИДИЧНИХ ОСІБ ПОДІБНИХ
ОРГАНІЗАЦІЙНО-ПРАВОВИХ ФОРМ: ПОРІВНЯЛЬНО-ПРАВОВИЙ АСПЕКТ**

Постановка проблеми. Актуальність дослідження інституту виходу учасника з товариства з обмеженою відповідальністю обумовлюється тим, що цей інститут зазнав істотних змін у зв'язку з прийняттям 6 лютого 2018 р. Закону України «Про товариства з обмеженою та додатковою відповідальністю»¹. При цьому аналіз правового регулювання виходу в інших правових системах свідчить про істотну варіативність підходів до цього питання, зокрема – до підстав виходу та відмінність цих підходів від тих, що передбачені як чинним законодавством України, так і положеннями, які втратили чинність.

Поняття «вихід» у цій статті охоплює усі випадки, коли корпоративні правовідносини участі у товаристві припиняються внаслідок волевиявлення учасника, здійсненого ним при реалізації суб'єктивного корпоративного права, тобто права, адресованого іншим учасникам корпоративних правовідносин – товариству та/або іншим учасникам і спрямованого на реалізацію законного інвестиційного інтересу учасника, незалежно від механізму і процедури здійснення виходу. Таким чином у деяких випадках «вихід» означатиме також «викуп частки», якщо товариство або учасники зобов'язані придбати частку внаслідок волевиявлення учасника. Проте законодавчі акти держав, правові системи яких передбачають лише примусовий викуп частки учасника товариством та/або викуп частки учасника за домовленістю з товариством, у цій роботі не розглядаються.

Вихід учасника розглядатиметься в товариствах з обмеженою відповідальністю та організаційно-правових формах, які є подібними до цього виду товариств, зокрема у Нідерландах це *besloten vennootschap*, у Великобританії – *private limited company*. Також у цій роботі розглядаються підстави виходу учасника з простого акціонерного товариства за законодавством Республіки Польща. Просте акціонерне товариство (*prosta spółka akcyjna*) є новим видом господарських товариств за польським законодавством, відмінним як від акціонерних товариств (*spółka akcyjna*) так і від товариств з обмеженою відповідальністю (*spółka z ograniczoną odpowiedzialnością*) і займає між ними проміжне становище: це по суті гібрид ТОВ і ПрАТ за законодавством України.

Таким чином, у цій статті досліджуватимуться нормативно-правові акти правових систем Вірменії, Бельгії, Білорусі, Великобританії, Нідерландів, Російської Федерації, Польщі, Туреччини, України, Чехії і Швейцарії.

Аналіз останніх досліджень і публікацій. Питання виходу учасника з товариства з обмеженою відповідальністю досліджувалось такими авторами, як О. Климчук та Т. Христюк, О.Р. Кібенко, С. Коровін та В. Левков, С.С. Кравченко, В.М. Кравчук, С.Д. Могілевський, Л.С. Нецька, О.В. Просянюк, І.В. Спасибо-Фатеева, С. Трикур, Г.О. Уразова, С.Ю. Філіппова, які приділили значну увагу питанням правової природи виходу учасника з товариства, моменту, з якого учасник вважається таким, що вийшов з товариства, його

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