

ADAPTATION OF UKRAINIAN CORPORATE LEGISLATION TO EUROPEAN STANDARDS

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Abstract. Defining the European vector of development of Ukraine in the model of international cooperation as a priority involves the use of European standards in the field of law. This is impossible without careful adaptation work to bring the domestic legal system in line with the system that exists in the countries of the European Union. Recent changes in legislation have been long-awaited and have been a breakthrough in the corporate and financial sectors. The authors aim to carry out a comprehensive analysis of Ukrainian corporate law by comparing the political governance of Eastern Europe, economic and political aspects of the current situation, problems of corporate governance and ways to solve them, and the current stages of adaptation of corporate law in its transformation to the EU's norms. In February 2018, the European Commission proposed to consider 2025 a possible date for the accession of Serbia and Montenegro, which means recognizing these countries as the first league in the Balkans, even in case the EU Council does not approve this date. The second league was set by the Council in June 2018, when 2019 was marked as a possible conditional date for the opening of accession negotiations with Albania and Macedonia. While the third league is for the accession of Bosnia and Kosovo, for which no date has been set. Negotiations with Turkey have been suspended. For comparison, if we take into account both political and economic indicators, Ukraine is approximately equal to the Balkan states of the second league. The prospect of EU membership has been recognized as the strongest external factor in domestic political change in the countries surrounding the EU. In accordance with the requirements of the Association Agreement with the EU on corporate law (EU Directives No. 2001/34/EC, No. 2003/71/EC, No. 2004/109/EC, No. 2007/14/EC, No. 2007/36/EC, No. 2012/30/EC, No. 2013/34/EC, Recommendations of the European Commission No. 2005/162/EC and No. 2004/913/EC) the Law of Ukraine No. 2210-VIII, the Law of Ukraine "On Limited Liability and Additional Liability Companies" dated February 06, 2018 No. 2275-VIII, amendments to the Laws of Ukraine №514-VI, "On Securities and Stock Market", "On Business Associations", the Economic Code of Ukraine, the Civil Code of Ukraine, the Criminal Procedural Code of Ukraine and other laws were made and came into force on July 1, 2021 in the Law of Ukraine No. 738-IX. European integration transformation of Ukrainian legislation in the context of protection of shareholders' rights was manifested through the implementation of Directive 2004/25/EC in the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning the Simplification of Doing Business and Attracting Investments by Issuers of Securities" dated March 23, 2017 No. 1983-VIII and the Law of Ukraine No. 514-VI. Ukraine's economy has not yet recovered from the negative effects of the global financial crisis of 2008, the political coup, the national crisis of 2015, the current crisis caused by the COVID-19 pandemic. This situation shows declining dynamics, and changes in Ukrainian legislation are offset, not showing real effect. The harmonization of Ukrainian legislation is complicated by the unwillingness of Ukraine's business environment to comply with EU rules. Analyzing the activities of the JSC, the dynamics of the securities market, stock market and the transformation of Ukrainian legislation, the initiatives of certain branches of government, we can say that Ukraine is moving in the right direction but not fast enough and forms a country with a real market economy. Therefore, we can conclude that the adaptation of Ukrainian corporate law to EU legislation should be carried out not only in relation to existing EU directives but in accordance with general trends and prospects for the development of European corporate law.

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Introduction

Defining the European vector of development of Ukraine in the model of international cooperation as a priority involves the use of European standards in the field of law. This is impossible without careful adaptation work to bring the domestic legal system in line with the system that exists in the countries of the European Union (EU). Such work in the field of corporate law is especially relevant in this context. This is due to the fact that at the present stage of the development of Ukraine's economy, the adaptation of domestic corporate legislation to generally accepted European standards is one of the main prerequisites for achieving the attractiveness of Ukraine's corporate sector for investors.

Recent changes in legislation have been long-awaited and have been a breakthrough in the corporate and financial sectors. Radical change of a number of legislative acts (namely, Law of Ukraine "On Joint Stock Companies" dated September 17, 2008 No. 514 VI (Law of Ukraine, 2008-2016), Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning the Simplification of Doing Business and Attracting Investments by Issuers of Securities" dated November 16, 2017 No.2210-VIII (Law of Ukraine, 2018)), and introduction of the Law of Ukraine "On Capital Markets and Organized Commodity Markets" (Law of Ukraine, 2020), which comes into force on July 1, 2021, No.738-IX, etc., require a detailed analysis of changes in the activities of joint-stock companies, which determines the relevance of the chosen research problem.

Given the European integration nature of the transformation of Ukrainian legislation, we propose to investigate the impact of such changes on the activities of joint-stock companies.

The author aims to carry out a comprehensive analysis of Ukrainian corporate law by comparing the political governance of Eastern Europe, economic and political aspects of the current situation, problems of corporate governance and ways to solve them, and the current stages of adaptation of corporate law in its transformation to the EU's norms.

1. Methodology of research

1.1. Political governance in Eastern Europe as a prerequisite for creating promising areas for adaptation of legislative processes in a country

The political geography of the territories directly close to the EU consists of three groups of countries,

which in the official doctrine of the EU differ in the prospects of integration into the EU. The Balkans are by far the most privileged group. They received a conditional promise of EU membership in 2000. Next are the three Eastern Partnership countries (Georgia, Moldova and Ukraine, but not Armenia, Azerbaijan and Belarus), which have accepted the EU's proposal for deep and comprehensive free trade and close political association, which, however, does not correspond to full EU membership (Bokovets, 2015). The countries of the Middle East and North Africa (MENA) are in third place less likely to achieve an advanced level of integration in the EU than their eastern neighbors due to various internal and regional barriers or lack of interest from the countries concerned.

Accordingly, the Eastern Partnership neighbors are included in the middle category, but they are themselves divided into those who want to join the EU and have signed an Association Agreement with the EU, as well as those who are unwilling or unable to take on such close contractual obligations with the EU (Kwilinski, Slavitskaya, Dugar, Khodakivska, 2020).

The Eastern Partnership countries are also "European" states, which, if they are democracies, have the right to apply for full membership in the EU under Article 49 of the Treaty, unlike their southern neighbors.

In February 2018, the European Commission proposed to consider 2025 a possible date for the accession of Serbia and Montenegro, which means recognizing these two countries as the leading countries in the Balkans (the first league), even in case the Council of Europe does not approve this date. The second league was set by the Council in June 2018, when 2019 was marked as a possible conditional date for the opening of accession negotiations with Albania and Macedonia. The third league includes Bosnia and Kosovo, for which no date has been set. Negotiations with Turkey have been suspended.

The prospect of EU membership has been recognized as the strongest external factor in domestic political change in the countries surrounding the EU. Scholars have argued that the quality of democratic governance in the wider neighborhood is commensurate with the strength of the incentives offered by Brussels (Boerzel and Schimmelfennig, 2017). Countries that enjoy a solid prospect of joining the EU have large-scale democratic changes. The opinion was expressed that in the countries with which have concluded the EU Association and Partnership Agreements, the pace and level of democratic transformations are not the

same as in the candidate countries for EU accession (Jelena Jovanovic, Biljana Grujic, 2018).

2. Results and discussion

2.1. Transformation of Ukrainian corporate legislation

Ukraine has relatively recently embarked on the path of market transformation. The only European integration path that the country has chosen in 2014 is currently being implemented by the government. First of all, the priority of European integration of Ukraine involves the fulfillment of political, economic and legislative criteria. The latter criteria also provide for the consistent and gradual adaptation of national legislation to the *acquis communautaire* in the field of alternative energy sources, banking law, company accounting, company law, intellectual property law, legislation on labor protection and taxes, incl. indirect taxes, competition rules, freedom to provide services and movement of capital and persons, financial services, securities and investment funds, etc. (Derevyanko, Pashkov, Turkot, Zahrisheva, 2020).

The implementation of the *acquis* acts is primarily aimed at forming a country with a market economy and harmonization of Ukrainian legislation with the EU. Every EU country in the field of corporate governance, financial services, and company activities must follow the strict rules of protection of the rights of investors, creditors, and other stakeholders; apply effective mechanisms for the establishment and operation of companies and corporate management; gradually move to international standards of accounting and auditing; create preconditions and opportunities for financial market development.

In accordance with the requirements of the Association Agreement with the EU on corporate law (EU Directives No. 2001/34/EC, No. 2003/71/EC, No. 2004/109/EC, No. 2007/14/EC, No. 2007/36/EC, No. 2012/30/EC, No. 2013/34/EC, Recommendations of the European Commission No.2005/162/EC and No. 2004/913/EC) the Law of Ukraine No. 2210-VIII, the Law of Ukraine “On Limited Liability and Additional Liability Companies” dated February 06, 2018 No. 2275-VIII, amendments to the Laws of Ukraine №514-VI, “On Securities and Stock Market”, “On Business Associations”, the Economic Code of Ukraine, the Civil Code of Ukraine, the Criminal Procedural Code of Ukraine and other laws were made and came into force on July 1, 2021 in the Law of Ukraine No. 738-IX.

In particular, according to the above amendments to the Law of Ukraine No. 738-IX to the Criminal Procedure Code of Ukraine, the bond issuance manager, who acts on the basis of the Law of Ukraine “On Securities and Stock Market” in the interests of bondholders who have suffered property damage as a criminal offense, is

enshrined by law to the concept of a victim (Part 1 of Art. 55 of the CPC of Ukraine) along with a natural person who has suffered moral, physical, or property damage by a criminal offense or a legal entity whose property damage has been caused by a criminal offense.

The bond issuance manager, who acts in the interests of the bondholders, is endowed with sufficiently broad procedural rights as a victim in criminal proceedings. It may also be recognized as a civil plaintiff who has suffered property damage by a criminal offense or other socially dangerous act, and who has filed a civil lawsuit in accordance with the procedure established by the Criminal Procedure Code (Art. 61 of the CPC of Ukraine).

The state gives the bond issuance manager, who acts in the interests of bondholders, to protect them by concluding a conciliation agreement (as a victim) in criminal proceedings (in case of a criminal offense against them and causing property damage), and to refuse to enter into such agreement, but only with the consent of the meeting of bondholders, obtained in accordance with the provisions of the Law of Ukraine “On Securities and Stock Market” (Part 4 of Art.61 of the CPC of Ukraine).

These are just a few examples of changes in Ukrainian sectoral legislation and its adaptation to European standards in the corporate sector.

European integration transformation of Ukrainian legislation in the context of protection of shareholders' rights was manifested through the implementation of Directive 2004/25/EU in the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Concerning the Simplification of Doing Business and Attracting Investments by Issuers of Securities” dated March 23, 2017 No. 1983-VIII and the Law of Ukraine No. 514-VI. The issue of purchase of a significant block of shares has been settled (a person is obliged to submit a written notice of his or her intention to the company and make it public no later than 30 days before the date of purchase of the respective block of shares) (Art. 64 of the Law of Ukraine No. 514-VI).

For a long time, scholars have also focused on the problem of regulating mergers and acquisitions in Ukrainian legislation. The squeeze-out procedure is popular in European law and is widely used. Since 2017, amendments were also made to Law of Ukraine No. 514-VI, which provides for the mandatory sale of shares by shareholders at the request of the dominant controlling interest (95%). (Art. 65 of the Law of Ukraine No. 514-VI). In turn, minority shareholders also received the sell-out right.

In general, as of December 31, 2019, according to the NSSMC, squeeze-out procedure was used 308 times (Figure 1), of which in 2017 – 7 procedures, in 2018 – 173 procedures, and in 2019 – 128 procedures.

Most joint-stock companies approved the market value determined by the subject of valuation activity,

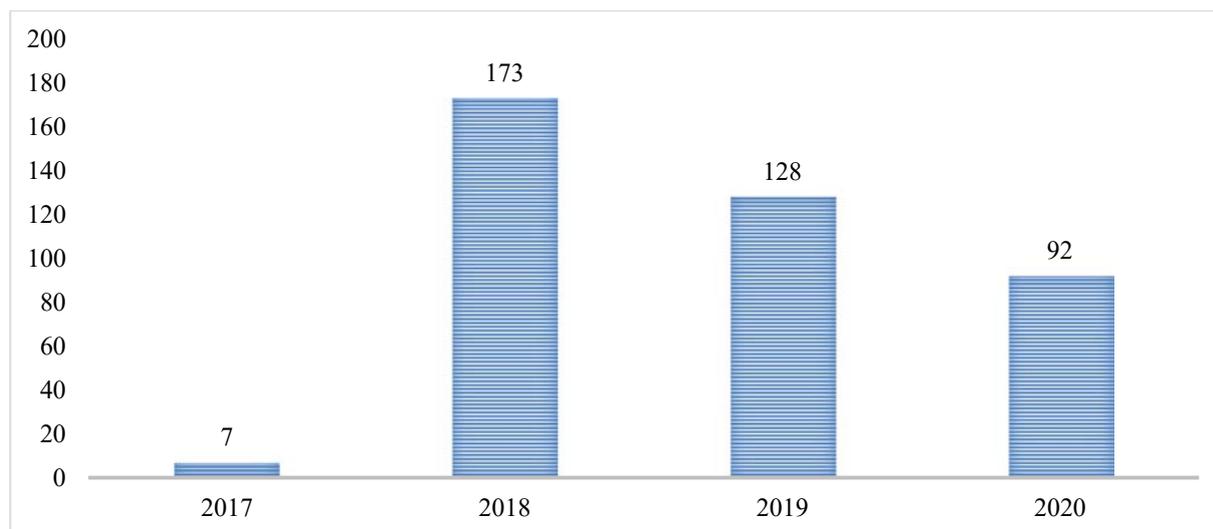


Figure 1. Number of squeeze-out procedures performed in Ukraine

Source: compiled according to the State Statistics Service of Ukraine (2020)

which is 85.7%. More than 8% of the procedures were carried out at the highest price at which the claimant purchased the shares of this JSC; 5.5% – at double the market price of JSC shares; and 0.65% – at the highest share price at which the claimant purchased the shares of this JSC within 12 months.

Increasing the transparency of JSC activities in accordance with Directive No.2004/109/EU in the regulations of Ukraine and decisions of the NSSMC (National Securities and Stock Markets Commission) has also undergone positive changes (The National Securities and Stock Market Commission, 2020):

- the establishment of a supervisory board (Directive No.2005/162/EC) as the company's governing body for public JSCs (PJSCs) and private JSCs (PrJSCs) with more than 10 shareholders provides for both increasing the transparency of the JSC and protecting shareholders' rights by reducing the influence of the majority shareholder in reference to the minority one.

Unfortunately, in Ukraine, there is a discriminatory tendency to pay dividends to minority investors, with the subsequent inability to sell their own shares at market prices. For example, the actions of PJSC Ukrnafta against shareholders holding a stake of less than 1% were established in court due to the effective operation of the Supervisory Board of PJSC;

- information coverage about the activities of the JSC. PrJSCs and JSCs that have not made a public offer should disclose only annual regulated information, special information, insider information and information on shareholders whose share is more than 5%. PJSCs should also disclose both interim and annual regulated information, the company's financial statements confirmed by an independent audit firm, prepare a management report, which includes: probable prospects for further development

of the issuer; information on the issuer's development; information on the issuance of derivatives or transactions with derivative securities by the issuer if it affects the assessment of its assets, liabilities, financial condition and income or expenses of the issuer and the corporate governance report (The Verkhovna Rada of Ukraine, 2017);

- the shareholder must notify the public joint-stock company about the change of the threshold value of the block of shares (5, 10, 15, 20, 25, 30, 50, 75, 95 percent of voting shares) owned by such shareholder, including as a result of increase or decrease of the authorized the capital of such a company;
- the payment of dividends for the PJSC directly to the shareholder has been canceled.

Currently, dividends are paid only through the depository system.

However, unfortunately, the implementation of the relevant directives and recommendations have not brought the necessary results for the transparency of JSCs. Instead, JSCs “go into the shadows” (Figure 2) (The National Securities and Stock Market Commission, 2019).

Firstly, there is a declining dynamics of the number of JSCs. As of 2020, the decline is more than 50% compared to 2013.

Secondly, the transformation of PJSC into PrJSC. In 2016, the number of PJSCs was higher than the PrJSC by 663 companies, but in 2017 the opposite trend was observed: the number of PJSCs decreased by 1,027 companies, and the number of PrJSCs increased by 862 companies. It should also be noted that 2016 was marked by the largest decrease in the number of legal entities of Ukraine of various forms of ownership, not only JSC. Then there is the upward trend of an increase.

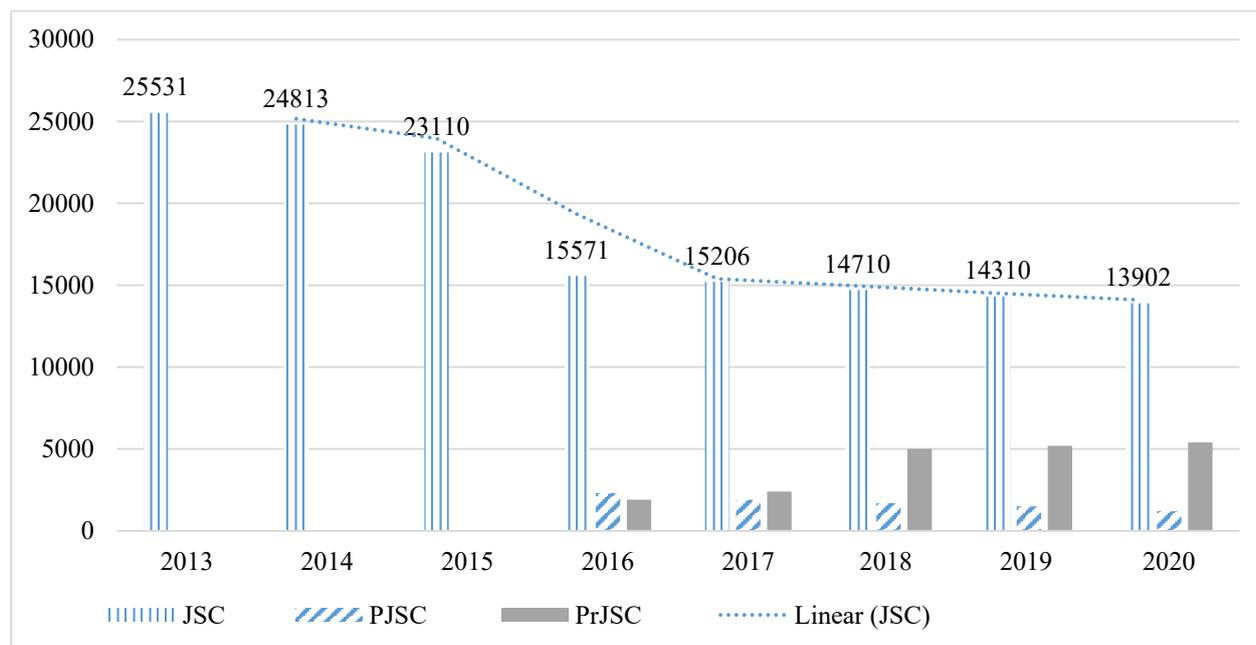


Figure 2. Dynamics of the number of joint-stock companies in Ukraine

Source: compiled according to the National Securities and Stock Market Commission (2019), State Statistics Service of Ukraine (2020)

Thirdly, the transformation of JSC into LLC. Based on the reduction in the number of JSC, the number of LLCs is increasing every year. For many years, LLC has remained the most popular organizational and legal form of management for legal entities.

Most 97% of Ukrainian enterprises operate as small and micro enterprises, which is caused primarily by a lack of financial resources and the inability to modernize the enterprise and improve the quality of production.

Thus, analyzing the main trends in the JSC operation and the situation in the stock market, we can summarize the main reasons for the reduction in the number of JSCs, changes in their forms of organization, falling trading in the stock market and a significant reduction in its stock segment (State sites of Ukraine, 2019):

- a nationwide problem of the number of medium and large enterprises (only 3%). Since JSC is mostly a form of conducting business for large and medium-sized enterprises, it is logical to reduce the number of such enterprises. And those who remained as JSCs, simply could not meet the new conditions and high standards due to increasing requirements for JSCs;
- the need for additional financial resources for the creation of JSC (under Art. 14 of the Law of Ukraine №514¹, the minimum size of the authorized capital of a joint-stock company must be 1250 minimum wages, based on the minimum wage rate in force at the time of creation (registration) of the joint-stock company (until December 31, 2020 – 6,250,000 UAH) and for its operation (creation and maintenance of a website, proper accounting and financial reporting, possibly

in accordance with the requirements of IASB and the procedure of independent audit or the establishment of an internal audit service, etc.);

- the complexity of corporate governance. This is primarily due to the holding of shareholders' meetings, the creation of a supervisory board, the issue of shares and other securities through the NSSMC. At the same time, it should be noted that due to the increase of requirements and procedures for JSC, an effective mechanism for minimizing the risk of expropriation has been created;

- the need to compile and cover additional information about the company (annual and interim financial statements, management report, etc.);

- undergoing a complex listing procedure on at least one of the stock exchanges. Regarding Directive No. 2001/34/EC on the admission of securities to official listing on a stock exchange and on the information to be made public, amendments to the requirements for the issue of shares on the stock exchange were approved (NSSMC Decision No. 546 "On Approval of Amendments to the Regulations of Stock Exchanges" dated August 3, 2018): the issuer must exist for at least three years; its equity must be at least 300,000,000 UAH; the annual net income from the sale of goods, works and services for the last financial year must be at least 300,000,000 UAH; the average value of the market capitalization of PJSC must be at least 100,000,000 UAH; the minimum share of shares in free float must be at least 10 percent, i.e., 75,000,000 UAH or more; quantitative composition of the company's shareholders – not less than

150 shareholders; the issuer has introduced the position of corporate secretary; the issuer conducts an annual audit in accordance with international auditing standards with the participation of an independent external auditor (at least two years) (The National Securities and Stock Market Commission (2019), State Statistics Service of Ukraine (2020), etc.

2.2. Problems of corporate governance at Ukrainian enterprises

Problems of the corporate sector of the domestic economy have been considered by scientists in various aspects, namely legal, organizational, economic, financial, information, and so on. The comprehensive study of the problem has made it possible to conduct a complete assessment of the corporate governance of any enterprise or corporation.

Many authors consider the corporate governance system an organizational model by which the interests of investors are represented and protected, i.e. corporate governance is an organizational agreement that may cover various aspects of the corporation, the organization of senior management, staff motivation and others, and due to the delimitation from the management process. The main problem of this management process is the creation of mechanisms for the control of outsiders (creditors and minority shareholders) over insiders (senior management and shareholders with a controlling share).

Some scientists equate corporate governance with the management of a joint-stock company (Kozakova, 2016; Okunev, 2016).

There is no single, generally accepted model of corporate governance that would be used by all countries. However, there are certain defined principles, standards, basic criteria and provisions used in the previously mentioned research contexts. Accordingly, almost all rating agencies use the standards proposed in these models to assess the level of corporate governance.

It should be noted that most Ukrainian companies use the domestic model of corporate governance.

The Ukrainian model of corporate governance, in contrast to countries with developed market economies, was formed mainly artificially by almost simultaneous corporatization and privatization of a large number of state-owned enterprises, originally formed under the administrative regulation of the economy. However, in modern conditions, the mass corporatization of enterprises has not led to significant changes in achieving the main goals of society.

The effectiveness of corporate governance is defined as the result of a combination of four factors that are applied in accordance with national or regional specifics: features of national legislation, type of ownership, government, public pressure. By studying

them, it is possible to achieve a deeper understanding of the national "regulatory" environment with which corporations interact (Bokovets, 2015).

Features of the formation of an effective domestic corporate sector are: it is highly dispersed; inefficient structure of shareholder ownership in the privatization process; the significant role of the state in the formation of the corporate sector; the state has a large number of shares and the need to solve the problem of managing state corporate rights; strong tax burden, which creates different tax conditions for shareholders of different industries, etc. (Korobka, 2016).

The main problems of modern corporate governance, in our opinion, are the following:

- uncertainty of the external environment in which the participants of corporate governance (corporations) operate. The external environment of the domestic economy remains uncertain, complex, rather problematic, and with a significant number of pronounced non-market characteristics;
- difficulty in using the domestic model of corporate governance, which leads to significant errors and miscalculations, and as a result – the inefficiency of the management system as a whole;
- violations related to shareholders' rights, awareness of dividends, transparency of certain activities and business transactions, irregular and incomplete information of shareholders, non-transparency and inaccessibility of financial and economic information;
- ineffective decisions of managers, due to their lack of qualifications or awareness and as a consequence – a decrease in the value of shares, corporate income and dividends of shareholders;
- reluctance of managers of individual corporations to make full use of the Code of Corporate Governance;
- a sharp divergence between theory and practice regarding corporate governance, its principles, methods of the decision making on income distribution, etc.

Moreover, in the last year, during the period of total quarantine, the restriction of the activities of individual corporations and enterprises is becoming more and more problematic, and there are almost no resources for their quick and effective solution.

2.3. Stages of adaptation of corporate legislation to EU's regulations

The adaptation of Ukraine's corporate legislation to EU's law is not spontaneous; it has a strong legal basis, the analysis of which will be discussed in more detail.

According to the provisions of the Program, the adaptation of Ukrainian legislation to the EU's one is recognized as a priority component of Ukraine's European integration process and aims to achieve compliance of the legal system of Ukraine with the *acquis communautaire* taking into account the EU's requirements for the countries to join the EU.

In Section II of the Program, the term “adaptation of legislation” is defined as the process of bringing the laws of Ukraine and other normative legal acts in line with the *acquis communautaire*. In turn, the *acquis communautaire* means the EU legal system, which contains (but is not limited to) the EU legislation adopted within the framework of the European Community, the common foreign and security policy and cooperation in the field of justice and home affairs.

That is, the term “*acquis communautaire*” is broader than the concept of the “EU legislation”, in connection with which we consider it more correct to talk about the adaptation of Ukrainian legislation to the EU’s law (Ligazakon, 2020).

Implementation of a number of Directives: No.600/2014/EC

- on markets in financial instruments (MiFIR); 85/611/EEC – on mutual investment institutions; 2003/6/EC – on insider trading and market manipulation; 98/26/EC;

- on payment settlements for securities of the Regulations of the European Parliament 2014/65;

- on markets in financial instruments (MiFID II) and 648/2012;

- on OTC derivatives, central counterparties and trade repositories (EMIR) and the Model Netting Act (ISDA) of 2006 in the current Law of Ukraine “On Amendments to Some Legislative Acts of Ukraine to Simplify Investment Attraction and Introduction of New Financial Instruments” dated June 19, 2020 No. 738-IX. This led to a further transformation in the Law “On Securities and Stock Market”, which entered into force on July 1, 2021, primarily aimed at forming a liquid capital market with greater opportunities for its participants, including JSC (Law of Ukraine “On Securities and Stock Market”, 2020).

These laws regulate the use of derivative contracts, which are: option certificates, stock warrants, credit notes, depository receipts, government derivatives. Also, the concepts such as green bonds, credit default swap, swaption, swap futures, forward swap, contract for the difference in prices, interest rate future are introduced. In addition, the new law regulates the provisions on final settlements and liquidation netting in accordance with the EU’s regulations (Derevyanko, Pashkov, Turkot, Zahrishcheva, 2020).

In accordance with the provisions of the EMIR regulations, the NSSMC and the NDU have introduced a single database for derivatives transactions.

An important challenge is the implementation of Directive (EU) 2017/1 132 on certain aspects of corporate governance, some provisions of which are covered in the new draft law “On Joint Stock Companies” No. 2493 dated November 25, 2019, which provides for JSC:

- holding a general meeting of shareholders by electronic means of communication and electronic voting;

- merger, acquisition, division, separation, transformation of JSC (the draft of a bill takes into account the provisions of the directive on the conditions of free publication of information on the terms of the merger/acquisition, the procedure for decision-making which can be sued for its cancellation, the conditions of free publication of information on the conditions of allocation/division, etc.) (OECD Principles of Corporate Governance);

- corporate governance for professional capital market participants (provides for the introduction of MiFID II and the Capital Requirements Directive).

At the same time, the requirements for voting for decisions of the general meeting and the use of reserve capital do not comply with the provisions of the directive, so we propose to regulate this aspect. Some aspects of the development and implementation of mechanisms to regulate the disclosure of information by branches of foreign companies also remain unresolved.

In European corporate law today, much attention is paid to mergers and acquisitions of companies, corporations, joint-stock companies, and more. In such processes, there are positive moments provided they are carried out correctly.

In particular, operating synergy arises from a combination of the merging corporations’ productional, technological, and intellectual assets and has a significant impact on the cost of capital of the future corporation. The result of financial synergy is the assessment of the stocks of a new corporation, while the total value of shares of corporations before the merger is less than that after integration (Lavrinenko, Frolova, Ananiev, 2020).

On the other hand, mergers and acquisitions of companies-subjects of corporate relations of Ukraine often occur through “raiding” mechanisms, i.e., without the desire of the subject of such relations under a merger or acquisition (Bershadsky, Yurchishena, 2017). Therefore, Ukrainian corporate law should adapt the best rules of the EU’s law in order to prevent “raiding” and realize the interests of all participants in corporate relations.

The process of adaptation of domestic corporate legislation to the EU regulations provides a variety of opportunities for the Ukrainian market to attract companies from the European Union to the domestic market, which will help our country accelerate new jobs and attract foreign investment to the domestic economy.

Comparing the provisions of the current corporate legislation of Ukraine with the provisions of the Directives of the European Union in this area of law, we can conclude that many provisions meet the requirements of the European Community law. Many of these provisions have been brought into line with the EU’s law through the phased implementation of the Directives (Zagrodniuk, 2018).

Conclusions

Ukraine's economy has not yet recovered from the negative effects of the global financial crisis of 2008, the political coup, the national crisis of 2015, the current crisis caused by the COVID-19 pandemic. This shows declining dynamics, and changes in Ukrainian legislation are offset, not showing real effect.

The harmonization of Ukrainian legislation is complicated by the unwillingness of Ukraine's business environment to comply with EU rules. Analyzing the activities of the JSC, the dynamics of the securities market, stock market and the transformation of Ukrainian legislation, the initiatives of certain branches of government, we can conclude that Ukraine is moving in the right direction but not fast enough and forms a country with a real market economy.

Thus, the corporate law of Ukraine is actively developing in accordance with trends, new bills, concepts for its reform and improvement are being introduced. Regarding the adaptation of Ukraine's corporate law to the EU's law, it should be noted that this process is already 80% completed, for example, depository reform – the creation of a single depository – has brought Ukraine much closer to integration into the international financial sector (Conference on European Company Law, 2011).

Therefore, we can conclude that the adaptation of Ukrainian corporate law to the EU's legislation should be carried out not only in relation to existing EU directives but in accordance with general trends and prospects for the development of European corporate law. The above allows us to provide the following recommendations for the adaptation of Ukrainian legislation to the EU's law in the field of corporate relations:

1. Adaptation must be carried out to achieve certain objectives, not just for the sake of similarity of laws.
2. During adaptation, the most important task should be to follow current trends and prospects for the development of EU corporate law.
3. For effective adaptation, it is necessary to use the experience of the EU member states, which are also reforming their legislation in the field of corporate law, the analysis of the consequences will allow a clearer understanding of what mechanism for improving corporate law to choose.
4. Carrying out a comparative legal study of the law of the EU companies and the legislation of Ukraine in this area in order to identify gaps and contradictions.
5. Adaptation should be carried out in accordance with the economic situation of the country, as well as taking into account social and cultural development.
6. Adaptation should be carried out taking into account the peculiarities of national legislation, i.e., the rules should be mainly framework and establish the basic principles and standards of corporate relations and leave their details in the competence of national authorities.
7. Adaptation must comply with generally accepted principles: respect for human rights, legal certainty, equality, the right to be heard.
8. Clear delineation of types of companies and appropriate differentiation of legal regulation.
9. Liberalization of many rules and requirements of corporate law, increasing the dispositive nature of its rules.
10. Creating a legal framework for the use of new information technologies by participants in corporate relations.
11. Encouraging cooperation between legal entities of different member countries in all spheres of economic activity.

References:

- About the consolidated principles of corporate governance (2014): Decision of the National Committee of the central part of the stock market from 22.07.2014. No. 955. Available at: <https://www.nssmc.gov.ua/documents/rshennya-pro-zatverdzhennya-printsipv-korporativnogo-upravlnnya/>
- Bershadsky, A. O., & Yurchishena, L. V. (2017). Joint stock companies: trends, functional problems, dividend policy. *Skhidna Yevropa: ekonomika, biznes ta upravlinnia*, 3, 95–102.
- Bokovets, V. V. (2015). The effectiveness of corporate governance in enterprises. *Global and national economic problems*, 8, 328–331. (in Ukrainian)
- Conference on European Company Law (2011). The way forward, 16-17.05.2011. Brussels. Available at: http://ec.europa.eu/internal_market/company/docs/modern/conference201105/programme_en.pdf
- Derevyanko, B., Pashkov, V., Turkot, O., & Zahrisheva, N. (2020). Addressing the issue of corporate raiding in Ukraine. *Problems and Perspectives in Management*, 18(1), 171–180. doi:10.21511/ppm.18(1).2020.156.
- Jelena Jovanovic, Biljana Grujic (2018). Historical development of corporate governance as the basis for current corporate trends. *Ekonomika*, 62(1), 187–197. Available at: <https://pdfs.semanticscholar.org/ae2e/ea977ebd1fccbffa37274f177ccf496dd07.pdf>
- Korobka, S. V. (2016). Corporate governance in Ukraine: the problems and ways of their solution. *Naukovyj visnyk LNUVMBT imeni S.Z. Yzhytskoho*, 2, 80–83. (in Ukrainian)
- Kozakova, T. S. (2016). Modern approaches to the definition of corporate governance in the information economy. *Black Sea Economic Studies*, 1, 56–58. (in Ukrainian)
- Kwilinski, A., Slavitskaya, I., Dugar, T., & Khodakivska, L. (2020). Main Effects of Mergers and Acquisitions in International Enterprise Activities. *International Journal of Entrepreneurship*. Vol. 24. Special Issue.

- P. 9467–9471. Available at: <https://ibima.org/accepted-paper/synergetic-and-value-effects-in-corporate-mergers-and-acquisitions-of-international-companies/>
- Lavrinenko, O., Frolova, T., & Ananiev, M. (2020). Joint-stock companies in the conditions of the Ukrainian legislation transformation of European integration. *Investment: practice and experience*, 21, 23–29.
- Law of Ukraine (2018). Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Concerning the Simplification of Doing Business and Attracting Investments by Issuers of Securities” (*Vidomosti Verkhovnoi Rady (VVR)*, 2018, № 6–7, p. 38). Available at: <https://zakon.rada.gov.ua/laws/show/2210-19#Text>.
- Law of Ukraine “Securities and Stock Market” (2020). On amendments to some legislative acts of Ukraine to simplify investment attraction and introduction of new financial instruments. Available at: <https://zakon.rada.gov.ua/laws/show/738-20#Text>
- Ligazakon (2020). Conclusion to the draft Law of Ukraine dated 05.03.2020 № 2493. Available at: <https://ips.ligazakon.net/document/XI00854K?an=3> (accessed May 02, 2021).
- OECD Principles of Corporate Governance. OECD 2004. Available at: <https://www.oecd.org/corporate/ca/corporategovernanceprinciples/31557724.pdf>
- Okunev, O. (2016). Corporate governance as a new trend of Ukrainian companies. Available at: <http://yur-gazeta.com/publications/events/korporativne-upravlinnya-yak> (in Ukrainian)
- Report of the Reflection Group on the Future of European Company Law, (5 April 2011). Available at: http://ec.europa.eu/internal_market/company/docs/modern/reflectiongroup_report_en.pdf
- Report of the Committee on the Financial Aspects of Corporate Governance and Gee and Co. Ltd. The financial aspects of corporate governance of 1 December 1992. Available at: <https://ecgi.global/sites/default/files//codes/documents/cadbury.pdf>
- State Statistics Service of Ukraine (2020). Statistics about Joint Stock Companies in Ukraine for 2013-2020. Available at: <http://www.ukrstat.gov.ua/> (accessed May 02, 2021).
- State sites of Ukraine (2019). Report on the implementation of the Association Agreement between Ukraine and the European Union for 2019. Available at: <https://www.kmu.gov.ua/storage/app/sites/1/55GOEEI/araaimplementation20194.pdf> (accessed May 02, 2021).
- The UK Corporate Governance Code (April 2016). Financial Reporting Council. Available at: <https://www.frc.org.uk/getattachment/ca7e94c4-b9a9-49e2-a824-ad76a322873c/UK-Corporate-Governance-Code-April-2016.pdf/>
- The key principle of the OECD is a corporate approach at enterprises of the state form of government (Edition 2015). Available at: https://www.oecd-ilibrary.org/docserver/9789264312906-uk.pdf?expires=1606498070&id=id&accname=guest&checksum=9BCA66A0351DA12786C2A36A5D7FC080&fbclid=IwAR2-clbgcli5cAaPCqiQqRwQHJk11FSGLjFHHgth1wQqcl7NHZDR_jAXRs.
- The Verkhovna Rada of Ukraine (2008). The Law of Ukraine “On Joint Stock Companies”. Available at: <https://zakon.rada.gov.ua/laws/show/51417#Text> (accessed May 02, 2021).
- The Verkhovna Rada of Ukraine (2017). The Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Concerning Simplification of Doing Business and Attracting Investments by Issuers of Securities”. Available at: <https://zakon.rada.gov.ua/laws/show/221019#Text> (accessed May 05, 2021).
- The National Securities and Stock Market Commission (2020). Securities market statistics for 2019. Available at: www.nssmc.gov.ua (accessed May 04, 2021).
- The National Securities and Stock Market Commission (2019). Stock market in modern macroeconomic processes against the background of macroeconomic indicators in Ukraine. Available at: <https://www.nssmc.gov.ua/document/?id=10666647> (accessed May 07, 2021).
- Zagorodniuk, G. P. (2018). International experience: corporate agreements under English law. *Pravo Ukrainy*, 10, 70–85.
- Ministry of Justice (2020). Acts Acquis communautaire. Available at: <https://minjust.gov.ua/acquiscommunautaire> (accessed May 02, 2021).