INTERNATIONAL REGULATION OF TERMINATION OF RIGHTS IN THE FIELD OF CIVIL AND INTERSUBJECTIVE STATE RELATIONS

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Abstract: *The termination of right, which is based on the implementation of legal facts, is determined by the fact that it will facilitate the realization of processes of changing the subject composition of a legal entity. As a result of this, the definition of structural legislation regarding the quality of the legal structure for the implementation of the termination of right becomes relevant. The relevance of the study is determined by the fact that termination of right is defined as the most problematic area of implementation in national legislation. This becomes a rather complicated legal phenomenon when it comes to block formations. The novelty of the study is determined by the fact that, for the first time in the literature, aspects of the development of the system of termination of right in an integrated and furthermore national system of law are shown on the example of the European Union. The authors determine the need for the formation of the indicated topics as exemplified by the analysis of the main interstate and fundamental documents that form the common legal field in integration and block associations. The study gains practical significance in the event that it becomes necessary to distinguish the interaction between counterparties outside the integration association and the domestic legal field. This aspect should also be considered in globalization processes. The analysis also has its application for the socio-economic development of territories.*

Keywords: legal structure, treaty, law, development, subjectivity.

We have analysed the foreign practices of legal regulation of mergers and acquisitions of legal entities under the laws of the European Union.

Before proceeding with an immediate study of the legal regulation of mergers and acquisitions of legal entities under EU law, it is necessary to emphasize the specifics of corporate law, highlight its sources[1,2]. As indicated in the literature, EU law acts as an independent legal system with its sources, forms of law-making and law enforcement, specific mechanisms for protecting legal provisions from violations, without fully merging with the domestic law of a certain EU-country. One of its important sections is the so-called "law of companies", which includes:

[1] V.I. Mishchenko, S.V. Mishchenko, "Enhancing the effect of transmission channels in monetary policy of Ukraine under the transition to inflation targeting", in *Actual Problems of Economics*, 2015, vol. 163, no. 1, p. 421-428.

[2] S.V. Mishchenko, V.I. Mishchenko, "Combining the functions of strategic development and crisis management in central banking", in *Actual Problems of Economics*, 2016, vol. 176, no. 2, p. 266-272. Cf. Flavius Cristian Mărcău, "Dynamics of Deconsolidating Democracies of Poland, Hungary and Romania," in *Astra Salvensis*, VII (2019), no. 14, p. 293.

–the provisions of the Treaty Establishing the European Community (the "Treaty of Rome") regarding the freedom of incorporation of companies;

–Directives adopted on the basis of the Treaty of Rome by European Union institutions;

–Regulations of the European Union adopted on the basis of the Treaty of Rome;

–Decisions of the Court of Justice of the European Union.

It should be noted that a specific basis for EU law in general and corporate law in particular are constituent treaties of the European Communities (Treaty of Paris of 1951, Treaty of Rome of 1957) and the European Union (Treaty on the Functioning of the European Union of 1958, Treaty on European Union of 1992). In this context, it should be noted that the constituent treaties of the EU as sources of corporate law determine the right of establishment as one of the fundamental principles of the domestic market[3], which implies the ability to create and manage enterprises, including companies and firms, under the same conditions that are established for citizens of the country where the law is exercised[4,5,6]. In the literature of the CIS countries this term has not received the same translation, it is often translated as "freedom of entrepreneurship", "freedom of the establishment of centres of

[3] E.I. Zatsarinnyi, N.I. Malykh, Y.N. Severina, A.L. Gendon, A.Y. Minnullina, K.A. Malyshenko, "Current trends in the financial market development", in *Journal of Advanced Research in Law and Economics*, 2017, vol. 8, no. 8, p. 2629-2635.

[4] A.R. Aharonovich, "Socio-economic importance of state support for youth innovative entrepreneurship in the economic development of the state", in *Academy of Entrepreneurship Journal*, 2019, vol. 25, no. 1, 1528-2686-25-S1-241.

[5] M.I. Vladimirovich, S.M. Nisonovich, S.M. Sergeevich, A.R. Aharonovich, "Regional differentiation of support of youth innovative entrepreneurship system in the union state", in *Academy of Entrepreneurship Journal*, 2019, vol. 25, no. 1, 1528-2686-25-S1-246.

[6] I.A. Kapitonov, "Peculiarities of applying the theory of international business by Russian oil and gas companies", in *Space and Culture, India*, 2018, vol. 6, no. 4, p. 5-14. Cf. Elmira Failovna Gumerova, Natalya Anatolyevna Yushchenko, Dinara Anvarovna Musabirova, Legal regulation of commercial concessions (franchising) in accordance with Russian and foreign law," in *Astra Salvensis,* V (2017), no. 10, p. 32.

entrepreneurship", and even "right to settle"[7,8]. The above treaties are classified as acts of primary law in the doctrine.

Literature review

The key form of legal regulation within the EU is the so-called "secondary legislation", namely: regulations, directives, decisions, recommendations, conclusions.

The regulations have legal force regardless of further implementation in the national legislation of the Member States[9]. It should be noted that the main role of regulations in the field of corporate law is to create supranational legal entities whose legal status is regulated not at the national but at the EU level (European Economic Interest Grouping, European Society and European Cooperative, etc.). As we have already specified, the provisions on the merger (acquisition) are enshrined in the regulations defining the legal status of the EU and the FTZ, as well as in EU regulation No. 139/2004 on the control of enterprise concentrations (EU Regulation on mergers)[10].

The directives became the main tool used for harmonization of the corporate law of the EU Member States. Unlike regulations, which are documents of general application and contain direct action provisions and are binding on all EU states, directives are addressed to Member States, are binding on the achievement of their stated objectives and require implementation in the national legislation of the EU Member States.

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[7] D. Ushakov, E. Rubinskaya, "*Reforming of the state immigration policy in the context of globalization: On the example of Russia*", in: *Immigration and the Current Social, Political, and Economic Climate: Breakthroughs in Research and Practice*, IGI Global, Pennsylvania, 2018. cf. Inocent-Mária V. Szaniszló, "TANGENTS OF SCIENCE AND FAITH - Search for the Interaction of Natural and Human Sciences in Their Relation to (Moral) Theology," in *Astra Salvensis,* VII (2019), no. 14, p. 279.

[8] R.H. Bekmansurov, K.E. Kovalenko, K.M. Utkina, Y.A. Novikova, E.I. Zatsarinnaya, A.I. Rozentsvaig, "State support for persons with disabilities in the field of entrepreneurship", in *Journal of Entrepreneurship Education*, 2019, vol. 22, no. 2, 1528-2651-22-S2-437.

[9] "Contract termination procedures", in *Outsourcing to India - A Legal Handbook*, Springer Berlin Heidelberg, 2007, p. 111–115. Available at: https://link.springer.com/chapter/10.1007%2F978-3-540-72220-5_15.

[10] "Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (Text with EEA relevance)". Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32004R0139.

Such acts of secondary legislation such as Decisions of the Council of Ministers and the European Commission are individual legal acts addressed to a specific entity or several entities, which may be either the state or individuals or legal entities. In turn, recommendations and opinions have an auxiliary, recommendatory character and they are not binding[11].

Analysing the legal force and place of the decisions of the Court of Justice of the European Union (Court of the EU) in the system of sources of the EU law, it can be noted that case law occupies a separate category of sources along with primary and secondary law, taking an intermediate position between these categories. The rules and principles enshrined in the precedents of the EU courts are binding on the national justice authorities of the Member States. In particular, in 1972 and in 1978, the EU Court created certain precedents, establishing the possibility of applying paragraphs 85-86 of the Treaty of Rome, which are aimed at preventing competition and abuse of a dominant position in the market, to mechanisms for merging legal entities (for example, in the case of purchase of a significant stake with the condition of an additional purchase of shares in the future, which will lead to the transfer of control over the company)[12,13,14].

Therefore, extrapolating the specific features of the system of sources of EU law in general to the sphere of corporate legal relations, it should be noted that in general EU legislation on the company includes:

– provisions of articles of association regarding the freedom of incorporation of companies;
– directives adopted by European Union institutions;
– European Union regulations;
– decisions as individual legal acts;

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[11] M. Badovskis, J. Briede, E. Danovskis, K. Dupate, A. Karklicna, K. Ketners, K. Strada-Rozenberga, "Public Law", in T. Kerikmäe, K. Joamets, J. Pleps, A. Rodicna, T. Berkmanas, E. Gruodyte (Eds.), *The Law of the Baltic States*, Springer International Publishing, 2017, p. 191–275. Available at: https://doi.org/10.1007/978-3-319-54478-6_5.

[12] D. Ushakov, I. Elokhova, I. Kharchenko, Tax instruments in public regulation of population employment: The factors of today's efficiency, in *International Journal of Ecological Economics and Statistics*, 2017, vol. 38, no. 2, p. 161-168.

[13] O.V. Takhumova, M.A. Kadyrov, E.V. Titova, D.S. Ushakov, M.I. Ermilova, Capital structure optimization in Russian companies: Problems and solutions, in *Journal of Applied Economic Sciences*, 2018, vol. 13, no. 7, p. 1939-1944.

[14] M.I. Ermilova, D. Ushakov, S.V. Laptev, "Financing the Russian housing market: Problems and the role of the state", in *Opcion*, 2018, vol. 34, no. 17, p. 1074-1087.

– recommendations and opinions that are supportive in nature;
– decisions of the Court of Justice of the European Union.

Materials and methods

The reorganization of legal entities in the form of merger (acquisition) in the European Union is regulated by EU Directive No. 2017/1132[15]. The matter of mergers (acquisitions) of companies is regulated by Section II of the Directive, which has the title "Merger and Separation of Limited Liability Companies". Within its framework, regulation of the merger of joint-stock companies (chapter I) and the cross-border merger of limited liability companies (chapter II) are separately highlighted. In accordance with the general provisions enshrined in Art. 87 of EU Directive No. 2017/1132, the rules on the merger of joint-stock companies do not apply to cooperatives, companies in the process of declaring bankruptcy or restoration of solvency, as well as limited liability companies[16,17]. Thus, a procedure is established in which matters of mergers of public joint-stock companies that are registered within one EU Member State and mergers of limited liability companies, which may be cross-border, are separately regulated at the supranational level. EU Directive No. 2017/1132 provides for two types of mergers:

1) the merger per se by formation of a new company, when two or more companies are combined (Art. 90). At the same time, they all cease and transfer all their rights and obligations to the new legal entity. In Roman law, this form of reorganization is called a "merger", however, in this case, during the merger, not only emission of shares of the newly formed company is allowed for the shareholders of the companies that are terminating their activity, but also the payment of money to them;

2) the acquisition by one company of one or more other companies (Article 89). These companies become terminated and transfer all their rights and obligations to another company that already exists, while a new

[15] "Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (Text with EEA relevance)". Available at: https://publications.europa.eu/en/publication-detail/-/publication/eba5bed3-5d59-11e7-954d-01aa75ed71a1/language-en.

[16] T. James, "OTC Derivatives Legal Risk Control and Documentation", in *Energy Price Risk*, Palgrave Macmillan UK, 2003, p. 286–316. Available at: https://doi.org/10.1057/9781403946041_17.

[17] N.B. Patsuriia, V.V. Radzyviliuk, N.V. Fedorchenko, I.R. Kalaur, M.I. Bazhenov, "Legal specifics of bankruptcy proceedings of insurers in Ukraine", in *Issues in Legal Scholarship*, 2018, vol. 16, no. 1, article no. 20180018.

legal entity is not formed. It should be noted that, from the viewpoint of the Roman legal doctrine, this kind of reorganization of legal entities is considered to be an acquisition, however, as indicated in the literature, in the law of most European countries this form of reorganization is not allocated separately, but is considered as a merger]. Similar mergers are provided for the EU and free trade zones[18].

The definition of "merger" is also contained in other EU directives. In particular, in the Council Directive 2009/133/EC dated October 19, 2009 on the generally accepted system of taxation of companies of various Member States during the merger, separation, partial separation, transfer of assets and the exchange of shares and upon the change of location of the object, it is noted that "merger" means operation by which[19]:

– one or more companies that cease their activities without liquidation transfer all their assets and liabilities to another existing company in exchange for the issuance of securities representing the capital of this other company to their shareholders, and, if possible, cash payments in the amount not exceeding 10% of face value, or, in the absence of face value, the accounting face value of these securities,

– two or more companies that cease their activities without liquidation transfer all their assets and liabilities to the company that they form in exchange for the issuance of securities representing the capital of this new company to their shareholders, and if possible, cash payments in the amount not exceeding 10% of the face value, or, in the absence of a face value, the accounting face value of these securities,

– a company that ceases to operate without liquidation transfers all its assets and liabilities to a company that owns all the securities representing its capital. The latter case is also a special kind of cross-border merger, which is provided for in Art. 119 of EU Directive No. 2017/1132. In the doctrine, this type of merger is called "upstream merger". It is also indicated that this kind of merger is similar to liquidation. The opposite in content is the "downstream merger", in which a legal entity joins its subsidiary.

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[18] E.M. Akhmetshin, K.E. Kovalenko, J.E. Mueller, A.K. Khakimov, A.V. Yumashev, A.D. Khairullina, "Freelancing as a type of entrepreneurship: Advantages, disadvantages and development prospects", in *Journal of Entrepreneurship Education*, 2018, vol. 21, no. 2, 1528-2651-21-S2-262.

[19] "Council Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States". Available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32009L0133.

Thus, at the level of EU directives and regulations, the key signs of a merger are identified: the transfer of all assets and liabilities of one or several companies to a newly formed or existing company in exchange for shares of the latter and, in some cases, for cash payments; termination of activity of all or several companies participating in the merger, without their liquidation.

Result and discussion

In addition to the study of directives, it is also necessary to pay attention to the specifics of the legal regulation of the procedures for merging and acquisition in the special legislation of individual EU member states[20]. In particular, in the Federal Republic of Germany, organizational transformations of legal entities are regulated by a special law – the Reorganization Act of 1994 (UmwG)[21]. It should also be noted that various versions of the translation of the term Umwandlung are found in scientific papers. Some authors translate this concept as "transformation", in other sources you can find a version of the translation of this word as "reorganization". The first part of Book 2 of the said Act contains general provisions on mergers and acquisitions, which apply in the part that does not contradict the second part of Book 2 – a special provision on the merger and acquisition of business entities of various legal forms. The process of mergers and acquisitions of joint-stock companies is also regulated by the Joint-Stock Law of 1965 in the part that is not regulated by the Reorganization Act (UmwG).

The legal regulation of the reorganization of business companies in Austria is also performed with the assistance of special laws. In particular, the Law on Separation (Spaltungsgesetz) regulates legal relations regarding the division of companies into several new ones or legal relations regarding the incorporation of companies into an existing one, as well as the procedure for forming companies by means of separation (§ 1 SpaltG)[22].

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[20] B. Scharaw, "Investor-State Contracts", in: *The Protection of Foreign Investments in Mongolia: Treaties, Domestic Law, and Contracts on Investments in International Comparison and Arbitral Practice,* Springer International Publishing, London, 2018.

[21] "Bundesgesetz über Fusion, Spaltung, Umwandlung und Vermögensübertragung (Fusionsgesetz, FusG)". Available at: https://www.admin.ch/opc/de/classified-compilation/20001208/index.html.

[22] "Bundesgesetz über die Spaltung von Kapitalgesellschaften (SpaltG). StF: BGBl. Nr. 304/1996 idF BGBl. Nr. 680/1996 (DFB) (NR: GP XX RV 32 AB 133 S. 25. BR: AB 5177 S. 614.) [CELEX-Nr.: 368L0151, 377L0091, 392L0101, 378L0855, 378L0660, 390L0605, 390L0604, 394L0008, 382L0891, 383L0349, 384L0253, 389L0666,

In its turn, the Reorganization Act (Umwandlungsgesetz) exclusively regulates legal relations regarding changes in the legal form of companies by transforming a joint-stock company into an open company or limited partnership (§ 1UmwG).

We can also find the regulation of relevant issues in the special Swiss law "On the merger, division, transformation and transfer of property"[23].

This Law, as its name implies, and, as indicated in Art. 1 ("Art. 1 Gegenstand"), aims to regulate: the merger (Fusion); separation (Spaltung); transformation (Umwandlung); asset transfer (Vermögensübertragung). The very subject of regulation of the law goes along these lines: this Law regulates the adaptation (you can also translate it as adjustment) of the legal structure of joint-stock companies, collective companies and limited partnerships, cooperatives, unions, institutions and individual enterprises in connection with the merger, division, transformation and property transfer. It should be noted that the Swiss Law, in addition to general provisions, contains special provisions on the merger: institutions; pension funds; legal entities of public law[24].

Thus, in the legislation of some European countries there is a tendency to consolidate legal provisions governing the reorganization of legal entities of various legal forms within the framework of a single regulatory act. At the same time, this approach does not provide absolute unification of the regulation of this legal institution, since certain rules regarding the reorganization of certain legal entities are nevertheless contained in other legislative acts[25].

In most EU Member States, the rules governing the merger (acquisition) of legal entities are enshrined in general acts of civil law (or trade – in countries with dualism of private law).

In particular, two methods of merging, designated by the concept of "alloy" are enshrined in French law: through absorption of one legal

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389L0667]". Available at:https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10003416.

[23] "Bundesgesetz über Fusion, Spaltung, Umwandlung und Vermögensübertragung (Fusionsgesetz, FusG)". Available at: https://www.admin.ch/opc/de/classified-compilation/20001208/index.html.

[24] Z. Zhumabayeva, R. Zhamiyeva, G. Balgimbekova, L. Arenova, R. Smagulova, "Ensuring the protection of the rights of the child is a priority in the legislation of Kazakhstan", in *Journal of Advanced Research in Law and Economics*, 2018, vol. 9, no. 7, p. 2484-2495.

[25] A.V. Kostruba, "The notion and attributes of right – terminating legal facts", in *Journal of Advanced Research in Law and Economics*, 2019, vol. 10, no. 1, p. 254-262.

entity of the other, or through forming a new legal entity. The Dutch Civil Code also defines two ways of merging. Art. 2:309 of the Code states that a merger is a legal act of two or more legal entities, according to which one of them acquires, according to the universal title, the property (assets and liabilities) of the other, or which results in the formation of a new legal entity that was formed (registered) by them jointly on the basis of this legal act, acquires their property (assets and liabilities) under the universal title. The Code also provides for a "triangular" merger, in which the shareholders of a corporation that ceases to operate become shareholders of a legal entity (primarily the parent company) different from that to which all its assets and liabilities are transferred as a result of the merger. Thus, a conceptual feature of the nature of the mechanisms of merging and joining legal entities in EU law is that, unlike national law, these categories are not differentiated, and merging is not always associated with the formation of a new subject of law.

Thus, according to EU law, acquisition is not a separate type of termination of a legal entity, and the merger is interpreted much more widely[26]. The author deems it appropriate to bring the provisions governing the merger and acquisition for the candidate countries to the following: expand the content of the concept of merger, including in it both the merger in its real sense and the merger of the legal entity.

The study also raises the question of whether legal entities operating in various organizational and legal forms can participate in the merger. We can state that there is no unified approach to solving this problem in the legislation of the EU Member States. For example, the French Commercial Code notes that companies of various forms may participate in the merger (L. 236-2). The Reorganization Act of the Federal Republic of Germany also adopts the concept of mixed mergers and enshrines the list of legal forms wherein legal entities have the right to participate in the merger (Sec. 3). The Swiss Federal Law on Mergers[27] dated October 3, 2003 states regarding the legal entities of which legal forms may participate in the merger with each other. For example, Art. 4 of the Law stipulates

[26] P. Mäntysaari, "Equity and Shareholders' Capital", in *The Law of Corporate Finance: General Principles and EU Law: Volume III: Funding, Exit, Takeovers,* Springer Berlin Heidelberg, 2010a, p. 131–282. Available at: https://doi.org/10.1007/978-3-642-03058-1_5.

[27] "Bundesgesetz über Fusion, Spaltung, Umwandlung und Vermögensübertragung (Fusionsgesetz, FusG)". Available at: https://www.admin.ch/opc/de/classified-compilation/20001208/index.html.

that corporations[28] may merge with other corporations (joint-stock companies and limited liability companies), cooperatives, and if the corporation acts as a legal entity to which it is merged, with full and limited partnerships and associations, which are registered in the commercial register. The Roman legal doctrine also positively perceives a combination of forms during the reorganization of entrepreneurial legal entities, in particular, merger, acquisition, division can be combined with transformation and a change in the legal form. The opposite approach is observed in the Civil Code of the Netherlands, which provides that, as a general rule: mergers between legal entities within the same legal form are permitted; in the event of a merger by forming a new entity, the legal form of the newly formed legal entity should be identical to those in which the predecessors existed.

On practical grounds, we believe that the consolidation of provisions in national legislation, which directly allow mixed mergers and acquisitions of legal entities, will be very advisable and will positively affect civil circulation, and will save time and money for legal entities involved in the reorganization, since in such a situation additional transformations will not be necessary[29]. At the same time, it seems justified to establish certain restrictions, for example, a ban on joining a non-entrepreneurial legal entity to an entrepreneurial one or formation as a result of a merger of an entrepreneurial legal entity if there are non-entrepreneurial legal entities among the predecessors.

Introducing the concept of a mixed merger or acquisition, it should also be considered that it combines the features of two forms of reorganization: merger or acquisition and transformation. Another feature is that the participants in this process (legal predecessors or assignees) are legal entities that operate in various legal forms and whose legal status is determined by various acts of civil law[30]. Despite this, one should consider

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[28] Bundesgesetz über die Spaltung von Kapitalgesellschaften (SpaltG). StF: BGBl. Nr. 304/1996 idF BGBl. Nr. 680/1996 (DFB) (NR: GP XX RV 32 AB 133 S. 25. BR: AB 5177 S. 614.) [CELEX-Nr.: 368L0151, 377L0091, 392L0101, 378L0855, 378L0660, 390L0605, 390L0604, 394L0008, 382L0891, 383L0349, 384L0253, 389L0666, 389L0667]. Available at: https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10003416.

[29] P. Mäntysaari, "Management of Information", in: *The Law of Corporate Finance: General Principles and EU Law: Volume I: Cash Flow, Risk, Agency, Information*, Springer Berlin Heidelberg, Berlin, 2010b, p. 143-148. https://doi.org/10.1007/978-3-642-02750-5_10.

[30] A. Froehlich, V. Seffinga, "National Space Legislation", in A. Froehlich, V. Seffinga (Eds.), *National Space Legislation: A Comparative and Evaluative Analysis*, Springer International Publishing, London, 2018, p. 204-287.

such provisions as: by decision of the general meeting, an agricultural service cooperative can be reorganized only into another agricultural service cooperative[31], and a cooperative association – into another cooperative association; institution cannot be transformed; a joint-stock company can only transform into another business company or production cooperative[3233].

With regard to cross-border mergers, these issues in the EU Directive 2017/1132 are governed by the provisions of Chapter 2 of Section II "Cross-border mergers of limited liability companies". These provisions apply to the mergers of limited liability companies incorporated in accordance with the legislation of the Member State and having a registered office, company headquarters or principal place of business within the Community, provided that at least two of them are regulated by the legislation of different Member States (Art. 118). However, Member States may decide not to apply this Directive to a cross-border merger in which a cooperative company participates, even in cases where the latter falls within the definition of a limited liability company provided therein (p. 2 of Art. 120). Also, the provisions of this Directive do not apply to cross-border mergers with companies whose business is the collective placement of capital raised by them among the public, the operation of which is subject to the principle of risk allocation, and shares in which, at the request of the owners, are directly or indirectly redeemable or payable from assets of such companies (p. 3 of Art. 120).

In accordance with Art. 1 of Council Regulation (EC) No. 2157/2001, in the EU the company may be created in the form of a European joint-stock company (Societas Europaea), which is a legal entity and whose capital is divided into shares[34]. In addition to the specified Regulation, its legal status is also determined by Council Directive 2001/86/EC dated October 8, 2001, supplementing the Charter of the

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[31] N. Batyrova, T. Fatih, R. Yermankulova, "Economic efficiency of means for mechanization in agricultural complex", in *Journal of Advanced Research in Law and Economics*, 2018, vol. 9, no. 6, p. 1893-1902.

[32] P. Mäntysaari, "Reduction of External Funding Needs", in *The Law of Corporate Finance: General Principles and EU Law: Volume III: Funding, Exit, Takeovers,* Springer Berlin Heidelberg, Berlin, 2010c, p. 384-387.

[33] E.M. Akhmetshin, V.D. Sekerin, A.V. Pavlyuk, R.A. Shichiyakh, L.M. Allanina, "The influence of the car sharing market on the development of ground transport in metropolitan cities", in *Theoretical and Empirical Researches in Urban Management*, 2019, vol. 14, no. 2, p. 5-19.

[34] "Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE)". Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32001R2157.

European Society for the Promotion of Employees. However, it should be borne in mind that legal regulation of the activities of such organizations is not completely supranational, since the personal law and features for each individual EU Member State are established by the relevant national legislation[35]. Thus, in accordance with Art. 63 of Council Regulation (EC) No. 2157/2001, the issue of termination of business, liquidation, bankruptcy, insolvency and similar procedures should be governed by those provisions of the law that would apply to joint-stock companies governed by the law of a Member State of a registered location. As indicated in the literature, a system of sources governing the formation and activities, in addition to the relevant Regulations, are also represented by: provisions of the charters of individual countries on issues that are directly indicated in the Regulations; provisions of national law specifically aimed at regulating activities, as well as provisions of national law aimed at regulating joint-stock companies as a whole; other provisions of the charters of individual countries, applied similarly to the provisions of the charters of national joint-stock companies (Art. 9 of the Regulation).

As indicated in the literature, the essential features of the legal form should include a special procedure of its formation; at the same time, the Regulation provides an exhaustive list of formation methods, including mergers of joint-stock companies. The latter is governed by the provisions of Part 2 of Section II of EU Regulation No. 2157/2001 (Art. 17-31).

It is necessary to immediately indicate that the Regulation establishes restrictions with respect to the circle of entities that may be founders by merger (Art. 2). They can only be joint-stock companies (according to the list specified in the Annex to the Regulation), created in accordance with the legislation of a Member State and having a registered office and central office in the territory of the Union, provided that at least two of them are governed by legislation of different Member States. As for legal entities that are registered in the EU, whose company headquarters are located in third countries, the issue of their admission to participation is left to the discretion of national legislation. At the same time, there is a reservation that the laws of a Member State may provide that a company governed by the law of that Member State may not take part in the formation by merger if any of that Member State's competent

[35] "Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees". Available at: https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32001L0086.

authorities opposes it; Such opposition may be based only on grounds of public interest. Review by a judicial authority shall be possible to Art. 19[36].

The corresponding merger, according to Art. 17 of EU Regulation No. 2157/2001, can be implemented in two abovementioned ways. In the first case, in a merger by acquisition, the successor company takes the form simultaneously with the merger, and in the case of a merger by formation of a new company, such a legal entity is a new company. It is also assumed that for issues not previously resolved, or issues that are only partially resolved, each company participating in the formation by merger shall be governed by the provisions of the Member State that apply to the merger of joint-stock companies in accordance with Directive 78/855/EEC[37].

As for the formation using the merger by acquisition, today this issue is to be guided by the provisions of EU Directive No. 2017/1132, which replaced the Directive 78/855/EEC.

As in the case of cross-border mergers of limited liability companies, a merger cannot be recognized as null and void if the legal entity is already registered (Art. 30). A simplified procedure for merging the subsidiary with the parent company is also established. Thus, if the merger is performed by means of acquiring a company that owns at least 90%, but not all of the shares or other securities that provide voting rights at the general meeting of another company, reports of governing bodies or executive bodies, reports of independent experts and documents necessary for control, should be required only to the extent that they are required by national law, and this provision applies to the company that conducts the acquisition, or to the company acquired by it.

It is also necessary to mention another important act of EU legislation on company law – EU Council Regulation No. 1435/2003 dated July 22, 2003 on the Statute of the European Cooperative Society (SCE)[38]. The adoption of this regulation should be viewed as a unique attempt to create a supranational legal form of legal entities of a cooperative type within the European Union. At the same time, the

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[36] "Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE)". Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32001R2157.

[37] "Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (Text with EEA relevance)". Available at: https://publications.europa.eu/en/publication-detail/-/publication/eba5bed3-5d59-11e7-954d-01aa75ed71a1/language-en.

[38] "Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE)". Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32003R1435.

developers abandoned the concept of dividing cooperatives into entrepreneurial and non-entrepreneurial, and the formation of such organizations taking place to meet the interests and needs of members of the cooperative and/or the development of their economic and/or social activities was taken as their defining feature; their functioning is based on the principles of a democratic structure and control of a fair distribution of profit[39,40,41].

In accordance with the first article of the Regulation, the object is a company whose capital is divided into shares. Moreover, the amount of capital and the number of participants may vary. If participants have limited liability, the mark "limited liability" shall be added to the name of the object. The main goal of its activities is to satisfy the interests and/or economic or social development of its participants, which can be both individuals and legal entities. It may also act to facilitate the participation of its members in the economic activity of one or more objects and/or in national cooperatives. The object has the status of a legal entity[4243].

As defined in para. 13 of the preamble, the most important task of the Regulation is to provide the opportunity to create an object by individuals – residents of different Member States or legal entities founded in accordance with the legislation of different Member States; at the same time, it is possible to establish an object by merging two existing cooperatives. According to Art. 3 of the Regulation, the merger of cooperatives established in accordance with the legislation of a Member State, with a registered office and company headquarters within the Community, is possible provided that at least two of them are regulated by the legislation of different states. These issues are regulated in more

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[39] D.S. Ushakov, O.I. Khamzina, R.A. Karabassov, I.A. Zaiarnaia, V.A. Gnevasheva, Countries' competitiveness as a factor of MNCs' global expansion, in *Journal of Advanced Research in Law and Economics*, 2018, vol. 9, no. 6, p. 2169-2175.

[40] N.S. Plaskova, N.A. Prodanova, E.I. Zatsarinnaya, L.N. Korshunova, N.V. Chumakova, "Methodological support of organizations implementing innovative activities investment attractiveness estimation", in *Journal of Advanced Research in Law and Economics*, 2017, vol. 8, no. 8, p. 2533-2539.

[41] N.A. Prodanova, L.B. Trofimova, A.A. Adamenko, E.A. Erzinkyan, N.V. Savina, L.N. Korshunova, "Methodology for assessing control in the formation of financial statements of a consolidated business", in *International Journal of Recent Technology and Engineering*, 2019, vol. 8, no. 1, p. 2696-2702.

[42] N.Y. Iakymchuk, O. Vaitsekhovska, L.M. Kasianenko, A.O. Monaienko, A.K. Ilyashenko, "Legal frameworks and basic models of local guarantees: A comparative legal analysis", in *Asia Life Sciences*, 2019, vol. 21, no. 1, p. 509-526.

[43] V.A. Gnevasheva, "The specifics of the economic activity of modern Russian corporations", in *Espacios*, 2019, vol. 40, no. 4, p. 21.

detail by the provisions of Section 2 of Chapter II, which is called "Formation by Merger" (Art. 19-34).

Similarly, an object can also be formed by means of: merging through acquisition, merger through formation of a new legal entity. With that, in the event of a merger through acquisition, the cooperative performing the acquisition shall take the form of an object from the moment the merger becomes apparent; in the event of a merger through formation of a new legal entity, the latter takes the form of an object.

Apart from the already analysed directives and regulations, it is worth noting the directive adopted in 2004 as well, which the doctrine informally refers to as the "Absorption Directive"[44]. This act defines absorption as the acquisition of a controlling interest to obtain a pre-emptive voting right (provided that the shares of such companies are allowed to circulate on the regulated securities market of one or several EU countries). In general, the importance of the issue of company absorption is due to the fact that, according to many European experts, the absorption of companies is an important factor in the development of the economy and the creation of a single European Economic Space[45].

The central concept of Directive No. 2004/25/EC is a "public offer of acquisition" (offre publique d'acquisition), which is addressed to holders of securities by a public offer to purchase their securities. The Directive distinguishes between two types of public offers: voluntary and mandatory (Art. 2). The Absorption Directive also contains a list of information to be included in the proposal:

– terms and conditions of the offer;

– data on the offeror's entity and, if it is a company, the type, name and legal address of this company;

– information on securities regarding which an offer was made;

– compensation offered for each class of securities and explanations of how such compensation will settled;

– the maximum and minimum percentage or amount of securities that the offeror agrees to purchase;

– all terms and conditions on which the proposal is made;

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[44] "Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (Text with EEA relevance)". Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0025 .

[45] "Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (Text with EEA relevance)". Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0025 .

–the intentions of the person submitting the offer regarding the future of the company: its validity, the preservation of jobs for employees and management in particular, and information on any changes in working conditions;

–time allotted for acceptance of the proposal;

–national legislation that will govern the agreements concluded between the offeror and the owners of the securities, as well as the judiciary bodies that will consider a possible case on a specific absorption.

Particular attention in the Directive is paid to the protection of minority shareholders, who, in the event of a change in control over their company, receive the right to demand redemption of their securities "for a fair price" (the highest selling rate over the past 6-12 months) (Art. 5).

This Directive aims to harmonize the rules and provisions applicable in the absorption of companies, and its development was aimed at introducing a unified regulation of the absorption of companies in the Member States, as well as guaranteeing shareholders and other interested parties equivalent protection in the entire European Union. In general, this Directive has two main objectives: to create an effective legal framework for absorptions within the framework of a single European market and to ensure an adequate and equal level of protection of minority rights in the event of a change of control over the company in the EU legal space. The need for the adoption of the directive was caused by the existence of various approaches in the national law of the EU Member States regarding the regulation of the absorption process. At the same time, as in the case of the merger, prior to the adoption of this directive, a number of its provisions was not introduced to the legislation of some EU Member States. In addition, in the national laws, the absorption of companies was performed according to different conditions and rules, there were various obstacles (barriers) in this regard, and, accordingly, the offeror faced difficulties due to various "rules of the game" in the EU Member States. And therefore, one of the main goals of Directive No. 2004/25/EC is not only to regulate the absorption process directly and establish certain measures for the protection of shareholders of the company that is absorbed, but also to take measures to create a unified legal regulation for participants in the absorption process within the European Union.

The general principles that should apply to absorptions are the provisions that:

– equal rights are ensured for all shareholders of shares of the same class of company that is being taken over;

– sufficient time and information should be provided to persons who are being offered the purchase of their shares in order to make a balanced and moderate decision regarding the acceptance or rejection of the offer;

– the executive body of the company, which is taken over, shall be obliged to act in the interests of the company as a whole.

In order to protect minority shareholders, the requirement is fixed that each of them shall be given a mandatory offer to purchase all shares at a fair price. In this case, fair price refers to the highest price paid for the same shares by the purchasing company, or by persons acting together with it. On the scope of its application, Directive No. 2004/25/EC contains not only legal and administrative regulations, but also this Directive formulates measures that coordinate laws, by-laws, administrative provisions, the procedural code and other provisions of the Member States, including provisions established by officially authorized organizations for market regulation (hereinafter referred to as the "provisions") relating to absorption offers in the matter of securities of companies to which apply the laws of the Member States, where the trade of all or some of those securities on regulated markets is provided for (Art. 1). Thus, unlike other directives, the subject of this Directive is not a change in the legal status of a particular company, but a change of control over it due to the acquisition of its shares or other securities in free circulation by an external investor.

The directive leaves a certain range of issues to the decisions of the national legislations of the EU Member States in accordance with the principle of subsidiarity. These include regulation of the loss of validity of an offer, revision of an offer, competition of offers, notification of the results of an offer, indistinguishability of an offer. The content of these rules is left to the discretion of the Member States, which must ensure that the adopted standards do not contradict the general principles of the Directive. It is forbidden to introduce restrictions on the free circulation of securities and the right to vote.

A similar approach to the legal regulation of the processes of mergers and acquisitions is observed in the legislation of the states of the Anglo-American legal family. In particular, the United Kingdom has implemented many of the provisions of the directives listed above in its national legislation, as it has long been a member of the European Union.

A distinctive feature of English law is the absence of a separate legal institution, the provisions of which would govern the reorganization of companies. Moreover, English law does not even contain more or less

pronounced definitions in this field, which would allow to distinguish between different forms of reorganization. The main difficulty encountered during the reorganization of companies is the lack of English legal terminology in this field. In practice, various terms are used: reductions, reconstructions, reorganizations, schemes of arrangement, amalgamation, merger, demerger, buy-out, etc. But none of these terms has a clearly defined meaning and does not allow to distinguish one transaction from another.

Section 904 of the Companies Act 2006 suggests that there are two ways the merger can take place: merger by absorption; merger by formation of a new company.

Thus, the legislation of the United Kingdom, as well as the EU directives, also does not distinguish such a category as "acquisition" and considers it as a kind of merger[46].

Researching the British legal doctrine, it should be noted that some authors determine that a "merger" or "amalgamation" takes place when the property and liabilities of more than one company are transferred to the ownership and control of one company. Such a company may be one of the specified companies or a newly formed company. The result of this is that shareholders of companies that have ceased operations now jointly own and manage essentially the same legal entities as one. If two corporate legal entities sincerely wish to combine their business processes for their mutual benefit, then the merger may become a harmonious union of the two companies, which will result in the formation of a new company, which will include their former shareholders (members), employees and management ("merger by formation of a new company"). Another way that a merger can be performed is when one company is absorbed by another, but the entity that continues to exist is an enlarged form of one of the companies ("merger by absorption").

England is characterized by a ramified system of legal acts regulating the processes of mergers and acquisitions. The basic regulatory act of England in this field is the Companies Act 2006, in particular, the reorganization is covered in parts 26-28 of the law. It is important that this regulatory act actually establishes the legal definition of the category of "merger" as a form of reorganization of a legal entity. According to Art. 904 of the Company Act, a merger is a process in which:

– the property, rights and obligations of one or more public companies, including the company which is offered a merger agreement,

[46] "Companies Act 2006. UK Public General Acts", 2006, p. 46. Available at: http://www.legislation.gov.uk/ukpga/2006/46/contents.

shall be transferred to another existing public company ("merger by absorption");

– the property, rights and obligations of two or more public companies, including the company which is offered a merger agreement, are transferred to the newly formed company, regardless of whether the company is public or not ("merger by formation of a new company").

It should also be noted that certain aspects of mergers and acquisitions of legal entities are regulated by the Insolvency Act[47], the Financial Services and Markets Act 2000[48] and the Enterprise Act 2002[49].

The legal features of the legal regulation of mergers and acquisitions of individual companies in the United Kingdom, the Isle of Man and the Channel Islands, for example, those whose securities are listed on the London Stock Exchange, are enshrined in the City Code on Takeovers and Mergers, which is adopted by a special body – The Panel on Takeovers and Mergers, or briefly – Takeover Panel).

An interesting fact is that the Takeover Panel is a self-regulating organization created in 1968 with the aim of monitoring the process of mergers and takeovers. The Panel does not deal with the financial or commercial aspects of mergers and takeovers, as well as issues of unfair competition. Its main task is to protect the interests of shareholders of companies in the process of mergers or takeovers. In practice, the powers granted to the Panel in accordance with the 2006 Law are so broad that this promise missed expectations[50].

In R v Panel[51] on Takeovers, ex parte Datafin 2 WLR 699, the Court of Appeal resolved that the decisions of the Panel could be subject to review by the courts, despite the fact that the review of a specific case was refused. The court did not want to impede the work of the Panel, and therefore considered that an appeal to the courts should not take place during events in respect of which the Panel takes orders. Courts should

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[47] "Insolvency Act 1986. UK Public General Acts", 1986, p. 45. Available at: http://www.legislation.gov.uk/ukpga/1986/45/contents.

[48] "Financial Services and Markets Act 2000. UK Public General Acts", 2000, p. 8. Available at: http://www.legislation.gov.uk/ukpga/2000/8/contents.

[49] "Enterprise Act 2002. UK Public General Acts", 2002, p. 40. Available at: http://www.legislation.gov.uk/ukpga/2002/40/contents.

[50] "The Takeover Code". Available at: http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/code.pdf.

[51] "R v Panel on Take-Overs and Mergers, ex p Datafin", 1987. Available at: https://webstroke.co.uk/law/cases/r-v-panel-on-take-overs-and-mergers-ex-p-datafin-1987.

allow the Panel to make decisions and allow events to unfold, intervening, if necessary at all, later, in retrospect, adopting declarative orders.

In the decision of R v Panel[52] on Takeovers, ex parte Guinness PLC BCLC 255, the Court of Appeal confirmed that the Commission's decision was subject to judicial review only if the procedure for their adoption was violated, resulting in real injustice, and requiring court intervention.

Despite the fact that mergers, acquisitions and absorptions of legal entities are traditionally considered to be mechanisms that were originally created within the framework of English corporate law, it is a generally recognized fact that these legal institutions are the most developed in the US regulatory framework. US legislation is particularly interesting from the perspective that each state has its own regulatory framework, including legislative acts and judicial precedents. In section 8 of Art. 1 The US Constitution provides Congress with the exclusive right to enact federal laws that constitute a single legislation on the reorganization and bankruptcy issues on the territory of the United States, although each state independently decides on the individual issues of declaring the insolvency of the debtor.

It is worth noting that the "reorganization" category in the understanding of national law and US legislation is significantly different. The term "reorganization" is found in federal legislative acts. The corresponding word is the title of Chapter 11 of the United States Code, which is called the Bankruptcy Code. In one of the specialized English-language dictionaries, it is noted that reorganization along with liquidation are two different forms of bankruptcy. In the California Corporations Code, the definition of the "reorganization" category is provided through the determination of the forms in which it can occur. In particular, according to para. 181 of Section 1, the reorganization of the company may be performed as follows: a merger reorganization; an exchange reorganization; a sale-of-assets reorganization.

In addition to the specified forms, the Internal Revenue Code of the USA also refers the following to reorganization: recapitalization and simple change of corporate identity, form or location of the corporation[53].

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[52] "R v Panel on Takeovers and Mergers, ex parte Guinness plc – 1 All ER 509", 1989. Available at: https://exeter.rl.talis.com/items/16EF5C65-FDB7-5C31-528B-412F0D9C5C4B.html.

[53] "U.S. Code Title 26 – Internal revenue code". Available at: https://www.law.cornell.edu/uscode/text/26.

In general, in US corporate law, a merger means a union of two or more legal entities, wherein only one of them remains on the market, while the others cease to exist, transferring their assets and liabilities to the former. At the same time, consolidation, in accordance with para. 251 of the Delaware General Corporation Law, provides for the possibility of two or more corporations merging into one newly formed on the basis of a consolidation agreement. A similar approach is observed in the New York Business Corporation Law (cl. (a)(2) para. 901), the Illinois Business Corporation Act (Art. 11), and legislative acts of a number of other states. At the same time, the General Statutes of Connecticut use the concept of "merger" in combination with the term "consolidation" without differentiating them[54].

Thus, the content that is embedded in the concept of "merger" in US and EU regulatory acts is significantly different. The essence of merger under American legislation is close to joining as a form of reorganization of a legal entity in the understanding of national law and civil law doctrine. At the same time, the legislation of the United States includes the term "consolidation" in opposition to the "merger" category, which is an association of legal entities wherein two or more companies are combined to form a completely new company. It should also be noted that in terms of regulation of reorganization, the US legislation is constructed in a much more complicated fashion than the EU legislation, in particular, due to the features of their state structure[55,56].

In general, it should be taken into account that in many cases the use of a particular concept is intended to reflect the economic essence of a business combination, which implies the achievement of a certain economic benefit. As for the legal form of such an association, such forms as reorganization of legal entities, transactions with shares and stakes in authorized capitals, transactions with property complexes are usually used. Furthermore, quite often legal regulation focuses on the formal and legal aspects merely of the merger or acquisition process, and on the regulation of the corresponding transactions, their economic background and

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[54] "General statutes of Connecticut. Revised to January 1, 2019. CT Armorial Bearing. Prepared under the direction of the Legislative Commissioners' Office". Available at: https://www.cga.ct.gov/current/pub/titles.htm.

[55] A. Arkhipov, D. Ushakov, "*Functional effectiveness and modern mechanisms for national urban systems globalization: The case of Russia*", in: *E-Planning and Collaboration: Concepts, Methodologies, Tools, and Applications*, IGI Global, Pennsylvania, 2018.

[56] D. Ushakov, S. Chich-Jen, "*Global economy urbanization and urban economy globalization: Forms, factors, results*", in: *E-Planning and Collaboration: Concepts, Methodologies, Tools, and Applications*, IGI Global, Pennsylvania, 2018.

consequences, certain licensing procedures. As indicated in the literature, the regulation of mergers and acquisitions is an integral part of government policy to support competition and the development of effective entrepreneurship; the development of balanced approaches to regulate such operations is of fundamental importance, first of all, to maintain the competitive process, prevent manifestations of monopolism in the economy and abuse of a dominant position. At the same time, while regulating these processes, the state should keep in view the creation of favourable conditions for the formation of large national companies that are able to win competitive battles in international markets.

Having researched various approaches to determining the essence of mergers and acquisitions, we can conclude that these forms of reorganization contribute to the achievement of an important economic objective or social objective. For legal entities, the positive effect of mergers or acquisitions also consists in optimizing the management structure, removal of non-core assets, consolidation of cash flows, reception of dividends and profits from the redemption of shares, etc.

In consideration of the foregoing, we can state the lack of unity in understanding the categories of "merger", "acquisition" and "absorption" among domestic and foreign scientists. EU legislation does not recognize acquisition as an independent form of reorganization of a legal entity. In turn, the term "mergers and acquisitions", which is quite common in global business circulation, has an economic sense and means gaining corporate control over a legal entity.

The importance of the merger (acquisition) processes for the European economy is emphasized by the fact that in addition to the general provisions of civil law, special laws of individual EU Member States (Germany, Switzerland, Austria), as well as supranational legal acts (EU Directives and Regulations) are devoted to this issue.

As follows from the above, the conceptual approach to the regulation of mergers and acquisitions of legal entities in EU legislation has significant differences. Firstly, there is no established civil-law institution of reorganization in EU legislation, therefore the concept of "merger (acquisition)" is defined through such categories as "operation"[57], "legal act" (Netherlands), "scheme" (Great Britain). Secondly, the merger is understood more broadly and also includes acquisition.

[57] "Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (Text with EEA relevance)". Available at: https://publications.europa.eu/en/publication-detail/-/publication/eba5bed3-5d59-11e7-954d-01aa75ed71a1/language-en.