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The Legal Mechanisms for Protection of Minority Shareholders in Cross-border Mergers under European Union Law

Minority shareholders protection in cross-border mergers is one of the EU's major concerns, which its leaders are trying to solve gradually and in stages. The evolutionary development of the regulation on cross-border merger transactions at the EU level shows that ensuring appropriate protection for minority shareholders laid on Member States' shoulders at first in 2005, while the EU has already undertaken a commitment to assure adequate and proportionate safeguard of minority shareholders since 2019 and regulates through a directive main specific mechanism for protection of minority shareholders in cross-border mergers directly at the EU level.

The article deals with the legal mechanisms for the protection of minority shareholders in the process of implementing cross-border mergers, which are provided by EU law for the protection of minority shareholders. The article also discusses and analyses the traditional mechanisms for the protection of minority shareholders, along with adequate cash compensation as the principal specific mechanism for the protection of minority shareholders, which the minority shareholders can use to protect their interests in the process of cross-border merger.

To better understand the functioning of legal mechanisms for the protection of minority shareholders, the legal nature of cross-border merger transaction has been observed, which has been determined by examining issues such as the essence of cross-border merger, its parties, methods of merger, and process of making the deal and only then the article discusses the legal mechanisms for the protection of minority shareholders.

Key words: *Minority Shareholders, Cross-border Merger, Legal Mechanism for Protection, Ensuring Appropriate Protection, Adequate Cash Compensation.*

1. Introduction

The appropriate and adequate protection for minority shareholders is one of the underlying principles of EU regulation on cross-border mergers and, at the same time, a key direction of such control, the meaning of which is growing as the number of cross-border mergers between companies from Member States of the EU have increased. Minority shareholders Protection is a legitimate public interest, as providing them with adequate and proportionate safeguard is one of the main components of creating a healthy, fair, and conducive legal environment, which together with other elements, aims to create an environment within the EU that enables companies to operate easily and smoothly.[1]

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1 In addition to the protection for minority shareholders, there is considerable importance to the safeguard of creditors and employees. See in detail: Proposal for a Directive of the European Parliament and of the

The necessity of protection for minority shareholders in a cross-border merger is determined, on the one hand, by the character and motive of the transaction and, on the other hand, by the direct nature of its implementation, which together can significantly worsen legal and property status of minority shareholders. A minority shareholder is an immediate participant in the process of a cross-border merger and a person who has a direct property interest, which is why the cross-border merger transaction has a significant impact on him. Cross-border mergers between companies from Member States of the EU can grossly infringe on minority shareholder rights and cause significant property damage, which has ultimately a negative impact on the success of the transaction as a whole, which is why legal mechanisms that should ensure timely and due protection for minority shareholders in a cross-border merger, take on special significance and purpose. The urgency of study on the legal mechanisms for the protection of minority shareholders should also define by the fact that Georgia, as a country having stood upon the path to EU membership, has not undertaken commitment for an objective reason to approximate its national legislation to cross-border merger directive at the time of concluding the Association Agreement, nevertheless, the country will have to transpose the provisions of the Directive into domestic law in case of joining the European Union that will create entirely new opportunities for Georgian companies, the realization of which would arise a necessity for protection of minority shareholders, which, in turn, will increase the importance of legal mechanisms for their safeguard doubly.[2]

Given of all the above, the purpose of this article is to study and analyze only those legal mechanisms for the protection of minority shareholders by which EU legislation provides for minority shareholders in the process of cross-border merger, for that there will be a systematic analysis of certain norms of one of the main EU directives in the field of corporate law, which deal with the regulation of cross-border merger transactions. To achieve the set goal, the structure of the research and, consequently, the article was defined, which consists of an introduction, three paragraphs, and a conclusion. An examination of the European legal mechanisms for the protection of minority shareholders will begin with a brief overview of the evolutionary development of the regulation of cross-border merger transactions at the EU level, which historically aims to show the path that the regulation has taken up to date. The second paragraph of the article deals directly with the regulation of cross-border merger transactions at the EU level, which, on the one hand, includes the characterization of cross-border merger transactions of limited liability companies, and, on the other

Council Amending Directive (EU) 2017/1132 as regards Cross-border Conversions, Mergers and Divisions, COM/2018/241 final, 2018/0114 (COD), Brussels, 25.4.2018, 1.

[2] Cross-border mergers were regulated at the EU level by Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies, which acquired legal force on 15 December of the same year. According to Article 319 of Chapter 6 of the Association Agreement between the European Union and Georgia, Georgia has not committed itself to approximation national law to the directive on the cross-border merger, insofar as directive 26/2005/56 / EC of 26 October 2005 is not sought among EU legal acts referred to in Annex XXVIII to the Agreement. The cross-border merger directive was repealed in 2017, but its norms were codified in Directive 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law. See: Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, 27/06/2014, Art. 319.

hand, integrates the study of its implementation process which allows determining the legal nature of cross-border merger. The study and analysis of the process implementing cross-border merger and its stages will be conducted only from a point of view regarding corporate law and from an angle of protection for minority shareholders. The last paragraph of the article is devoted to the discussion of the principle of ensuring appropriate and adequate protection and the examination of specific legal mechanisms for the protection of minority shareholders. The concluding part of the article summarizes the results of the research, which were shaped in the form of conclusions and recommendations.

2. The Historical Evolution of the Regulation of Cross-border Mergers of Limited Liability Companies

The regulation of cross-border merger transactions between limited liability companies from the EU Member States has a long and controversial history at the EU level. It is evidenced by the fact that the creation of a legal environment conducive to their implementation has not been possible for several decades. Throughout the history of the EU, there have been several attempts to regulate cross-border merger transactions, most of which failed for economic and legal reasons. Among the reasons for the failure of regulatory efforts to regulate cross-border merger transactions can be named the lack of harmonized rules on domestic mergers in the Member States, tax policies, barriers to employee participation, and a distinct feature characteristic for the development of European business.[3]

The idea of legal regulation of cross-border merger transactions started from the moment of the creation of the European Union. The principles of legal regulation of cross-border mergers were established by the Treaty establishing the European Economic Community, in which for the first time stated the intention to regulate cross-border merger transactions through an international agreement.[4] Nevertheless, the importance of cross-border merger and its conducive legal environment for economic growth and integration could not be conceived in its time to such an extent and a certain degree that the EU and its Member States would overcome existing obstacles from the very beginning of the European Economic Community to establish a european framework for regulating transactions as far back as the 1950s and 1960s

The first attempt to regulate cross-border merger transactions at the EU level was linked to an initiative of regulation with the Convention, which preceded the idea of regulation through the directive. In early 1965, negotiations for the adoption of an international convention to regulate cross-

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3 *Vermeylen J.,* The Cross-Border Merger Directive, In Book: *Vermeylen J., Velde I. V. (eds.),* European Cross-Border Mergers and Reorganisations, Oxford Univ. Press, New York, 2012, 1.01.

4 See: Vertrag zur Gründung der Europäischen Wirtschaftsgemeinschaft, Rom, den 25. März 1957, EUR-Lex Document (CELEX number) 11957E/TXT, Art. 220, <https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:11957E/TXT&from=EN [24.09.2020]. The original wording of Article 220 of the Treaty establishing the European Economic Community is no longer in force at this time, and the normative content that this article once had is not sought in the Treaty on the Functioning of the European Union. When the title of the Treaty establishing the European Economic Community was amended under the Maastricht Treaty in 1993, Article 220 was retained unchanged in the Treaty Establishing the European Community, but the numbering was changed according to Treaty of Amsterdam in 1999 and became Article 293 of the Treaty establishing the European Community, Which was finally repealed under the Treaty of Lisbon in the Treaty on the Functioning of the European Union in 2009.

border mergers between the member states of the European Economic Community began that lasted seven years and ended in 1973 with the publication of the draft Convention and the report on the draft.[5] The draft Convention on international merger, prepared by a working group set up by the Commission under the direction of Professor Berthold Goldman, caused a great deal of controversy, and its adoption was ultimately rejected.

On 14 January 1985, the Commission presented the first draft of the Directive on cross-border merger, which was largely based on the draft Convention.[6] The tenth directive could not be adopted even though the third Council directive on domestic mergers was already in force at that time. In 2001, the Commission withdrew the old draft Directive on cross-border mergers and introduced an updated draft on 18 November 2003, which differed from the former in terms of scope of application and ways of resolving the issue of employee participation.[7] On 26 October 2005, after overcoming all existing obstacles, the EU finally adopted directive on cross-border merger of limited liability companies.[8]

In June 2017, cross-border merger directive was repealed and its norms became part of the codification, the last amendment of which was made in November 2019 at this time.[9] The amendments to the Directive on Certain Aspects of company law from 1 January 2020 on cross-border mergers are significant and interesting in the sense that the purpose of the new regulations is, on the one hand, to simplify the process of cross-border merger and to provide greater legal certainty, and, on the other hand, to adequately and proportionately protect the interests of all interested parties to cross-border mergers.[10]

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5 The draft of the Convention and Report on the draft in English see: Draft of the Convention on International Merger of Sociétés Anonymes and Report on the draft Convention on the International Merger of Sociétés Anonymes, Submitted to the Council by the Commission on 29 June 1973, The Bulletin of the European Communities, 7/8, Vol. 6, 1973, Supplement 13/73, 2-123, <http://aei.pitt.edu/5613/1/5613.pdf> [24.09.2020].

6 Commission of the European Communities, Proposal for Tenth Council Directive based on Article 54 (3) (g) of the EEC Treaty concerning Cross-border Mergers of Public Limited Companies, Bulletin of the European Communities Supplement 3/85, 1985, 1-23, <http://aei.pitt.edu/8561/1/8561.pdf> [24.09.2020].

7 Commission of the European Communities, Proposal for a Directive of the European Parliament and of the Council on Cross-border Mergers of Companies with Share Capital, COM(2003) 703 final 2003/0277 (COD) Brussels, 18.11.2003, 3.

8 Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on Cross-border Mergers of Limited Liability Companies, (Text with EEA relevance), OJ L 310, 25.11.2005, 1-9 (Hereinafter – Directive 2005/56/EC on Cross-border Mergers of Limited Liability Companies).

9 See: Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to Certain Aspects of Company Law (Codification), (Text with EEA relevance) OJ L 169, 30.6.2017, 46-127. (Hereinafter –Directive (EU) 2017/1132 relating to Certain Aspects of Company Law (Codification), (Consolidated Text)). Consolidated text of the 2017 Directive, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02017L1132-20200101&from=EN> [22.09.2020]. See also: Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards Cross-border Conversions, Mergers and Divisions (Text with EEA relevance), O J L 321, 12.12.2019, 1-44. (Hereinafter – Directive (EU) 2019/2121 as regards Cross-border Conversions, Mergers and Divisions).

10 Proposal for a Directive of the European Parliament and of the Council Amending Directive (EU) 2017/1132 as regards Cross-border Conversions, Mergers and Divisions, COM/2018/241 final, 2018/0114 (COD), Brussels, 25.4.2018, 2.

3. Regulation of Cross-border Mergers of Limited Liability Companies

3.1. Transactional Characterisation of Cross-border Merger of Limited Liability Companies

3.1.1. The Essence of Cross-border Merger

The legal definition of the substance of cross-border merger is provided for in article 118 of the Directive relating to Certain Aspects of Company Law, on the basis of which each Member State formulates the notion of cross-border merger individually and independently in its domestic law, which is why its definitions in the national laws of the Member States are almost identical to each other and fit direct nature of the international transaction.[11]

Cross-border mergers, as the structural measure between companies,[12] are carried out between limited liability companies formed in accordance with the law of a Member State and having their registered office,[13] central administration or principal place of business within the Union.[14] In addition, a merger is considered as cross-border merger transaction only if at least two of the participating companies are governed by the legislation of different Member States.[15] Such a definition of the cross-border merger transaction indicates that cross-border merger takes place only between limited liability companies which have their domicile in different EU Member States. From this definition it is possible to distinguish four main features of cross-border merger transaction. In particular, according to the first sign, only limited liability companies should be parties to cross-border merger; The second sign indicates that the companies participating in the transaction must be established under the law of the Member States; The third sign requires participating companies to have a registered office, central administration or principal place of business within the EU, and last, the fourth sign implies that the

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11 The article 118 of the Directive relating to Certain Aspects of Company Law defines the scope of the norms governing cross-border mergers for the expansion of which there are more than one recommendation, nevertheless, recent changes have not affected this article at all. For more information on the scope of the norms governing cross-border mergers, see: *Papadopoulos Th.,* Reviewing the Implementation of the Cross-Border Mergers Directive, in: *Papadopoulos Th. (ed.),* Cross-Border Mergers: EU Perspectives and National Experiences, Studies in European Economic Law and Regulation, Vol. 17, Springer, Cham, 2019, 7-8.

12 There are two types of structural measures. The first type includes structural measures implemented within the company, such as establishment of a branch or transfer of registered office, while the second type of structural measures includes external structural measures implemented between companies, in particular, such as mergers, acquisitions and takeovers. See: *Grundmann S.,* European Company Law: Organization, Finance and Capital Markets, 2nd ed., Intersentia, Antwerpen, 2012, 487-488.

13 The term "Registered Office" refers to the official legal address of the company at which the company was registered. In addition, its function is that the correspondence received on it is considered as an officially delivered message. The official legal address of the company is usually indicated in the charter and its declaration is usually made for registration purposes. The official legal address of the company may differ from the legal address of the company's central administration or head office. Thus, it can be said that the term "registered office" refers to the criteria for determining the nationality of a company such as place of incorporation.

14 Directive (EU) 2017/1132 relating to Certain Aspects of Company Law (Codification), (Consolidated Text), Art. 118.

15 Ibid.

merger transaction must necessarily include an international element, which usually assumes that at least two of the companies participating in the transaction are governed by the laws of different Member States.[16] The simultaneous coexistence of all the listed signs is necessary for the merger transaction to be considered as cross-border merger transaction.[17]

3.1.2. Legal Forms of the Parties to Cross-border Merger

Only limited liability companies from the Member States have the right to participate in cross-border merger between the companies from Member States of the EU. The term "limited liability company" usually refers to a company with a share capital and having legal personality possessing separate assets, the existence of which can only serve to cover debts of the company.[18] Thus, members of a limited liability company are not personally liable for the debts and liabilities of the company.[19] In addition, the company is required by the national law of the Member State to which it is subject to comply with the conditions concerning guarantees for the protection of the interests of its members and third parties which are directly related to the cancellation of company registration and the publicity of the register.[20]

In connection with the definition of the legal forms of the parties participating in the cross-border merger, the laws governing cross-border merger have a broad and comprehensive so-called personal (subjective) scope of application.[21] The party to cross-border merger between companies from Member States of the EU can become a limited liability company of all types, regardless of its legal form,[22] which has allowed small and medium-sized enterprises operating in the EU to merge

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16 Comp.: *Lazíková J., Belková L., lková Z., Ďurkovičová J.,* Cross–border Mergers – the Concept and its Implementation into the Legal Order of the Slovak Republic, EU Agrarian Law, Vol. 2, Iss. 2, 2013, 55. In a particular case, only three characteristics of cross-border merger are distinguished, as long as the second and third signs are united in one sign, which may be due to their interrelationships, but in the presence of different indicators determining nationalilty, their close connection is broken. That is why it is more justified to separate the second and third marks and discuss them separately, because the rules on the connecting factor have not been harmonized in the EU at this stage and determination of the national law applicable to a company falls, in accordance with Article 54 of the TFEU, within the competence of each Member State. Directive (EU) 2019/2121 as regards Cross-border Conversions, Mergers and Divisions, rec. (3).

17 *Lazíková J., Belková L., lková Z., Ďurkovičová J.,* Cross–border Mergers – the Concept and its Implementation into the Legal Order of the Slovak Republic, EU Agrarian Law, Vol. 2, Iss. 2, 2013, 55.

18 Directive (EU) 2017/1132 relating to Certain Aspects of Company Law (Codification), (Consolidated Text), Art. 119, para. 1, point (b).

19 *Gerven D.,* Community Rules Applicable to Cross-border Mergers, In Book: *Gerven D. (ed.),* Cross-border Mergers in Europe, Vol. 1, Cambridge Univ. Press, New York, 2010, 6.

20 The terms of the safeguards for the interests of the members of the company and of third parties were provided for in First Council Directive at the time, which were reflected in Section 2 of Chapter 2 and Section 1 of Chapter 3 at this stage. See: Directive (EU) 2017/1132 relating to Certain Aspects of Company Law (Codification), (Consolidated Text), Art. 119, para. 1, point (b).

21 *Grundmann S.,* European Company Law: Organization, Finance and Capital Markets, 2nd ed., Intersentia, Antwerpen, 2012, 576.

22 *Gerven D.,* Community Rules Applicable to Cross-border Mergers, In Book: *Gerven D. (ed.),* Cross-border Mergers in Europe, Vol. 1, Cambridge Univ. Press, New York, 2010, 4.

internationally. The legal forms of limited liability companies participating in cross-border mergers are concretized according to the member states, among which are usually the joint stock company and the limited liability company, or their hybrid forms.[23]

3.1.3. The Methods and Consequences of Cross-border Merger

Cross-border mergers between limited liability companies from the Member States of the EU take place in two main forms, which are consequently identical to each other, and the only difference between them is revealed only in terms of maintaining the status of the entity. The naming of methods implementing cross-border mergers doesn't usually occur at the directive level, however, if we do not take into account the international component, their essence coincides exactly with the methods of domestic mergers, the name of which is provided for in the Directive.[24]

The material scope of application of the provisions of the directive regulationg cross-border merger applies to such forms of cross-border mergers as Merger by Acquisition, which essentially means merging by joining, and through the founding of a new company (Merger by the Formation of a New Company), during which a wholly new third company is formed, which may be established as in one of the Member States, which is the home country of one of the companies participating in the transaction, also in a third Member State that has nothing to do with the deal. Both forms implementing cross-border mergers are, in terms of their legal nature, a direct (legal) merger, as the name suggests,[25] which, in turn, means that companies from different Member States are involved in the transaction of which at least one loses the status and ceases to exist as independent subject of law.

The consequences of cross-border mergers are determined by the methods of implementation. Cross-border merger by acquisition or alternatively by joining involves transaction in the course of which all the assets and liabilities belonging to the other participating companies are transferred to one of the companies participating in the transaction, which is the acquiring company for the purposes of the transaction, in exchange for securities and shares of the acquiring company. The securities and shares that are transferred are eligible to participate in the acquirer's share capital and are distributed ultimately to the shareholders of acquired companies. In the process of cross-border merger, the acquired companies are dissolved after the completion of the acts of reciprocity, so that their

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[23] An exhaustive list of legal forms of limited liability companies by Member States was provided for in the 2005 cross-border merger directive by redirecting to the Council First Directive, Article 1 of which listed specific types of companies. See: Directive 2005/56/EC on Cross-border Mergers of Limited Liability Companies, Art. 2, para.1, point (a). The First Council Directive was replaced in 2009 by a new directive, which was to be codified in 2017, and the list of legal forms was included in the Directive relating to Certain Aspects of Company Law as an appendix, Annex 2 of which, as already mentioned, identifies specific legal forms from Member States that may participate in cross-border mergers. See: Directive (EU) 2017/1132 relating to Certain Aspects of Company Law (Codification), Official Journal of the European Union, 30.6.2017, L 169/117, ANNEX II.

[24] See Directive (EU) 2017/1132 relating to Certain Aspects of Company Law (Codification), (Consolidated Text), Arts. 89-90, 119.

[25] *Siems M. M.,* The European Directive on Cross-Border Mergers: An International Model?, Colum. J. Eur. L., Vol. 11, 2005, 169.

liquidation does not begin, therefore, the liquidation-related processes do not take place during the merger.[26] Cross-border merger by the formation of a new company envisages the development of qualitatively similar processes, which is characterized to cross-border merger by acquisition, with the only difference being that the acquiring company is a newly established company to which the assets and liabilities of all companies involved in the transaction were transferred, that will be followed by the dissolution of the merged companies.[27]

3.2. The Process of Cross-border Mergers of Limited Liability Companies

3.2.1. The Preparation and Publication of Common Draft Terms of Cross-border Mergers

Implementing cross-border merger between limited liability companies is a complex process that consists of several sequential stages and ends with the execution of the merger decision. In the first stage of cross-border merger, after the merger is initiated, common draft terms of merger is prepared and its publicity and availability are ensured. The accessibility of common draft terms of cross-border merger must be provided to all at least one month prior to general meeting, at the same time, shareholders, including minority shareholders, have the right to express their views and comments on common draft terms at least five working days before general meeting.[28]

The administrative organs of the companies participating in the transaction are responsible for preparing common draft terms of cross-border merger. The management or administrative body of each company participating in cross-border merger is responsible for drawing up common draft reflecting the terms of the merger, in which the obligatory and necessary conditions for the implementation of the merger will be written.[29] The most important and essential points, among the terms of cross-border merger to be included in common draft terms of merger are exchange ratio of securities and shares and the amount of cash payments.[30]

The common draft terms of merger in the process of cross-border mergers between limited liability companies, has a special role and importance in terms of protection of minority shareholders, which is reflected in the fact that in addition to general information to shareholders and other stakeholders, it contains the necessary information directly to minority shareholders, from which, as the primary source minority shareholders are informed of detailed information on the monetary compensation offer and its terms, which they can benefit from if they do not support common draft terms of merger at the general meeting.[31]

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[26] Directive (EU) 2017/1132 relating to Certain Aspects of Company Law (Codification), (Consolidated Text), Art. 119, para. 2, point (a).

[27] Ibid, Art. 119, para. 2, point (b).

[28] Ibid, Art. 123, para. 1, point (a), (b).

[29] The directive relating to Certain Aspects of company law provides a broad and exhaustive list of conditions that must be taken into account in Common draft terms of cross-border mergers. See in its entirety: Directive (EU) 2017/1132 relating to Certain Aspects of Company Law (Codification), (Consolidated Text), Art. 122.

[30] Directive (EU) 2017/1132 relating to Certain Aspects of Company Law (Codification), (Consolidated Text), Art. 122, point (b).

[31] Ibid, Art. 122, point (m).

3.2.2. Report of the Administrative Body

The process of cross-border merger between limited liability companies will move to the second stage after the preparation of common draft terms of merger and ensuring its availability, on which the governing bodies of the companies participating in the transaction are responsible for preparing a report on cross-border merger. In contrast to common draft terms of merger, report of administrative body directly serves to inform the shareholders and employees of the companies participating in the transaction. The report of administrative body is essentially a report on cross-border mergers that explains and clarifies the economic and legal aspects of cross-border mergers. The report of administrative body also includes an explanation of the consequences of cross-border mergers, which directly and indirectly apply only to employees and may have a material impact on their interests.[32]

The report of administrative body on cross-border merger has a special purpose for both the shareholders and the employees, as well as for minority shareholders, as the report provides clarity of the information on common draft terms of merger. The report of administrative body contains explanations on issues important to minority shareholders, such as, on the one hand, the methods of determining monetary compensation and calculating share exchange ratio, and, on the other hand, the use of a special mechanism to protect minority shareholders.[33] The report of administrative body on cross-border mergers, in contrast to common draft terms of merger, which only provides information disclosure and accessibility, ensures that the information provided is explanatory and understandable to its recipients, thus striving to meet criteria for access and adequacy of information, such as comprehensibility of the content of the information, which has special importance for the minority shareholder. The minority shareholder, due to its status and the nature of the investment, has little insight into the internal affairs of the company and lacks the professional skills to evaluate them, which prevents him from making an informed decision on the merger.

3.2.3. Independent Expert Report

In the third stage of the process of cross-border merger of limited liability companies, it is necessary to invite an independent expert with special knowledge, which studies and evaluates common draft terms of merger from a professional point of view, on the basis of which a written report is prepared, which combines the expert opinions on the essential terms of the merger. An invited expert may be an individual with relevant education and qualifications, who conducts his / her activities independently and individually, as well as an employee of a special institution having the status of a legal person, whose summons and appointment are made separately for each company participating in the transaction, separately or on a joint request, by the competent authority of the Member State.[34] The main characteristic of the appointed expert is his independence, which, first of

[32] Ibid, Art. 124, para. 1.
[33] Ibid, Art. 124, para. 3, point (a), (b), (d).
[34] Directive (EU) 2017/1132 relating to Certain Aspects of Company Law (Codification), (Consolidated Text), Art. 125, para. 2.

all, implies independence from the companies participating in cross-border merger and their governing bodies, which is a kind of guarantee of the objectivity of his conclusion.

The report prepared by an independent expert is essentially and qualitatively a document similar to an audit report in which the terms of cross-border merger are assessed in terms of fairness, validity and adequacy.[35] The report of the independent expert, unlike the report of the administrative body, is only a document intended for the shareholders of the companies participating in the transaction, which is submitted at least one month before the date of the general meeting.[36] The report submitted by independent expert are expressed and substantiated opinions, on the one hand, on share exchange ratio and monetary compensation and, on the other hand, on the adequacy of their calculation methods, in the process of which, the expert must take into account the market price of the shares and the value of the company before announcement of merger, which are usually determined based on commonly accepted valuation methods.[37] The importance of independent expert report and, in particular, of the opinions expressed in it, is immeasurably great for minority shareholders, who, as a rule, do not have the special knowledge required to assess the terms of the merger, so the conclusions presented in the report, that are given by an expert who acts independently from the management, are objectively qualified and professional for them, which is why it is more credible and reliable than the explanations contained in the report of administrative body.

3.2.4. Approval by the General Meeting

The prerequisite for cross-border merger of limited liability companies is the approval of the transaction by the General Meeting, which is reflected in the approval of common draft terms of merger and its consent to its implementation. The decision-making stage for cross-border merger takes place only after the preparatory stage has been successfully completed and all the authorized persons participating in the transaction will complete the submission of their opinions and remarks on all reports in writing. The decision on cross-border merger is made individually by the general meeting of each company participating in the transaction.[38] The approval of the transaction by the General Meeting is by nature a mandatory requirement, although it may be waived if certain conditions are met that will only be allowed by the general meeting of the acquiring company in connection with the approval of common draft terms of merger.[39]

The formalities related to cross-border merger decision-making process are not defined in detail at EU level. The rules for convening and holding a general meeting by each company participating in cross-border merger, as well as the decision-making process, shall be governed by the domestic law of

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35 *Gerven D.,* Community Rules Applicable to Cross-border Mergers, In Book: *Gerven D. (ed.),* Cross-border Mergers in Europe, Vol. 1, Cambridge Univ. Press, New York, 2010, 15.

36 Directive (EU) 2017/1132 relating to Certain Aspects of Company Law (Codification), (Consolidated Text), Art. 125, para. 1.

37 Ibid, Art. 125, para. 3, point (a), (b), (c).

38 Ibid, Art. 126, para. 1.

39 Directive (EU) 2017/1132 relating to Certain Aspects of Company Law (Codification), (Consolidated Text), Art. 126, para. 3.

the Member State to which the company participating in the transaction belongs.[40] In addition, it should be emphasized that the convening of and decision-making process on general meeting for the approval of cross-border merger shall be governed by the principles and provisions of the national law of the Member State applicable to domestic mergers.[41] Domestic legislation governing domestic mergers was harmonized thanks to the Third Council Directive in the 1970s, and therefore the norms governing cross-border mergers, which currently exist at EU level do not pay much attention to these issues, as their solution is entrusted to the norms governing domestic mergers. According to the norms governing the merger of public limited liability companies, the decision to approve the merger at the general meeting shall be taken by a majority of votes, but not less than two-thirds of the votes, which shall be calculated according to the number of shareholders are presented at the meeting. Moreover, a decision can be made by a simple majority of votes, but in such a case the majority is calculated from the data when at least half of the issued voting shares are represented at the meeting.[42] From the perspective of protecting minority shareholders, such a number of votes needed to make a decision can be considered as average or slightly below average, as the law or the charter may require qualified majority or supermajority voting, which is not a rare practice that seeks to protect minority shareholders. With a higher turnout required for decision to be taken at the general meeting increases likelihood that the participation of minority shareholders in the voting will become more important than their voting normally would and, in some cases, will even have a decisive influence on the merger approval process. However, EU policies aimed at adequate and proportionate protection for minority shareholders may not fully share this, but do not rule it out, as it tends to set minimum, sufficient and necessary requirements, leaving more choice to member states and companies participating in the transaction.

4. Ensuring A*ppropriate Protection* and Legal Mechanisms for the Protection of Minority Shareholders

4.1. The Essence of Minority Shareholder

The protection of a minority shareholder requires the identification of a specific minority shareholder who must use the protection mechanisms granted to him and protect his property interests. The issue of minority shareholder identification, as noted, has remained somewhat unresolved by European regulation of cross-border merger transactions,[43] that is why the issue should be clarified based on certain provisions of Directive and in accordance with the general rules, which can offer a completely satisfactory solution.

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40 Ibid, Art. 121, para. 1, point (b).

41 *Gerven D.,* Community Rules Applicable to Cross-border Mergers, In Book: *Gerven D. (ed.),* Cross-border Mergers in Europe, Vol. 1, Cambridge Univ. Press, New York, 2010, 16-17.

42 Directive (EU) 2017/1132 relating to Certain Aspects of Company Law (Codification), (Consolidated Text), Art. 93, para. 1.

43 *Wyckaert M., Geens K.,* Cross-border Mergers and Minority Protection: An Open-Ended Harmonization, Utrecht L. Rev., Vol. 4, Iss. 1, 2008, 48-49.

The norms governing cross-border merger transactions, which provide for Directive relating to Certain Aspects of Company Law, do not place emphasis on minority shareholder status and focus only on protecting the company's shareholders. Accordingly, Article 119 of the Directive, which contains definitions of two key terms, such as limited liability company and merger, does not define the term "minority shareholder". In addition, the article of the Directive, which directly deals with the protection of shareholders, as well as other norms governing international transactions, does not use the term "minority shareholder" at all.[44] However, it should also be noted that cross-border merger directive of 2005 treated the issue slightly differently and used the term "Minority Members" in the text, which also referred to minority shareholders.[45]

The general approach to the issue of protection of minority shareholders in the process of cross-border merger of limited liability companies, which puts their protection under shareholder protection, is determined by the comprehensive nature of the latter, which does not differentiate and envisages the shareholders of both companies participating in the merger transaction, as well as the two groups of minority shareholders of each company, which may arise in connection with the approval of the merger. Based on the above, the definition of a minority shareholder to be protected consists of two interrelated points, which separate, on the one hand, the companies participating in the transaction and, on the other hand, groups of minority shareholders in each of them. Such setting of the issue is largely determined by the scant and far-fetched regulation provided by the EU directive, which is responsible for regulating cross-border merger transactions.

Determining the essence of a minority shareholder is usually related to the quantitative indicator of shares, which is determined by the general and specific context, according to which, in turn, the use of ex-ante and ex-post mechanisms is defined. Determining the essence of a minority shareholder according to the quantitative indicator of shares in the process of cross-border merger usually depends on the number of votes required to approve the transaction at the general meeting, which, as already mentioned, is determined by national legislation applicable to domestic mergers. Therefore, the remaining shareholders, who did not support the approval of the merger, are minority shareholders, whose quantitative share of voting shares owned by them may fluctuate within one share to minus one share from percentage of the total amount, which is no longer required for approval of the transaction under a specific regulation. In other words, minority shareholder is a shareholder who holds less than the number of votes required to make a decision at the meeting, which in the context of a merger equates him with a group of shareholders who use their vote against the merger.[46] Furthermore, defining the essence of a minority shareholder in the context of cross-border merger as a specific context should be considered in the light of the above two points, thus creating a more complete picture of quiddity of minority shareholder and the main categories of his mechanisms for protection.

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44 Directive (EU) 2017/1132 relating to Certain Aspects of Company Law (Codification), (Consolidated Text), Art. 126a.

45 Directive 2005/56/EC on Cross-border Mergers of Limited Liability Companies, Art. 4, para. 2; Art. 6, para. 2, point (c); Art. 10, para. 3.

46 *Alavi H., Khamichonak T.,* To Be or not to Be; the EU Cross-border Mergers Framework and Harmonization of Dissenting Shareholder's Rights, Hungarian Journal of Legal Studies, Vol. 58, Iss. 3, 2017, 314.

The issue referred to in points one in the process of cross-border merger between limited liability companies of the EU Member States requires, on the one hand, to determine whether there is a need to protect minority shareholders of one or both parties to the transaction and, on the other hand, to determine whether there is a need to protect minority shareholders on both sides that, in most cases, is related to the presence or absence of a request for approval of the transaction by the general meeting.

In the process of direct transactions of cross-border mergers of limited liability companies, both of these issues are relatively easy to resolve and, most importantly, positive for both parties, whereas directive requires the approval of a merger by the shareholders' meetings of both parties to the transaction, which allows minority shareholders to enjoy all the proposed mechanisms for protection, which are usually used in direct merger transactions.[47] Thus, the issue of protection for minority shareholders of both companies participating in cross-border merger is on the agenda as after the approval of the transaction in both companies may remain shareholders who did not support the transaction.As for the necessity of protection for minority shareholders, the need to protect them may arise from both a reduction in the percentage of shares and change in the applicable law.[48]

The second point of the definition of a minority shareholder is to differentiate the minority shareholders of each company participating in the merger and to determine the need for their protection, which includes the categorization of protection mechanisms. In cross-border mergers of limited liability companies, there are usually two main groups of minority shareholders, the first of which includes minority shareholders, which in both merging companies may have existed by themselves before the merger was approved, while the other group includes minority shareholders who did not support the approval of the merger. The overlap of both groups of minority shareholders is quite possible, which often happens in the process of cross-border merger, since and because the categorization of minority shareholders into two groups is conditional and is actually related to a specific stage of the merger. The norms governing cross-border merger transactions do not leave both groups of minority shareholders in the spotlight, although direct safeguards apply only to minority shareholders of the second group after the changes in late 2019, while providing for the first group minority shareholders with ex ante mechanisms within process of the merger. Furthermore, it is self-evident that minority shareholders of the first group or a certain part of them will have the full right to use the ex post mechanisms in compliance with the requirements set by the Directive after the approval of the transaction by the general meeting, since the division into groups and the

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47 Directive (EU) 2017/1132 relating to Certain Aspects of Company Law (Codification), (Consolidated Text), Art. 126, para. 1. However, as already mentioned, bypassing the requirement for approval by the general meeting may be allowed in individual cases. See: Directive (EU) 2017/1132 relating to Certain Aspects of Company Law (Codification), (Consolidated Text), Art. 126, para. 3.

48 It should also be noted that justifying the need to protect minority shareholders by change of applicable corporate law is only of additional importance. See details: *Ventoruzzo M.,* Cross-border Mergers, Change of Applicable Corporate Laws and Protection of Dissenting Shareholders: Withdrawal Rights under Italian Law, European Company and Financial L. Rev., 2007, Vol. 4, Iss. 1, 47-75. See also: *Wyckaert M., Geens K.,* Cross-border Mergers and Minority Protection: An Open-Ended Harmonization, Utrecht L. Rev., Vol. 4, Iss. 1, 2008, 49-50.

categorization of mechanisms for protection are greatly formal and conditional, what partially explains and justifies the issue of protection of minority shareholders within the broader topic of shareholder protection. However, it is more appropriate to protect minority shareholders in a more explicit manner which would be much better even if it was reflected in the title of the article, especially when article 126a of the directive actually deals only with the protection of minority shareholders.

4.2. Ensuring Appropriate and Adequate Protection

Ensuring appropriate and adequate protection for minority shareholders in the process of cross-border mergers of limited liability companies is a result of the evolutionary development of regulation on cross-border transactions at EU level and of understanding of the need to protect minority shareholders, which is, in fact, the demonstration of the way in which the need to take into account the interests of minority shareholders has gone from ensuring appropriate protection to providing adequate and proportionate protection. The path of slow progression of the protection of the interests of minority shareholders can be conditionally divided into two periods from 2005 to 2019 and after 2019. In 2005, the EU adopted cross-border merger directive, which outlined the need for appropriate protection for minority shareholders, although this was mandated by the legislation of the Member States at that time.[49] Such an approach to the protection of minority shareholders has received well-founded criticism, in which a number of recommendations have been made regarding the harmonization of a special mechanism for the protection of minority shareholders.[50]

In 2019, the EU unanimously recognized that a harmonized legal framework is crucial for ensuring adequate and proportionate protection for minority shareholders, [51] on the basis of which Article 121 of the Directive relating to certain aspects of company law was amended and the proposal concerning the provision of ensuring appropriate protection was withdrawn, while the harmonization of the special mechanism for protection was imposed under Article 126a of the Directive. [52] Thus, a kind of obligation to ensure appropriate protection, which gave Member States a wide range of discretion, has been replaced by the principle of adequate and proportionate protection, which is directly or indirectly reflected in the provisions of the Directive relating to Certain Aspects of Company law, which regulate the process implementing cross-border merger and the mechanisms for the protection of minority shareholders in this process.

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49 Directive 2005/56/EC on Cross-border Mergers of Limited Liability Companies, Art, 4, para. 2.

50 For more on the need to harmonize the rights and mechanisms for protection of minority shareholders in order to increase the level of protection, see: *Wyckaert M., Geens K.,* Cross-border Mergers and Minority Protection: An Open-Ended Harmonization, Utrecht L. Rev., Vol. 4, Iss. 1, 2008, 40-52; *Alavi H., Khamichonak T.,* Protection of dissenting shareholders in the EU Cross-border Mergers Framework: A Call for further Harmonization?, Trames Journal of the Humanities and Social Sciences Vol. 21, Iss. 3, 2017, 215-232.

51 Directive (EU) 2019/2121 as regards Cross-border Conversions, Mergers and Divisions, rec. 6.

52 Proposal for a Directive of the European Parliament and of the Council Amending Directive (EU) 2017/1132 as regards Cross-border Conversions, Mergers and Divisions, COM/2018/241 final, 2018/0114 (COD), Brussels, 25.4.2018, 26.

4.3. Mechanism for Disclosure of Information

Disclosure of information is a traditional mechanism for the protection of minority shareholders, which focuses on the transparency of process of cross-border merger within the general format of shareholder protection and serves to inform shareholders, including minority shareholders. Disclosure of information belongs to the category of ex-ante mechanisms for the protection of minority shareholders, which can be used by any minority shareholder before the merger is approved at the general meeting, regardless of what decision it plans to make in this regard as far as information disclosure mechanism forms the basis for the informed decision on the merger transaction and of the use special mechanisms for protection. Article 123 of the Directive relating to Certain Aspects of Company Law is devoted to regulating the disclosure of information as, on the one hand, the guiding principle of process implementing cross-border merger and, on the other hand, the mechanism for the protection of minority shareholders.[53]

Disclosure of information, first and foremost, means the publicity of the merger process, which means the publication of information related to the implementation of cross-border merger, or more precisely, the documentation containing this information. Documents to be submitted by both companies participating in the transaction should include common draft terms of merger, a notice sent to the shareholders and an independent expert report, which must be accessed by submitting to the registry at least one month prior to the general meeting or it must be done through the official website of the company.[54] In order to provide access to information on cross-border mergers to the general public, the legislation of the Member States may allow the publication of common draft terms of

[53] Directive (EU) 2017/1132 relating to Certain Aspects of Company Law, (Codification), (Consolidated Text), Art. 123. Article 6 of the cross-border merger directive was devoted to the disclosure of information. See: Directive 2005/56/EC on Cross-border Mergers of Limited Liability Companies, Art. 6. The Codified Directive of Company Law adopted in 2017 changed the numbering and Article 6 took the place of Article 123. After some time, along with the change in the numbering of the article regulating the disclosure of information, its title has also changed. The original title of the article was “Publication", and according to the change that came into force on January 1, 2020, which was included in the codified directive, the article changed its title and was re-edited. See: Directive (EU) 2019/2121 as regards Cross-border Conversions, Mergers and Divisions, Art. 1, para. (10). The current title of article 123 of the Directive relating to Certain Aspects of Company Law is “Disclosure".

[54] Directive (EU) 2017/1132 relating to Certain Aspects of Company Law (Codification), (Consolidated Text), Art. 123, para. 1. If the documents are published on the official website, if certain deadlines are met, the companies participating in the transaction may be exempted from the requirement to disclose information related to the submission of documents to the register, which is a very favorable condition, although the submission of documents to the register may be done entirely electronically. See: Directive (EU) 2017/1132 relating to Certain Aspects of Company Law (Codification), (Consolidated Text), Art. 123, para. 1; 4. Nevertheless, companies participating in the merger are still required to submit certain types of minimum information to their local registry, the scope and content of which are set out in detail in the Directive. See: Directive (EU) 2017/1132 relating to Certain Aspects of Company Law (Codification), (Consolidated Text), Art. 123, para. 3.

merger in national gazette, which is spread across the country, for which the transfer of information is directly responsible to the registry.[55]

The role of disclosure of information as a mechanism for protection of minority shareholders in the process of cross-border merger, regardless of its general nature, is special, as it ensures the actual exercise of the right of minority shareholders to receive information, which is reflected in providing to them information about the terms of the merger and the mechanisms for their protection.[56] The practical realization of the right to receive information is carried out by getting acquainted with and understanding the information given and explained in the corporate-legal documentation within the framework of the mechanism for information disclosure, the access of which is the responsibility of the companies participating in cross-border merger.

4.4. Mechanism for Obtaining Adequate Cash Compensation

Obtaining cash compensation is a special mechanism for the protection of a minority shareholder, which is granted to minority shareholder only on the basis of his or her status.[57] Furthermore, the specific nature of the mechanism for obtaining cash compensation is due to the fact that through it the minority shareholder has the opportunity to leave the company, which creates optimal conditions for the protection of his interests in case of impasse.[58] In addition, when characterizing the legal nature of the mechanism, it should be taken into account that the mechanism for obtaining cash compensation falls into the category of ex-post mechanisms for the protection of minority shareholders, which is determined by the moment of its entry into force. The minority shareholder has the right to use mechanism for obtaining cash compensation after the approval of the merger transaction at the general meeting and only under the condition that the right to vote against the approval of common draft terms of merger will be fixed.[59]

The cross-border merger directive of 2005 did not provide mechanism for obtaining cash compensation to minority shareholders, although the reference to ensuring appropriate protection meant the introduction of a special mechanism for protection,[60] which was already been somewhat

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55 Directive (EU) 2017/1132 relating to Certain Aspects of Company Law (Codification), (Consolidated Text), Art. 123, para. 6.

56 Ibid, Art. 123, para. 3, point (c), (d).

57 *Wyckaert M., Geens K.,* Cross-border Mergers and Minority Protection: An Open-Ended Harmonization, Utrecht L. Rev., Vol. 4, Iss. 1, 2008, 45.

58 *Papadopoulos Th.,* Reviewing the Implementation of the Cross-Border Mergers Directive, in: *Papadopoulos Th.* (ed.), Cross-Border Mergers: EU Perspectives and National Experiences, Studies in European Economic Law and Regulation, Vol. 17, Springer, Cham, 2019, 14.

59 Directive (EU) 2017/1132 relating to Certain Aspects of Company Law (Codification), (Consolidated Text), Art. 126a, para. 1.

60 The assumption of mechanism for receiving cash compensation derives directly from paragraph 3 of Article 10 of the cross-border merger directive, which allowed an agreement on the use of the monetary compensation mechanism only if the law of one of the Member State in which the company participiating in merger is established, provided for such mechanism. See: Directive 2005/56/EC on Cross-border Mergers of Limited Liability Companies, Art. 10, para. 3.

familiar with the legislation of the Member States thanks to the Third Council Directive.[61] The cash compensation mechanism essentially assumes the receipt of monetary compensation in exchange for the transfer of own shares. The Directive relating to Certain Aspects of Company Law provides a mechanism for obtaining cash compensation, at least for the minority shareholders of the mergering company, and only if they are threatened to become shareholders of the company in another Member State, while the use of this mechanism for minority shareholders of the acquiring company depending, on the one hand, the existence of a requirement for approval of the merger by the general meeting, and, on the other hand, the legislation of the Member States governing matters relating to the application of the mechanism.[62]

The application of mechanism for obtaining cash compensation requires compliance with certain preconditions and the completion of certain procedures, after which minority shareholder will be able to transfer his/her shares in exchange for monetary compensation. The preconditions and procedures for the use of mechanism for obtaining cash compensation are set out in the Directive relating to certain aspects of company law which is limited to regulating only the minimum necessary issues, and the regulation of other details related to the use of the mechanism is entrusted to the legislation of the Member States.[63] Such an approach to regulating the mechanism for obtaining cash compensation, as well as the whole process of cross-border merger, to what extent will be justified only the practice ultimately shows which can demonstrate all the shortcomings that can be identified in the absence of harmonization on minor issues. This can have a significant impact on the implementation of a single transaction of merger in different Member States and create problems for its coordinated management.

The main requirement for cash compensation to be met is its adequacy, which in simple terms, means that the monetary compensation should be neither more nor less than the value of the shares owned by the minority shareholder. The amount of cash compensation and information on its methods of calculation are indicated in common draft terms of merger. In case of a claim for the proposed amount of cash compensation, minority shareholder has the right to file a request for additional monetary compensation before an authorized organ or body the concretization of which is the prerogative of the Member State, which usually designates the body administering justice as the body before which the claim can be brought.[64] At the same time, only this request can not be set grounds for appealing the decision of the general meeting to approve common draft terms of cross-border merger,[65] as far as minority shareholder can only benefit from specific mechanisms for protection

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61 *Seretakis A.,* Appraisal Rights in the US and the EU In Book: Papadopoulos Th. (Ed.), Cross-Border Mergers: EU Perspectives and National Experiences, Studies in European Economic Law and Regulation, Vol. 17, Springer, Cham, 2019, 70-71.

62 Directive (EU) 2017/1132 relating to Certain Aspects of Company Law (Codification), (Consolidated Text), Art. 126a, para. 1.

63 Ibid Art. 126a, para. 2-6.

64 Directive (EU) 2017/1132 relating to Certain Aspects of Company Law (Codification), (Consolidated Text), Art. 126a, para. 4-5.

65 Ibid, Art. 126, para. 4, point (b).

specifically established for it, which are provided for in the Directive relating to certain aspects of company law.[66]

4.5. Mechanism for Changing the Share Exchange Ratio

The mechanism for changing share exchange ratio is an additional special mechanism for the protection of minority shareholders, which, unlike the mechanism for receiving adequate cash compensation, does not require strict procedural requirements. The relative simplicity of use of mechanism for changing share exchange ratio is determined by its optional and voluntary nature, which over time has led to its development as an alternative mechanism for protection of minority shareholder, which includes the right to get additional payments.[67] Minority shareholder has the right to use mechanism for changing share exchange ratio only if he has not used mechanism for obtaining adequate cash compensation.[68] Minority shareholder usually uses the mechanism for changing share exchange ratio when he does not want to transfer shares and leave the company, but at the same time does not consider share exchange ratio to be adequate.

The share exchange ratio and the information on its methods of calculation shall be indicated in common draft terms of merger. In the event of a claim arising out of the proposed share exchange ratio, the minority shareholder has the right to dispute the ratio and request additional monetary payment before the authorized organ or body, which are usually the body that administers justice, which is a court of the Member State of the merging company whose minority shareholder makes the claim.[69] It should also be noted that the litigation to change share exchange ratio is not an obstacle to the registration of cross-border merger. At the same time, only this request can not be set grounds like mechanism for obtaining cash compensation for appealing the decision of the general meeting to approve common draft terms of cross-border merger.[70] The decision of the court on changing the exchange share ratio is of an extension nature, which means that it applies to all shareholders who do not benefit from the mechanism for obtaining adequate cash compensation.[71] Moreover, it is possible to receive shares or other compensation instead of cash,[72] which is especially important when there are difficulties with free cash or liquidity in the company. [73] Thus, the mechanism for changing the

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66 *Knapp V.,* Cross Border Mobility: What do We Need in Practice?, ERA Forum: Journal of the Academy of European Law, Vol. 19, Iss. 1, 2018, 68.

67 *Papadopoulos Th.,* Reviewing the Implementation of the Cross-Border Mergers Directive, in: *Papadopoulos Th. (ed.),* Cross-Border Mergers: EU Perspectives and National Experiences, Studies in European Economic Law and Regulation, Vol. 17, Springer, Cham, 2019, 13.

68 Directive (EU) 2017/1132 relating to Certain Aspects of Company Law (Codification), (Consolidated Text), Art. 126a, para. 6.

69 Ibid, Art. 126a, para. 6.

70 Ibid, Art. 126, para. 4, point (a).

71 Ibid, Art. 126a, para. 6.

72 Directive (EU) 2017/1132 relating to Certain Aspects of Company Law (Codification), (Consolidated Text), Art. 126a, para. 7.

73 *Papadopoulos Th.,* Reviewing the Implementation of the Cross-Border Mergers Directive, in: *Papadopoulos Th. (ed.),* Cross-Border Mergers: EU Perspectives and National Experiences, Studies in European Economic Law and Regulation, Vol. 17, Springer, Cham, 2019, 13-14.

exchange share ratio is a kind of insurance for the minority shareholder who does not oppose to the implementation of the merger, but, at the same time, wants to adequately protect his property interest.

5. Conclusion

The protection of a minority shareholder is the leitmotif of the whole process of implementation of the cross-border merger and each of its stages, which determines the necessity of the legal mechanisms of its protection and their proper functioning. The importance of legal mechanisms for the protection of minority shareholders is growing with the increase in number of cross-border merger transactions. Cross-border merger as the transaction of consolidation of limited liability companies form different member states of the EU, despite its complex nature and ambiguous impact on the relatively weak participants in the transaction, it plays a special role in the formation and development of the EU single internal market, which has a direct impact on the economic growth of the EU and leads to a significant acceleration of the growth rate of European business.

With the realization of the necessity of legal mechanisms for the protection of minority shareholders and their importance, the approach to their protection in the process of cross-border merger has changed, which has led to the replacement of the general obligation to ensure appropriate protection with the principle of adequate and proportionate protection. The EU has gradually begun to recognize that the reliance on the introduction of mechanisms for the protection of minority shareholders in cross-border mergers could not, for a long time, be based on the good will and discretion of the Member States alone to achieve the goals of modern corporate law, on the basis of which the legal regulation of mechanisms for protection of minority shareholder has become an integral part of the regulation on cross-border merger transactions at EU level. The effect of the principle of ensuring adequate and proportionate protection for minority shareholders in the process of cross-border merger is reflected in the special mechanisms of their protection, which were consolidated by a directive at EU level, which created important preconditions for their effective use. Nevertheless, it is advisable to be acquired by minority shareholders protection a more pronounced and outlined character in cross-border merger. Furthermore, it would be much better to increase the level of harmonization for implementing process of cross-border merger in a coordinated manner in different Member States, which would be reflected in the full harmonization of a separate issue related to both the process of merger and the use of special mechanisms for protection of minority shareholders.

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