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THE STATUTORY EXIT RIGHT OF A MINORITY SHAREHOLDER IN A PRIVATE LIMITED COMPANY UNDER LITHUANIAN AND BULGARIAN COMPANY LAW

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Abstract: This article focuses on the statutory exit right of a minority shareholder in a private limited company in two countries – Lithuania and Bulgaria – by exploring two interconnected aspects with equal practical significance: conditions for its exercise and the terms for the calculation of the exit payment. The paper emphasises that both legal frameworks employ conceptually different legal techniques that limit withdrawal from a private limited company, i.e., by providing either for a narrowly drafted exit right and therefore directly limiting the exit of the minority shareholder, as is the case in Lithuania, or by establishing a general right of exit against limited cash compensation which impedes withdrawal in an indirect way, as is the case in Bulgaria. The article concludes that there is room for significant improvement in both countries when it comes to regulating the exit right of a minority shareholder in a private limited company.

Keywords: *private limited company, minority shareholder, exit right, exit in no-conflict situation, shareholder disputes.*

Introduction

For decades, there has been lively discussion on the *ex lege* protection of the investments of minority shareholders in private limited companies with no liquid share market by permitting minority shareholders to withdraw from a solvent company. The legal form of a private limited company that is used by small and medium-sized businesses is often a place for investor cooperation, which is based on their personal characteristics and relationships rather than on invested capital. However, a different business approach can emerge over time between shareholders, alongside dynamic changes in their personal relationships for a variety of reasons (due to succession, divorce, corporate divisions, changes to the share capital of the company, etc.). This may have a negative impact on smooth cooperation between shareholders, which was the basis of the business initially. In private limited companies, shareholder agreements are not always in place to deal with the withdrawal of a minority shareholder, and agreements are not always structured in such a way that a minority shareholder can recover their investments on reasonable and fair terms. It can at times be neither efficient nor cost-effective when a minority shareholder voices their opinion to influence a company's activities or act as a gatekeeper, and in certain particular situations the most optimal solution is for them to leave the company, relying on statutory exit mechanisms that are designed for the protection of both minority shareholders' ownership and investments. Recent regulatory developments extending this exit right to minority shareholders in private limited companies in some countries, such as Lithuania , as well as the intensive growth of case law in other countries, such as Bulgaria, raise the question of whether the current legal framework as a whole is sufficient to ensure that minority shareholders' investments are returned on fair terms.

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Therefore, this article addresses the statutory exit right of minority shareholders in private limited companies by exploring two interconnected aspects with equal practical significance: conditions for its exercise and the terms for the calculation of the exit payment. It examines *ex lege* mechanisms that permit a minority shareholder to recover their investments, either by the company redeeming their shares or other fellow shareholders or third parties buying out their shares. This process may concern shareholder disputes as well as other cases in which there are no shareholder conflicts, although the statutory minority shareholder's right to withdraw is aimed at preventing conflicts in cases where minority shareholders' ownership can be materially affected (hereinafter –the exit right).

To achieve a better understanding of how lawmakers tackle the difficult issue of ensuring that minority shareholders' investments are returned on fair terms, the article aims to analyse their exits from private limited companies on a comparative basis. Given that the authors of this article are affiliated with two partner universities united by common values and goals in research, teaching and institutional development under the framework of the European Reform University Alliance – Mykolas Romeris University and New Bulgarian University – the article focuses on the two civil-law legal jurisdictions of Lithuania and Bulgaria, and on the following types of private limited liability companies: *uždaroji akcinė bendrovė* (UAB) in Lithuania, and *дружество с ограничена отговорност* (ООД) in Bulgaria (hereinafter – private companies). This type of company, which, by its nature, is a legal form of capitalised company, is the most popular both in Lithuania (Official Statistics Portal, 2024) and in Bulgaria (Registry Agency, n.d.). The article makes intensive use of comparative legal analysis as well as applying the systemic, teleological and precedential methods in addressing both the issue of the minority shareholder's exit from a private company and the need for the modernisation of the legal regulation in both jurisdictions.

This article is divided into three parts. Parts one and two deal with the description of exit mechanisms for minority shareholders in private companies available under Lithuanian law and Bulgarian law, respectively. The third part then proceeds to identify the key results of the comparison of the exit right of minority shareholders under statutory law, which is followed by the conclusions.

The comparison between the approaches of the legislators towards the exit right in each country provides valuable insights into how to improve existing regulations in Lithuania and Bulgaria. In addition, this paper has the potential to initiate further comparative law analysis and discussions on the topic among company law scholars.

1. Minority shareholder exit: Lithuania

It has been long contended by Lithuanian scholars that the national legal framework does not sufficiently address either minority shareholders' protection in solvent private companies or, in particular, the shareholder exit right (Mikalonienė, 2015, pp. 195–225; Tikniūtė, 2017). The courts are reluctant to decide on the distribution of dividends, reserving such decisions for the exclusive competence of the general shareholders' meeting (e.g., the rulings of the Court of Appeal of Lithuania of 1 December 2022 in civil case no. e2A-803-912/2022 and of 4 March 2014 in civil case no. 2A-281/2014, and the judgement of Kaunas District Court of 7 March 2016 in civil case no. e2-1038-259/2016), and the concept of a minimum mandatory dividend as a statutory right of a minority shareholder in a private company is not known under Lithuanian legislation. Therefore, in private companies with no liquid share market (Fleischer, 2014, p. 35), in which there are no regular returns on investments for minority shareholders, statutory exit mechanisms can play a role in returning minority shareholders' investments on fair terms.

In Lithuania, a minority shareholder has no independent statutory remedy through which to demand the forced winding-up of a solvent private company as a tool to return investments made in the private company. However, although the court may apply the winding-up of a company when corporate misconduct is confirmed under special investigative proceedings (item 8 of part 1 and part 3 of Article 2.131 of the Civil Code; hereinafter – CC), it is likely that this legal measure as an *ultima ratio* legal tool has a minimal effect in practice (examples of the liquidation of a company under special investigative proceedings include the judgement of Klaipėda District Court of 8 December 2014 in civil case no. 2-752-253/2014, as upheld by the ruling of the Court of Appeal of Lithuania of 2 July 2015 in civil case no. 2A-520-196/2015, and the judgement of Panevėžys District Court of 2 April 2004, as upheld by the ruling of the Court of Appeal of Lithuania of 19 July 2004 in civil case no. 2A-269). At general shareholders' meetings, a qualified majority of at least two thirds of the votes is required to approve the dissolution of the company. Therefore, voluntary winding-up is hardly feasible (item 1 of part 1 of Article 2.106 and part 1 of Article 2.107 of the CC; item 17 of part 1 of Article 28 of the Law on Stock Companies of the Republic of Lithuania; hereinafter – the LSC). In this context, it is worth mentioning that the law also provides for compulsory corporate dissolution on the grounds specified in the exhaustive list of part 1 of Article 2.70 of the CC, but at the initiative of the administrator of the Register of Legal Entities, not the minority shareholder. This provision is not linked to the exit right of minority shareholders, as it can only be applied, for example, when a company is not functioning and for a period lasting more than 6 months either: members of the managing organs of the company cannot be contacted at the corporate seat and at their addresses indicated in the Register of Legal Entities, or the corporate management bodies have not been formed and therefore are not capable of making corporate decisions.

However, there are other, less drastic exit mechanisms than the winding-up of a solvent private company that permit a minority shareholder to withdraw from it. The exit right of a minority shareholder, both in a no-conflict situation and in the event of shareholder disputes, will be addressed in the following sections of the article.

1.1. No-conflict as basis for minority shareholder exit

1.1.1 Dominant control by a shareholder

In November 2022, the Lithuanian Parliament adopted changes to the LSC by introducing both a statutory squeeze-out right and a sell-out right for shareholders of non-listed limited companies (including private limited companies) in which there is a controlling party with at least 95 percent of the votes (Article 46 of the LSC).[3] In principle, the newly introduced rules are similar legislative mechanisms to the contra-balancing squeeze-out right/sell-out right that are already applied to listed companies, in which the control threshold is at least 95 percent of the votes and share capital (Article 32 of the Law on Securities of the Republic of Lithuania; hereinafter – the Law on Securities).

Following the amendments to the LSC, a shareholder of a private company holding at least 95 percent of the votes at the general shareholders' meeting, alone or acting in concert on a contractual basis with others (hereinafter – a dominant shareholder) has the right to acquire the remaining voting shares in the company and thus demand that the remaining shareholders sell their voting shares (the squeeze-out right). In a similar vein, a minority shareholder in a private company with a dominant shareholder holding 95 percent of the votes has a contra-statutory sell-out right. The amendments of the LSC establish an exit right only for those minority shareholders who comply with the two cumulative criteria: a withdrawing shareholder owns voting shares and the holding does not exceed 5 percent of the votes.

Dominance is determined using voting power at the general shareholders' meeting. The control threshold of the dominant shareholder is calculated by adding the votes of those persons who act in concert with the shareholder holding the voting shares to the total number of votes. In order to determine situations in which a shareholder is deemed to be acting in concert with others, similar rules as those for listed companies in cases of mandatory bids apply (part 5 of Article 46 of the LSC refers to Article 16 of the Law on Securities; part 33 of Article 2 of the Law on Securities). For example, in the following situations votes would be added together with the votes of the shares owned by the shareholder: votes of other parties to the voting agreement for the implementation of a long-term management policy of the company; votes obtained under a temporary agreement on the transfer of votes; votes acquired under usufruct, pledge or financial collateral; votes to be exercised at the discretion of an agent or a holder of shares in a trust; and votes under the joint share ownership of spouses. In the aforementioned examples, votes should also be counted when obtained indirectly through the controlled company

The LSC sets a time frame by which to implement the sell-out right. After the threshold of the control of at least 95 percent of the votes is reached, there is a maximum 3-month timeframe within which a minority shareholder must declare to the company that they are exercising their exit right. Communication among shareholders is not

[3] The amendments to the LSC provided for a 1-year-transitional period that ended on 30 November 2023 to implement both a squeeze- and sell-out right in case of the dominant control of 95 percent of the votes of a non-listed limited company if the right was obtained before enacting the new rules (part 3 of Article 25 of the Law amending the LSC).

direct, but the dominant shareholder and the minority shareholder interact through the company. To ensure that the shareholder obtains information about the 95 percent control threshold on a timely basis, there is both a duty for the shareholder to inform the company within 5 business days of the threshold having been reached (or reduced), and a subsequent corporate duty to inform minority shareholders who have an exit right within 1 business day. A dominant shareholder has a duty to submit a notice on the share buy-out within 20 business days following the receipt of information on the demand to buy out the shares of the minority shareholders from the company. The notice of the dominant shareholder must include, among other things, a price for the shares subject to the buy-out and redemption procedure. The LSC establishes rather casuistic procedural requirements for exercising the mechanism for buying out shares. On the other hand, the LSC does not specifically sanction the dominant shareholder for non-compliance with the rule to disclose the control factor since, unlike the model for listed companies (part 10 of Article 15 of the Law on Securities), it does not prohibit the defaulting shareholder from voting at the general shareholders' meeting.

The share redemption price has to be fair, and must be paid by cash compensation. A mechanism involving an independent expert determining the share value is the key difference compared to the share pricing model used for listed companies. There are concerns that in practice it can be challenging to comply with a deadline to arrange the valuation of the shares by an independent expert within 20 days (Bank of Lithuania, 2022, p. 4). It is also worth mentioning that the LSC does not specifically address the question of who covers the cost of the share valuation of the independent expert. It could be implicitly interpreted that the valuation costs should be borne by the dominant shareholder, since the dominant shareholder has to attach documents to the notice that justify the valuation of the shares, as well as take into account the right of the withdrawing shareholder to dispute the proposed share redemption price which has to be resolved via court litigation.[4]

If the minority shareholder views the cash compensation proposed by the dominant shareholder to be inadequate, the withdrawing shareholder is entitled to dispute it in court. Therefore, the LSC sets forth a judicial protection mechanism in order to avoid potential abuses in determining the share price (Ministry of Economy and Innovation, 2022). There is a minimum 6-week period for the minority shareholder to either sell the shares or to lodge a suit, in which the court appoints an expert to evaluate the shares. In the latter case, both the share valuation mechanism and the buy-out procedure are the same as those used in case of serious shareholder conflicts under the judicial remedy for minority shareholder oppression. To ensure the fair treatment of minority shareholders, the LSC establishes an *erga omnes* effect of the final court decision to provide additional cash compensation to those shareholders who did not dispute the share redemption price in the court proceedings.

Overall, in private companies with no liquid share market, an exit right against cash compensation is aimed at enabling a minority shareholder holding weak voting powers and a very small portion of the share capital of a company (i.e., holding a maximum 5 percent of the votes) to leave the company when there is dominant control at the general shareholders' meeting and recoup their investments on fair terms.

In general, a sell-out right of a minority shareholder that is not tied up with oppression by a majority shareholder is considered to be a proper tool to defend minority shareholder rights (Andersen et al., 2017, pp. 264–265).[5] According to the *travaux preparatoires*, based on comparative examples (e.g., Denmark, Finland, Sweden), the new rules are aimed, *inter alia*, at increasing the protection of minority shareholders in non-listed companies (Ministry of Economy and Innovation, 2022).

Having said that, the limited scope of the statutory exit right that can be invoked by a minority shareholder holding a maximum of 5 percent of the votes has to be noted.

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[4] Other scholars, however, share the view that payment for share valuation is not regulated by law, leaving it to the agreement of the parties (Bitė, 2022, p. 203).

[5] On the other hand, there are debates over the enactment of squeeze-outs and sell-outs in closed companies taking into account contractual arrangements to protect minority shareholders often used in these types of companies (High Level Group of Company Law Experts, 2002, p. 110). In a similar vein, associations representing the interests of start-ups have met the proposed legislation with criticism because of the corresponding squeeze-out right of the dominant shareholder, which may essentially change the legitimate expectations of the minority shareholders that have been created when they invested into the company before the amendments to the LSC were adopted (Lithuanian Private Equity and Venture Capital Association, 2021; Unicorns Lithuania, 2021; Lithuanian Business Angels Network, 2021).

Firstly, only a minority shareholder with very low voting powers in a private company – 5 percent of the votes or less – can benefit from the exit right. The arguments of lawmakers substantiating the 5-percent ceiling and refusing to increase it to 10 percent – which would have matched the ceiling used for listed companies – are not convincing for the following reasons. The shareholder exit right in private companies with no liquid share market cannot automatically be equated with a shareholder's right to withdraw from listed companies whose shares are freely transferable. Further, there is no conceptual and systematic consistency between setting a threshold for the minority sell-out right/squeeze-out right and for minority holdings to use certain other governance and economic rights. A shareholder holding more than 5 percent but less than 10 percent of votes has essentially similar *ex lege* governance rights as a shareholder holding 5 percent of the votes. However, shareholders possessing at least 10 percent of the share capital (votes) of the company are in a somewhat more powerful situation, and can exercise rights that allow them to intervene into corporate management. For example, shareholders holding 10 percent of the share capital who have reasonable doubts about corporate misconduct are entitled to request that special judicial investigative proceedings be conducted. Shareholders with at least 10 percent of votes also have certain procedural governance rights related to the general shareholders' meeting, such as the right to initiate the meeting, the right to demand remote attendance and voting at the meeting, and the right to approve voting in secret. A higher holding amounting to less than 10 percent of the votes when the exit right is exercised in no-conflict situations would have been systematically closer to the ceiling, i.e., when a shareholder holding up to 10 percent of the share capital is entitled to withdraw from the company during national reorganisation under certain circumstances (part 4 of Article 67 and Article 70[1] of the LSC).

The *travaux preparatoires* offer no evidence that demonstrates the overall statistics on the distribution of the shareholding (votes) in non-listed companies. Although a small holding can result from various circumstances (e.g., due to succession, divorce, corporate divisions, changes to the share capital of the company, etc.), it is not certain whether the new rules that establish an exit right for a shareholder holding a maximum of 5 percent of the votes are aimed at addressing the most typical and relevant situations as a practical need in the context of non-listed companies.

Finally, it is worth noting that there are comparative examples – which, *inter alia* have inspired a change of the LSC – that provide for a control threshold of 90 percent of the votes. For example, the European Model Company Act (Andersen et al., 2017) provides for a squeeze-out right of the majority shareholder if the shareholder holds more than 90 percent of the shares and votes in a limited liability company and a corresponding sell-out right of each minority shareholder (Sections 11.34 and 11.35; in a group context, Sections 15.11 and 15.15).

Secondly, a minority shareholder is only entitled to demand that a dominant shareholder buy out their shares if they own voting shares. At the stage in which the new exit right for minority shareholders in non-listed companies was introduced, lawmakers refused to broaden the scope of protection for minority shareholders by granting a similar exit right to the owners of non-voting shares. This legislative approach was justified by the need to firstly test the functioning of the new rules within their narrower scope.

Thirdly, it is also worth mentioning that due to the limited number of situations that exist to determine the dominant control of a shareholder who is deemed to be acting in concert with others, *de jure* and *de facto* control in situations other than those listed in law are not taken into account in the context of the exit right. For example, some authors highlight the overly narrow scope of the sell-out right of the minority shareholder of the subsidiary, as envisaged in Article 46[1] of the LSC, to properly tackle specific features of the group of companies (Bakanauskas, 2023, pp. 202–208). Others, in general, argue that a statutory exit right on the basis of the dominant threshold does not effectively address the problems associated with locking the investment of a minority shareholder in a private company, as the majority shareholder can act under arrangements that are not formalised (Tikniūtė, 2017, p. 246).

Although the dominant shareholder and other persons acting in concert will be jointly and severally liable for the performance of the obligation to buy out the shares of the minority shareholder who exercises their sell-out right, and annual interest of 10 percent is computed for a default payment (parts 5 and 18 of Article 46[1] of the LSC), it is questionable whether the statutory mechanism offers effective and balanced protection for minority shareholders when the dominant shareholder does not fulfil the obligation to buy out the shares and, as stated in the *travaux preparatoires*, the minority shareholder seeking to obtain a settlement has to litigate in the courts (also see: Bank of Lithuania, 2022, p. 5).

1.1.2 A corporate decision as a basis for minority shareholder exit

Seeking to strike a fair balance between various affected interests – the company's autonomy to implement a sound commercial decision, majority shareholders' discretional power to decide on business transactions, and minority shareholders' legitimate interest in protecting their investments – the legislator provides an exit right for a minority shareholder under certain circumstances. In addition to the above-mentioned super-qualified control threshold as grounds for a minority shareholder to leave a company, the Lithuanian legal framework establishes the exit right of minority shareholders from a private company by recovering their investments on fair terms from the company when they disagree with the company's decisions concerning corporate reorganisations (mergers, divisions) and conversions. The scope of the exit right depends on the type of corporate operation, i.e., whether it is national or cross-border in the single market.

The law governing cross-border corporate mergers, divisions and conversions of limited liability companies (hereinafter – the Law Governing Cross-Border Operations)[6] implemented the provisions of Directive (EU) 2019/2121 on cross-border operations, which highlights that the cross-border nature of operations can pose specific problems for shareholders. In principle, in a cross-border conversion, a merger of a company being dissolved without going into liquidation, or a full or partial division, the Law Governing Cross-Border Operations enables minority shareholders who disagree with the cross-border operation to exercise their exit right against cash compensation (Article 7 (conversion), Article 19 (merger), Article 32 (division)). Since the general shareholders' meeting has to approve the draft terms of the cross-border operation with a qualified majority of no less than two thirds of votes, when all shares are of the same class, shareholders holding one third of the share capital (33.33 percent) with no blocking power may decide to exit the company (part 2 of Article 9 (conversion), Part 4 of Article 1 of the Law Governing Cross-Border Operations; items 14 and 15 of part 1 of Article 28 of the LSC). The draft terms of the cross-border operation must include details about cash compensation for the withdrawing shareholders, and this information is further detailed and substantiated in the company's management report and the independent expert report, unless all shareholders unanimously waive their right to receive these reports (Articles 3–5 (conversion), Article 15–17 (merger), Articles 28–30 (division) of the Law Governing Cross-Border Operations). If a minority shareholder who has informed the company about their exit deems the cash compensation proposed by the company to be inadequate, the shareholder is entitled to dispute it by claiming an additional amount. To ensure the fair treatment of minority shareholders, the LSC establishes an *erga omnes* effect of the final court decision to provide additional cash compensation to all shareholders who have declared to the company that they are exercising their exit right.

In the context of national reorganisations and conversions, the scope of the exit right of a minority shareholder is very narrow in comparison with that which is granted in relation to cross-border operations in the single market. The LSC enables shareholders holding a maximum of 10 percent of the share capital to demand the company to acquire their shares in only two cases.
Firstly, this can occur when shares are not allocated proportionally in each company in the corporate division. Corporate division cannot be carried out when the exit right is exercised by shareholders holding more than 10 percent of the share capital of the company being divided (part 4 of Article 67 of the LSC).

Secondly, a shareholder can exit in an intra-group upstream merger when a parent company which has a holding of at least 90 percent of the subsidiary's share capital acquires the subsidiary (Article 70^1 of the LSC). The LSC does not specifically address the shareholder's right to claim an additional amount of cash compensation. Although a cross-border operation poses its own risks to shareholders' investments in comparison with those arising in relation to a domestic operation, it remains to be seen whether the newly adopted rules for cross-border operations in the single market will shed light on the need to upgrade the rules governing the protection of minority shareholders under national corporate reorganisations (see Davies et al., 2019, pp. 210–211).

[6] The new rules do not apply to cross-border mergers that were initiated before the entry into force of the new law, i.e., 31 August 2023.

Given the above, it could be summarised that the LSC does not set forth a general right for minority shareholders to exit from a private company if they are dissatisfied with corporate decisions based on the majority principle that may substantially alter the investment environment. The exceptions to this are those decisions specifically linked to the abovementioned cross-border operations in the single market and domestic reorganisation, although the latter has a very narrow substantive scope.

1.2 Minority shareholder exit in the event of shareholder conflicts

There is a statutory judicial shareholder remedy which deals with extreme shareholder conflicts in a private company, and which in exceptional circumstances permits a shareholder either to withdraw from the company or to expel another shareholder. Under such a legal framework, the CC sets forth a shareholder oppression remedy as a judicial mechanism for a minority shareholder to leave the private company in the event of serious shareholder conflicts.

As far as it relates to the withdrawal of a minority shareholder, Article 2.123 of the CC provides for a forced buy-out remedy when a shareholder in a private limited company can no longer properly exercise their shareholder rights due to the actions of another shareholder and it cannot be reasonably expected that such actions will cease. The court obliges the other shareholder or shareholders who are responsible for such a situation to buy out the shares of the withdrawing shareholder. This remedy should apply in case of serious and permanent conflict between shareholders when the interest of the withdrawing shareholder is materially prejudiced, further cooperation between shareholders is no longer feasible, and other less drastic alternative measures cannot be applied. To determine the share price for the withdrawing shareholder, if the court finds the exit grounds justified then the judicial withdrawal procedure involves experts to evaluate the shares. The court must approve the party (which can be a private company) that should pay the costs of the share valuation.

The forced buy-out remedy can be used only by a shareholder or group of shareholders of a private limited company whose par value of shares amounts to no less than one third of the share capital (part 1 of Article 2.123 and item 1 of part 1 of Article 2.116 of the CC). In this context, it is worth mentioning that only a shareholder (or group of shareholders) of a private limited company whose par value of shares amounts to no less than one third of the share capital has the right to demand the exclusion of a shareholder whose actions contradict objects of the company if there are no grounds to reasonably expect any changes in said actions (Article 2.115 and item 1 of part 1 of Article 2.116 of the CC). Therefore, a shareholder holding a lower percentage of the share capital has neither the right to leave the company nor to expel another abusive shareholder.

The case law reveals that the expulsion of another shareholder by a shareholder (or a group of shareholders) holding at least one third of the share capital of a private company is used as a legal tool to solve shareholders' conflicts, both as an independent remedy and as a contra-claim (e.g., the rulings of the Supreme Court of Lithuania of 29 April 2008 in civil case no. 3K-3-258/2008 and 12 November 2007 in civil case no. 3K-3-483/2007; the rulings of the Court of Appeal of Lithuania of 13 January 2017 in civil case no. e2A-52-196/2017, 20 May 2021 in civil case no.e2A-356-302/2021, 20 January 2022 in civil case no. e2-22-302/2022, and 30 December 2019 civil case no. e2A-620-781/2019). A shareholder who elects to use an expulsion remedy assumes the risk of possible changes in the share price (increase or decrease) that can occur during the period between the point at which the court fixes the share price and the moment when the share sales purchase is actually enforced. Therefore, the court-approved price for shares that are subject to mandatory sale on the basis of the court decision cannot be adjusted following the principle of *rebus sic stantibus*, as used in contractual relationships (Article 6.204 of the CC). Accordingly, the price cannot be reduced due to the subsequent insolvency of the company which results in a decrease in the value of its shares (the ruling of the Supreme Court of Lithuania of 23 June 2022 in civil case no. e3K-3-180-403/2022).

Both the expulsion remedy and the exit remedy can be used in a deadlock situation (e.g., the ruling of the Supreme Court of Lithuania of 1 July 2020 in civil case no. e3K-3-214-219/2020; the rulings of the Court of Appeal of Lithuania of 20 October 2022 in civil case no. e2A-630-1120/2022, 22 October 2020 in civil case no. e2A-599-781/2020, and 10 December 2020 in civil case no. e2A-864-370/2020).

The withdrawal of a minority shareholder from a private company under the oppression remedy is not, however, used very often in practice (e.g., the ruling of the Supreme Court of Lithuania of 13 June 2008 in civil case no. 3K-3-323/2008; rulings of the Court of Appeal of Lithuania of 13 November 2014 in the civil case no. 2A-1355/2014, and 28 April 2022 in the civil case no.e2A-260-302/2022). There are different risks related to the use of this judicial exit remedy by a minority shareholder. For example, shareholders are often reluctant to use the exit remedy due to uncertainty regarding the potential value of the shares as determined by court-appointed experts, since the issue is vaguely regulated and a number of material aspects are left to be developed in the case law (e.g., on the adjustment of the price of the withdrawing shareholder's shares, which the abusive shareholder must purchase compulsorily, to take into account the reflective losses; on the need to better protect minority shareholder rights in the event of a default by the majority shareholder when an exit right is exercised by a minority shareholder (Mikalonienė, 2016, pp. 172–180)). On the other hand, it is likely that in case of serious conflicts between shareholders when the interest of a minority shareholder is materially prejudiced, a very high threshold requirement of holding one third of the share capital of the private company can serve as a major impediment in protecting minority shareholders' rights when withdrawing from the company on fair terms. The legal framework that prevents the exit of every shareholder whose interests are substantially harmed in the event of serious shareholder conflicts has long been criticized as not properly ensuring the protection of their ownership rights (e.g., Mikalonienė, 2015, pp. 212–213, 234–237; Tikniūtė, 2017, pp. 236–239).

In conclusion, the scope of the latest legislative developments that introduced the minority shareholder's right to leave a private company and retrieve their investments on fair terms in the case of dominant control or cross-border corporate operations in the single market has not eliminated the need to legally enable each shareholder whose interests are substantially harmed in the event of serious shareholder conflicts to withdraw from the private company (for similar discussions in relation to withdrawal in case of dominant control, see Bitė, 2023, p. 203).

2. Minority shareholder exit: Bulgaria

2.1. General exit right

The Bulgarian Commercial Act (hereinafter – the CA) provides each shareholder in a limited liability company a unilateral and unconditional exit right, i.e., each shareholder is entitled to leave the company and terminate its shareholding at any time for convenience, without providing their motivation or the specification of any grounds for their exit. This right is acquired by each shareholder, as the nominal value of the shares is not relevant, i.e., there is no minimum threshold as a precondition for the acquisition of this right.

The exit right is exercised under a simple and straightforward procedure. The withdrawing shareholder must submit to the company a written exit notice followed by the expiry of a 3-month notice period, beginning from the receipt by the company of the exit notice. Once the notice term expires, the shareholder must ensure the acquisition of the vacated shares by other shareholders or by a third party, or if such an acquisition is not possible, the share capital of the company must be decreased. In addition, since the articles of association contain the names of the shareholders, they must be updated by resolution of the remaining shareholders. The changes in the corporate status are subject to registration under the file of the company at the Commercial Register.

After the termination of the shareholding, the company is obliged to pay the withdrawing shareholder the monetary value of their shares. The main downside of the exit right is related to the valuation of the shares of the withdrawing shareholder. The CA provides that the value of the shares shall be calculated on the basis of the accounting balance sheet at the end of the month in which the notice period expired. According to the case law of the Supreme Cassation Court (hereinafter – the SCC), the withdrawing shareholder is entitled to receive the net asset value of their shares, calculated according to the balance sheet value of the assets minus the liabilities (own capital, reserves and financial results, i.e., profit or loss, are excluded from the equation) (SCC Decision No. 466 of 30.06.2008 under commercial case No. 112/2008; Decision No. 224 of 10.09.2010 under commercial case No. 765/2008; Decision No. 200 of 19.01.2018 under commercial case No. 592/2016; Decision No. 180 of 26.03.2021 under commercial case No. 2602/2019; Decision No. 10 of 10.09.2012 under commercial case No. 502/2010; Decision No. 71 of 18.12.2017 under commercial case No. 2899/2015). The balance sheet value is significantly lower than the market value of the assets of the company, but the market value is disregarded and hence the withdrawing shareholder loses a significant portion of their investment (Stefanov, 2014, p. 350; see also SCC

Decision No. 64 of 09.06.2009 under commercial case No. 504/2008; Decision No. 61 of 30.04.2010 under commercial case No. 741/2009; Decision No. 224 of 10.09.2010 under commercial case No. 765/2008; Decision No. 81 of 18.07.2011 under commercial case No. 809/2010; Decision No. 87 of 06.06.2012 under commercial case No. 468/2011; Decision No. 10 of 10.09.2012 under commercial case No. 502/2010). If the other shareholders and the management decide to act in bad faith, they have 3 months until the expiry of the notice period to re-direct the business and assets of the company to another company, and in this way to ensure that the balance sheet value of the shares shall be a negative figure at the end of the exit notice term, in which case the withdrawing shareholder is not entitled to receive any payment (Stefanov, 2014, p. 351; Grigorov, 1994, pp. 191–192; Goleva, 2014, p. 285; as well as SCC Decision No. 10 of 10.09.2012 under commercial case No. 502/2010; Decision No. 100 of 7.02.2013 under commercial case No. 665/2011; Decision No. 200 of 19.01.2018 under commercial case No. 592/2016; Decision No. 206 of 06.08.2018 under commercial case No. 1108/2017), even for the nominal value of their shares (Stefanov, 2014, p. 351, as well as SCC Decision No. 100 of 07.02.2013 under commercial case No. 665/2011; Decision No. 405 of 25.06.2007 under commercial case No. 144/2007).

The effect of the exit notice is immediate, because the shareholding is terminated automatically upon the expiry of the notice period (e.g., SCC Decision No. 991 of 29.11.2006 under commercial case No. 566/2006; Decision No. 46 of 22.04.2010 under commercial case No. 500/2009; Decision No. 515 of 20.03.2002 under civil case No. 1312/2001; Decision No. 223 of 18.03.2004 under civil case No. 892/2003; Decision No. 6 of 31.01.2005 under civil case No. 293/2004; Decision No. 1091 of 1.07.2003 under civil case No. 1857/2002; Decision No. 74 of 18.07.2016 under commercial case No. 1113/2015; Decision No. 7 of 14.03.2018 under commercial case No. 926/2017). The termination effect is not postponed, and is neither conditional on the passing of shareholder resolutions for the approval of the corporate changes resulting from the terminated shareholding of the withdrawing shareholder (e.g., SCC Decision No. 46 of 22.04.2010 under commercial case No. 500/2009; Decision No. 74 of 18.07.2016 under commercial case No. 1113/2015; Decision No. 7 of 14.03.2018 under commercial case No. 926/2017; Ruling No. 124 of 25.02.2015 under private commercial case No. 3390/2014), nor on the registration of such corporate changes at the Commercial Register, nor on payment to the withdrawing shareholder of the monetary value of their shares (Decision No. 46 of 22.04.2010 under commercial case No. 500/2009; Decision No. 515 of 20.03.2002 under civil case No. 1312/2001; Decision No. 223 of 18.03.2004 under civil case No. 892/2003; Decision No. 6 of 31.01.2005 under civil case No. 293/2004; Decision No. 1091 of 1.07.2003 under civil case No. 1857/2002; Decision No. 74 of 18.07.2016 under commercial case No. 1113/2015; Decision No. 7 of 14.03.2018 under commercial case No. 926/2017).

The regulation of the exit right is imperative, since it is designed to protect the minority shareholders, and the exit right cannot be excluded by the articles of association or by virtue of a decision of the shareholders' general meeting. It is permitted, on the other hand, for the articles of association to modify the conditions for the exercise or consequences of the exit right, for instance to provide a longer or shorter notice period (Decision No. 46 of 22.04.2010 under commercial case No. 500/2009; Decision No. 10 of 28.01.2004 under civil case No. 426/2003; Decision No. 223 of 18.03.2004 under civil case No. 892/2003; Ruling No. 124 of 25.02.2015 under private commercial case No. 3390/2014; Decision No. 74 of 18.07.2016 under commercial case No. 1113/2015). The articles of association may provide that the withdrawing shareholder shall be entitled only to payment equal to the nominal value of their shares instead of their balance sheet value, or the lesser amount of these two figures (Stefanov, 2014, p. 351; as well as Decision No. 405 of 25.06.2007 under commercial case No. 144/2007; Decision No. 1106 of 09.07.1999 under civil case No. 75/1999); they may also provide for a different date by which the accounting balance must be prepared for the calculation of the balance sheet value of the shares (Kalajdzhiev, 2014, pp. 267–268), or that the net asset value of the shares shall be calculated taking into account the market value of the company's assets (Decision No. 126 of 5.10.2011 under commercial case No. 889/2010; Decision No. 16 of 24.03.2011 under commercial case No. 354/2010). In principle, the payment to the withdrawing shareholder shall correspond to their share capital quota, but the articles of association may stipulate a different proportion (Article 127 of the CA) (Kalajdzhiev, 2014, pp. 267–268). Furthermore, the payment to the withdrawing shareholder could be subject to a settlement agreement between the shareholder, the company and the other shareholders. For instance, instead of cash compensation, the withdrawing shareholder (or their nominee) could acquire specific assets of the company (Decision No. 112 of 26.01.2012 under commercial case No. 638/2010; Decision No. 359 of 25.10.2011 under civil case No. 1220/2010), or the settlement agreement may provide for different monetary rights instead of or in addition to the payment of the monetary value of the shares. This may include receiving part of the net profit of the company for a certain period of time after the exit (Decision

No. 126 of 5.10.2011 under commercial case No. 889/2010; Decision No. 16 of 24.03.2011 under commercial case No. 354/2010).

In conclusion, Bulgarian law provides for a very strong general exit right to each shareholder, exercisable at any time and without any specific preconditions, even if there is no shareholder dispute, although in practice it is exercised mainly in the context of such disputes. The exit right significantly compensates for the lack of market for the shares of private companies. The main downside, related to the calculation of the value of the shares according to the balance sheet value of the assets and liabilities, could be overcome by the articles of association.

2.2. Other exit options

2.2.1 Special exit right in case of corporate reorganisation

The CA also provides for a special exit right in case of corporate reorganisation (e.g. fusion, merger, spin-off). A shareholder in an LLC whose legal status changes after reorganisation and who has voted against the decision for reorganisation has the right to leave the company in which they received shares after reorganisation. There is no minimum nominal value of the shares owned by such a shareholder in order to exercise their exit right. Their exit is effected by a notarised notification provided to the company within 3 months of the date of transformation. The withdrawing shareholder is entitled to receive payment of the monetary value of the shares owned before the reorganisation, calculated in accordance with the exchange ratio provided for in the transformation contract. This special exit right is applicable only in the event of reorganisation and is very rarely used, thus it has limited practical relevance.

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 has not yet been implemented in Bulgaria; hence, no special exit right is provided in case of cross-border conversions, mergers and divisions.

2.2.2 Shareholder expulsion

The CA also contains other mechanisms for the resolution of corporate disputes, such as compulsory shareholder expulsion in a situation in which two battling (groups of) shareholders both wish to keep the company for themselves.

Beside the non-payment of the share capital contribution, which rarely occurs in practice, the grounds for shareholder expulsion include the actions as well as inactions of the shareholder against the interests of the company or their lack of support for the company's activity. Expulsion occurs after sending a warning letter to the shareholder and following their failure to remedy the grounds for expulsion within a reasonable term specified in the warning letter. If the breaches are not remedied by the shareholder within such a term, the shareholder meeting is able to expel the shareholder. The applicable majority for passing a shareholder decision for expulsion is more than three quarters of the total share capital, but the voting right of the shareholder proposed for expulsion is suspended, which means that the majority shareholder could even be expelled by the minority shareholder(s).

Shareholder expulsion can be challenged in court and is amongst the main sources of corporate litigation. However, shareholder expulsion is seen as the nuclear option for any company or enterprise because the shareholder dispute almost always leads to the simultaneous mutual expulsion of shareholders, which blocks corporate bodies and the activity of the enterprise, and its value is thus significantly decreased within a short period of time.

2.2.3 Termination of the company by the court

The last resort for the resolution of a shareholder dispute is the compulsory termination of the company by the court. This can occur on the grounds of a claim by a shareholder (or group of shareholders) with more than one fifth of the share capital motivated by good reasons for the termination, or by the prosecutor if the company has lacked a registered manager for more than 3 months or if the activity of the company violates the legal regulations applicable to it.

The scope of application of compulsory termination is significantly limited by the exit right and shareholder expulsion, because the case law of the SCC allows the compulsory termination of a company by the court only if the enterprise of the company and/or its management bodies are not functioning. Therefore, the shareholder dispute by itself is not sufficient grounds for the termination of the company by the court (Goleva, 2014, p. 302; Tadjer et al., 2011, pp. 120–121; Stefanov, 2014, pp. 411–412; Gerdjikov, 2000, pp. 621–623; Kalajdzhiev & Bobatinov, 1998, pp. 139–140; Kalajdzhiev, 2014, p. 253; Grigorov, 1994, pp. 168, 209–210; as well as SCC Decision No. 159 of 15.12.2009 under commercial case No. 389/2009; Decision No. 21 of 02.03.2010 under commercial case No. 471/2009; Decision No. 4887 of 16.05.2005 under civil case No. 786/2004; Decision No. 532 of 14.10.2008 under commercial case No. 258/2008; Decision No. 182 of 08.05.2008 under commercial case No. 801/2007; Decision of 21.03.2006 under commercial case No. 724/2005; Decision No. 30 of 10.09.2010 under commercial case No. 320/2009).

3. Key aspects of the comparative analysis

The exit right of minority shareholders in a private company has two interconnected aspects with equal practical significance: (i) the conditions for its exercise, and (ii) the terms for the calculation of cash compensation. The present article suggests that there is room for significant improvement, both in Lithuania and Bulgaria.

In Lithuania, although at the first glance the legislative amendments that enable shareholders with 5 percent or less of the votes to exit the company suggest a significant improvement in terms of protecting minority shareholder rights in private companies, a systematic overview of the legislative framework raises reasonable doubts as to whether the protection of minority shareholders is sufficient when they are oppressed by the majority.

When there is no fair return on investments from a private company on a regular basis, minority shareholders holding more than 5 percent but less than 10 percent of votes are in a very weak position in using their *ex lege* governance rights. Although minority shareholders possessing at least 10 percent of the votes (share capital) of the company are in a somewhat more powerful situation and can exercise rights that permit them to intervene in the management of the company (e.g., to request the court to initiate a special investigation into corporate affairs), they need to obey the majority decision-making. Shareholders holding one third or less of the votes are not in a position to block a number of decisions made by the general shareholders' meeting that essentially impact shareholder ownership.[7] Oppressed minority shareholders holding more than 5 percent, but less than or equal to one third of votes cannot make their voices heard in an efficient or cost-effective way.

Given the overall legal framework for minority shareholder exit in Lithuania, there is no general right to exit for a minority shareholder in a private company. Lithuanian law provides for a very narrow exit option in non-conflict situations by establishing a statutory squeeze-out and sell-out right for a shareholder of a private company in which there is a controlling party with at least 95 percent of the votes at the general shareholders' meeting, and this is applicable only to a withdrawing shareholder with voting shares. This mechanism has limited use in the most common situations, in which minority shareholders seek to withdraw from a private company when their interests are substantially harmed in the event of serious shareholder conflicts. For example, this mechanism cannot be used when: minority shareholders hold more than 5 percent of the votes but less than one third of the share capital; minority shareholders hold non-voting shares and less than one third of the share capital; or minority shareholders hold a small portion of the holding (less than one third of the share capital), but a dominant

[7] Although there are exceptional cases in which decisions have to be made unanimously by all shareholders (e.g., shareholders as holders of the governance membership rights that are exercised at their forum can opt out of a physical meeting through the articles of association and replace it with a purely virtual meeting instead if agreed unanimously as per part 4 of Article 21 of the LSC), the primary principle is a majority rule for decision-making at the general shareholders' meeting. The general shareholders' meeting has to make decisions by a qualified majority of two thirds of votes on such issues as amendments to the articles of association, increases or decreases of the share capital of the company, changes of the legal status of the company, classes of shares, the approval of profits for distribution, etc. (part 1 of Article 28 of the LSC). A higher super majority of three quarters of votes is required to withdraw the pre-emptive right to subscribe for new shares when the share capital of the company is increased by additional contributions (part 2 of Article 28 of the LSC). However, a simple majority of votes is sufficient, e.g., when appointing a general manager who is a single corporate managing organ.

controlling party has not reached the established threshold due to its narrow statutory definition. In addition, there is a minimal probability for a minority shareholder (or group of shareholders) holding one tenth but less than one third of the share capital of the private company to withdraw when corporate misconduct is confirmed under special investigative proceedings, since it is unlikely that the company will be liquidated via the court decision. The exit right of minority shareholders when they disagree with the company's decisions concerning corporate mergers, divisions and conversions has limited practical relevance, as they are specific to targeted corporate operations. Only a shareholder or group of shareholders of a private company whose par value of shares amounts to at least one third of the share capital has the right to demand from the court the forced buy out of their shares in case of a serious shareholder conflict when such a shareholder cannot properly exercise their shareholder rights due to the actions of another shareholder and it cannot be reasonably expected that such actions will terminate. Alternatively, minority shareholders holding at least one third of the share capital may demand the exclusion of such a shareholder whose actions contradict the objectives of the company if there are no grounds to reasonably expect any changes in said actions. Therefore, even though minority shareholder interest is substantially harmed in the event of serious shareholder conflicts, the investments of minority shareholders holding less than one third of the share capital can still be locked within private companies, and there may be no *ex lege* solutions to the minority shareholders' exit and the return of their investment on fair terms in case of their oppression by majority.

In this respect, the Bulgarian legislation is one step ahead because each shareholder has an unconditional and irrevocable statutory exit right from a private limited company, in addition to a special exit right in case of corporate reorganisation and a strong right to expel a defaulting shareholder in case of a shareholder conflict, which is exercised by the general shareholders' meeting. Thus, in order to protect the ownership rights of minority shareholders against oppression by the majority, the Lithuanian legislation should provide an exit right for every shareholder whose interests are substantially harmed in the event of serious shareholder conflicts in a private company, and not only to a minority shareholder (or group of shareholders) who holds at least one third of the share capital of the company.

The roles are reversed when it comes to assessing the legal regime of the exit payment for the withdrawing minority shareholder. The Lithuanian legislation requires the payment of fair cash compensation, as the value of the compensation is determined by an independent expert appointed by the court both in the case of forced buy out ruled by the court in case of a serious shareholder conflict, as well as when the withdrawing shareholder challenges the exit compensation proposed to them in the statutory squeeze-out or sell-out scenario, with the dominant shareholder holding 95 percent of the votes.

In comparison, Bulgarian law ties the calculation of the cash consideration to the balance sheet value of the company's assets and liabilities, which may even be a negative figure at the end of the relatively long 3-month exit notice period as a result of bad faith actions by the majority shareholder and the management, controlled by them. Although there are contra-arguments against giving generous statutory exit rights to minority shareholders from private companies (Fleischer, 2014, pp. 66–68, 82), in the author's view, the protection of the investments of the withdrawing minority shareholder has to be strengthened under Bulgarian law. The latter should provide that the monetary payment owed to a minority shareholder in exchange for their shares shall be equal to the fair value of such shares to be determined by an independent valuator (auditor) selected with the consent of the withdrawing shareholder or appointed by the court. Simultaneously, if the withdrawal from the company may adversely affect corporate creditors when the share capital of the company is reduced and funds are distributed to the withdrawing minority shareholder, the protection of creditors must also be considered.

The foregoing demonstrates that in both Lithuania and Bulgaria, lawmakers take into account the specific features of private companies to tackle problems regarding the return of investments due to illiquidity of shares, and the legal framework provides an exit right for a minority shareholder. The exit right of the minority shareholder is not, however, unlimited under statutory law. In both countries, the legal framework establishes certain measures to limit the statutory exit right, although conceptually different techniques are employed.

Conclusions

In both Lithuania and Bulgaria, the legal framework establishes certain measures to limit the exit of a minority shareholder from a private company. However, conceptually different techniques are employed in relation to the conditions for the exercise of this right and the terms for the calculation of the exit payment, with equal practical significance. The Lithuanian legal framework provides a narrowly drafted exit right, and therefore directly limits the exit of a minority shareholder from a private company. The Bulgarian legislation has a conceptually different approach to that employed in Lithuania, and establishes the general exit right against limited cash compensation with the result that it prevents the withdrawal of the minority shareholder in an indirect way.

Furthermore, there is room for significant improvement both in Lithuanian and Bulgarian law:

- The Lithuanian legal framework provides for the protection of shareholders' interests by involving an independent expert to estimate cash compensation for the withdrawing shareholder, although it does not establish a general exit right as such. In order to protect the ownership rights of minority shareholders against oppression by the majority shareholder, the Lithuanian legislation should provide an exit right for every shareholder whose interests are substantially harmed in the event of serious shareholder conflicts in a private company, and not only to minority shareholders (or group of shareholders) who hold at least one third of the share capital of the company.
- The Bulgarian legislation establishes an unconditional and irrevocable general exit right for each shareholder from a private company. However, this is not without its own drawbacks, since the withdrawing shareholder is entitled only to cash compensation which is calculated from the net book value of the company rather than as the fair value of the shares. In order to protect the investments of the withdrawing minority shareholder, Bulgarian law should provide that cash compensation is based on the fair value of the shares of the withdrawing shareholder to be determined by an independent expert selected with the consent of the withdrawing shareholder or appointed by the court, with adequate safeguards in place for corporate creditors.

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