

PROTECTION OF MINORITY SHAREHOLDERS' RIGHTS IN GROUP OF COMPANIES: LITHUANIA AND EU COMPANY LAW PERSPECTIVES

Edvinas Bakanauskas¹

Abstract. Just as in the entire European Union, in Lithuania company groups are an integral part of the modern business world. It is the companies that are part of company groups are leading both in Lithuania and in the European Union in terms of a number of economic indicators: revenues, number of employees, amounts of taxes paid and other contributions. Despite being an integral part of modern business, regulation of company groups has not yet attracted sufficient attention both at the European Union or the national level. Such absence of a consistent regulation may lead to or cause, *inter alia*, infringements of rights of minority shareholders. Accordingly, the purpose of the present article is to assess whether the effective Lithuanian or European Union regulation is sufficient to protect minority shareholders' rights in group of companies.

Keywords: protection of minority shareholders' rights, group of companies.

INTRODUCTION

In Lithuania, as in other European Union (hereinafter – EU) countries, groups of companies are an integral part of the modern economy. It is the companies belonging to the groups of companies that are leading ones in Lithuania in terms of various economic indicators: revenue², number of employees³, amount of taxes and other contributions paid⁴. Meanwhile in Europe, the largest companies also belong to groups of companies⁵. It may then seem, that much attention should be paid at both EU and national level to the proper regulation of groups of companies, including the protection of the rights of minority shareholders in groups of companies. Nevertheless, despite the fact that groups of companies are an integral part of the modern economy, to date there is no special regulation of groups

1 PhD candidate in Law, Vilnius University of Faculty of Law Department of Private Law, with a dissertation on *Protection of Minority Shareholders' Rights in Group of Companies*. E-mail edvinas.bakanauskas@tf.vu.lt, ORCID i-D: 0000-0002-5669-0974.

2 For example, in 2018, in Lithuania, AB ORLEN Lietuva, which belongs to the PKN ORLEN SA group of companies, was in the first place in terms of revenue and UAB Maxima LT was in the second place and UAB Girtėka logistics - in the third place (Verslo žinios, 2019).

3 For example, in 2018, UAB Maxima LT, AB Lietuvos geležinkeliai, UAB Palink were the leaders in Lithuania in terms of the number of employees (Verslo žinios, 2018).

4 As can be seen from the STI report for 2017, the major share of taxes and other contributions are paid to the state by companies belonging to groups of companies, for example, AB ORLEN Lietuva, which belongs to the PKN ORLEN SA group of companies, is in the first place. It should be noted that the above-mentioned STI report sums up all the taxes and contributions paid by undertakings, including indirect taxes (VAT, excise duties) and personal income tax on benefits classified as personal class A income, which must be calculated, deducted and paid to the budget by those paying out that income (State Tax Inspectorate, 2018).

5 For example, in the first place Volkswagen company group (Business Chief, 2018).

of companies in Lithuanian or EU company law (EMCA, 2017, p. 371)⁶. Naturally, one may wonder why is there no such regulation? Have there been any attempts to regulate groups of companies? Is such regulation needed at both the EU and national level? In the absence of regulation of groups of companies, are the rights of minority shareholders in a group of companies sufficiently protected? Finally, what are the prospects for regulating groups of companies and, more specifically, for protecting the rights of minority shareholders in groups of companies (both at EU and at national level)? Accordingly, the purpose of this article is to assess whether the current Lithuanian or EU legal regulation is sufficient to protect the rights of minority shareholders in a group of companies. In order to achieve the above objective, the first part of the article focuses on the analysis of the overall situation with regard to the regulation of groups of companies, including the protection of the rights of minority shareholders in groups of companies at EU level, in order to see if there is any need of change to the regulation of groups of companies. The second part of the article analyses whether the lack of regulation of groups of companies exists at EU level only or at the national level of the EU Member States as well. The third part of the article provides answers to the question of whether the protection of the rights of minority shareholders in groups of companies should be regulated at EU level. The fourth part of the article examine the path to be taken by the protection of the rights of minority shareholders in groups of companies in Lithuania and present the path proposed by the author of the article, i.e. transposing the provisions of the European Model Company Act (hereinafter – EMCA), intended to protect the rights of minority shareholders in a group of companies, into the Lithuanian company law. It should also be noted that due to the limited scope of this article, this article is not intended to provide a detailed analysis of the above-mentioned EMCA provisions and rather seeks to clarify the shortcomings of the current Lithuanian legal framework related to the protection of minority shareholders rights in groups of companies and specify, why the transposing into national law of provisions of EMCA should be considered as a possible tool to remedy these shortcomings.

1. GROUP LAW IN THE EUROPEAN UNION

The subject of company groups regulation has been on the agenda of the European Commission for more than 40 years (ECLC, 2016, p. 2). Unfortunately, currently there is no specific legislation regulating groups of companies at EU level. It is true that there was an attempt to regulate groups of companies at EU level when a Draft Ninth Company Law (Draft Ninth Council Directive..., 1984) was drawn up for that purpose (regulate group of companies). One of the goals of the drafters of Ninth Company Law Directive was to protect minority shareholders in groups of companies: “*The*

⁶ It should be noted that at both national and EU levels, the operation of groups of companies is not regulated in company law in particular, while operation of groups of companies is regulated in certain other areas of law. For example, in the area of financial reporting, the beginning of regulation of groups of companies at EU level dates back to 1983, from the adoption of the Seventh Council Directive. Accordingly, the Lithuanian national law even has a special law dedicated for groups of companies. For more information, see: Law of the Republic of Lithuania on Consolidated Financial Reporting by Groups of Undertakings (Law of the Republic of Lithuania on Consolidated Financial Reporting by Groups of Undertakings, 2015). Accordingly, when this article states that there is no specific regulation of groups of companies at both EU and national level, this implies a lack of regulation in company law in particular.

shareholders, creditors and employees of public limited liability companies dependent on a group must, moreover, be suitably protected". In order to protect the interests of minority shareholders in a group of companies, the drafters of the Ninth Company Law Directive enshrined in the draft Ninth Company Law Directive the possibility of a subsidiary's minority shareholders to leave the subsidiary, i.e. by selling out their shares of the subsidiary when the parent company has acquired, directly or indirectly, 90% or more of the capital of the subsidiary. In the event that the shareholders of the subsidiary decide not to sell their shares, the draft directive provided, that: *"the guarantees granted to them must be independent of the financial results of their company"*. Articles 7 to 12 of the Ninth Company Law Directive also provided for the protection of the rights of minority shareholders in a subsidiary. For example, Articles 7 and 8 of the draft Ninth Company Law Directive refer to the right of minority shareholders of a subsidiary to appoint special auditors for the dependence report. The exercise of that right was intended to ensure that the minority shareholders of the subsidiary would be able to access the information on the actual structure of the group of companies: *"The special report shall give an overall picture which makes it possible to assess the extent and intensity of the relationship which existed, directly or indirectly, between the subsidiary company and the parent undertaking during the preceding financial year"*. Thus, part of the provisions of the draft Ninth Company Law Directive was intended to protect the rights of minority shareholders in a group of companies. Meanwhile, other provisions of the draft Ninth Company Law Directive were intended, for instance, to define the possible types of groups of companies; second, the rules on the disclosure of shareholdings, third, detailed rules applicable when the parent undertaking had entered into a "control contract" with a group, fourth, rules when it had made a "unilateral declaration instituting a vertical group" (European Commission, 2003, p. 18). Thus, the drafters of the Ninth Company Law Directive provided a comprehensive framework on group law. However, the consultation on the draft of Ninth Directive showed that there was very little support for such a comprehensive framework on group law: *"such an approach was largely unfamiliar to most Member States, and the business sector viewed it as too cumbersome and too inflexible. As a consequence, the decision was made not to issue an official proposal"* (European Commission, 2003, p. 19).

Nevertheless, it should be noted that the mere failure to adopt the Ninth Directive at EU level does not mean that regulation of groups of companies has become redundant: its need remained and merely the idea, that it should be comprehensive, was abandoned. Accordingly, in September 2001, the European Commission set up a Group of High Level Company Law Experts, which drew up a report where it identified and highlighted the main problems with the lack of regulation of groups of companies at EU level. The first one is transparency of the group relations (the shareholders of the parent may need additional information on the risks arising from the subsidiary for the parent since these risks may affect the parent (reputational risk; temptation to rescue the subsidiary with corresponding risks to the parent). The second one is the lack of a sell-out right of the group's minority shareholders. The third is the tensions between the interests of the group and its parts. The fact that in reality the interests of the subsidiary are often sacrificed to the interest of the parent or group as a whole, amounts to a wide-spread disregard of corporate law which has elements of hypocrisy and may

weaken the authority and credibility of corporate law more generally (Group of High Level Company Law Experts, 2001, p. 27 - 37). Accordingly, in 2003, the European Commission, based on the insights provided by the Group of High Level Company Law Experts, published a Report on “Modernizing Company Law and Enhancing Corporate Governance in the European Union - A Plan to Move Forward”, in which the Commission stated that there is no need to revive the draft Ninth Directive on group relations (European Commission, 2003, p. 18), instead the EU should consider provisions within the existing range of corporate law to address particular problems, such as the management of a group (rule allowing group policy, squeeze-out), transparency of groups, protection of creditors (wrongful trading) and minority shareholders’ protection (High Level Group of Company Law Experts, 2002 *In Reflection group on the Future of Company Law*, 2011, 59). It should be noted that some of the problems identified in the European Commission’s report “Modernizing Company Law and Enhancing Corporate Governance in the European Union – A Plan to Move Forward” concerning the regulation of group companies, have been resolved, such as transparency of group relations was resolved in part by the adoption of the Transparency Directive (Transparency Directive 2013/50/EU, 2013), the Takeover Directive (Takeover Directive 2004/25/EC... 2004). On the other hand, the insights into the protection of minority shareholders in groups of companies set out in the European Commission’s report “Modernizing Company Law and Enhancing Corporate Governance in the European Union – A Plan to Move Forward” have not been implemented.

In 2010, the European Commission set up another working group, namely the Reflection Group on the future of EU company law, to assess the situation with EU company law and to identify what changes are needed in EU company law. Accordingly, the Reflection Group on the future of the EU company report was prepared in 2011, part 4 of which contains proposals related to the regulation of groups of companies, such as the need to recognize the interest of groups of companies, etc. However, no specific proposals regarding protection of the interests of the minority shareholders in group companies were mentioned. On the other hand, on the basis of the said report, the European Commission conducted a public survey that revealed that the majority of the EU businesses surveyed are in favour of regulating the activity of the groups of companies at EU level, in particular by ensuring improved intra-group communication and recognition of interest of a group of companies; strengthening the protection of the interests of minority shareholders was also met with support (Reflection group on the Future of Company Law, 2011, 59).

Finally, in 2016, European Company Law Experts drafted a proposal for reforming group law in the European Union, where it was stated that as the law stands and is being developed in most jurisdictions, there is no need to develop a comprehensive European regime for the protection of the creditors and minority shareholders of the group company interests. However some doubts as to whether the applicable legal regimes in the different jurisdictions offers comparable levels of protection: one could argue that harmonisation should intervene in order to offer if not the same, at least a minimum level of protection all over the Union, thereby contributing to the level playing field in terms of cross border establishment and contributing to investment in other Member states (ECLE, 2016, p. 35).

Thus, summing up all the above, two things can be said: first, an analysis of the various initiatives and proposals for the regulation of groups of companies at EU level shows that no comprehensive law on groups of companies is planned at EU level. On the other hand, it is planned to regulate certain aspects of the activities of groups of companies in the future, such as the recognition of the interest of a group of companies. Secondly, it is the EU Member States that are free to choose how they want to regulate the aspects of company group management, creditors and minority shareholder protection. Naturally, the question arises as to whether the regulation of groups of companies, including the protection granted to minority shareholders, should in fact be left to the EU Member States, while having only a small share of the operation of groups of companies regulated at EU level. In order to answer the previous question, it is important to find out how the operation of groups of companies, including protection of the rights of minority shareholders in groups of companies, are regulated in the EU Member States.

2. COMPANY GROUPS REGULATION APPROACHES AT THE MEMBER STATES LEVEL

It has been mentioned that there is no common regulation of groups of companies at EU level. Meanwhile, the situation is slightly different at national level of Member States. Based on the way in which the EU Member States regulate operation of groups of companies, four approaches can be distinguished: comprehensive regulation, partial regulation, case law recognition, and lack of treatment.

The first approach aims at regulating the operation of groups of companies in detail. The emergence of such an approach is linked to Germany, which was the first in Europe to codify the regulation of groups of companies. This approach was subsequently adopted by some other countries, such as Brazil and Portugal. It should be noted that the Czech Republic also had a German-type legal system for quite a while, but in 2012 a new Law on Commercial Companies and Cooperatives was passed in 2012, which allowed for a more flexible regulation of groups of companies (EMCA, 2017, p. 371). Following the second approach, only certain matters related to groups of companies are regulated, but there is no comprehensive regulation of groups of companies. This is the regulation being applied in Italy, where the liability relationships among the members of a group of companies were regulated by the adoption of the reform of the Civil Code. As Kousedgi rightly points out, the purpose of the said reform was to regulate only certain aspects of company group law, rather than to codify the company group law in general, as it was done in Germany, for example (Kousedgi, 2007, p. 225). The third approach is linked to the French case law, according to which the management bodies of a subsidiary may take decisions in the interests of the group as a whole and not merely in the interests of the subsidiary. This approach is followed in other European countries: Belgium, Luxembourg, the Scandinavian countries and the Netherlands (EMCA, 2017, p. 371). The fourth approach includes countries where the operation of groups of companies is not regulated or are regulated only as required by the EU directives. Lithuania is one of the EU countries having adopted this approach (EMCA, 2017, p. 371).

Thus, the answer to the question of whether, in fact, the regulation of groups of companies, including the protection of minority shareholders, should in principle be left to EU Member States and

only a small part of group activities should be regulated at EU level, is positive, meaning be that it is the EU Member States which should be free to regulate operation of groups of companies, including the matters of protection of minority shareholders, since, firstly, as history, i.e. the attempt to adopt the Ninth Directive, has shown, the EU Member States maintain overly divergent positions regarding group company regulation, and secondly, the EU Member States have regulated the operation of groups of companies based on the specificities of their country's economy, traditions, differences in groups of companies (e.g. in some countries there are many more listed companies that belong to groups of companies, so this type of group of companies needs more attention), therefore unreasonable (artificial) regulation of groups of companies, including the protection of minority shareholders, at EU level would not facilitate the operation of groups of companies but, on the contrary, would only complicate it. In addition, as mentioned above, the various initiatives and proposals of the working groups also advocate only minimal regulation of the activities of groups of companies at EU level. Therefore, obviously, two questions arise: firstly, if Member States should be allowed to regulate operation of groups of companies, should the protection of the rights of minority shareholders in groups of companies be regulated at EU level? Secondly, as mentioned above, some EU countries, including Lithuania, have not regulated groups of companies, including the protection of the rights of minority shareholders in groups of companies, it is obvious that we need to answer the question of how the rights of minority shareholders of groups of companies in Lithuania should be protected: comprehensive regulation, partial regulation, case law recognition?

3. SHOULD THE PROTECTION OF THE RIGHTS OF MINORITY SHAREHOLDERS IN GROUPS OF COMPANIES BE REGULATED AT EU LEVEL?

It was stated in the previous part of the article that the regulation of groups of companies should be left to the discretion of the EU Member States and that certain matters of operation of groups of companies should be regulated at EU level, so the question naturally arose as to whether the protection of minority shareholders in groups of companies should be regulated at EU level. In the author's opinion, the aspects of protection of minority shareholders has to be regulated at EU level in cases where the companies forming the group of companies are from different countries, e.g. the parent company is registered and operates in Lithuania and controls two subsidiaries, one of which is registered and operating in Lithuania and the other – in Germany. In Lithuania, operation of groups of companies is not regulated, there are no special legal provisions dealing with protection the rights of minority shareholders in a group of companies, whereas in Germany there are provisions aimed at protection of the rights of minority shareholders in a group of companies, so it is clear that the rights of the minority shareholders in the subsidiary operating in Germany will be secured better than of the minority shareholders in the Lithuanian subsidiary.

Furthermore, in the absence of regulation of groups of companies at EU level, a parent company cannot be subject to civil liability for unlawful acts of a subsidiary established in another Member State (e.g. if a foreign subsidiary would infringe the rights of minority shareholders of its subsidiary

by unlawful acts). It was stated in the case *Impacto Azul Lda* by the Court of Justice of the European Union (CJEU, 2013), that Member States may adopt national regulations providing for the civil liability of a parent company for unlawful acts of a subsidiary established in another Member State and such a provision does not constitute a restriction of the freedom of establishment within the meaning of Article 49 TFEU. Thus, a parent company could incur civil liability for the unlawful acts of a foreign subsidiary only if it would be provided for in the national law of the parent company. The current Lithuanian legal regulation does not provide for the liability of a parent company for unlawful acts of a foreign subsidiary, therefore civil liability would not apply to a parent company registered and operating in Lithuania, even if the foreign subsidiary would have violated the interests of its minority shareholders. The question naturally arises, whether Lithuania and other EU Member States, whose laws do not provide for the civil liability of a parent company for the unlawful acts of a foreign subsidiary, would choose to include such provisions in their national laws. It is reasonable to assume that this is not the case, as it is clear that the introduction of such provisions would encourage parent companies not to establish themselves in that particular Member State choosing instead other Member States whose laws provide for more attractive regulation of groups of companies. Thus, it can be seen that ensuring the protection of the interests of minority shareholders in groups of companies made up of companies of different EU countries could prove to be rather challenging in practice, because the protection of the rights of minority shareholders in group companies would depend on the countries of the companies constituting the group. Consequently, in the view of the article's author, in order to ensure equal protection of minority shareholders' rights it is at EU level that certain standards for the protection of the rights of minority shareholders in a group of companies should be set when groups of companies are made up of companies from different EU Member States.

4. PROTECTION OF MINORITY SHAREHOLDERS' RIGHTS IN GROUP OF COMPANIES: WHICH APPROACH WILL LITHUANIA CHOOSE?

As mentioned above, a number of the EU Member States, including Lithuania, have not regulated the operation of groups of companies at all, including the protection of minority shareholders of groups of companies, so it is obvious that the question should be answered as to which path should be taken by the Lithuanian regulation of groups of companies? German (comprehensive regulation), Italian (partial regulation), French (case law recognition), or maybe some other path?

In the opinion of the author of the article, aspects of operation of groups of companies in Lithuania, including the protection of minority shareholders of companies, should be regulated in accordance with the provisions of the European Model Company Act⁷ (hereinafter - the EMCA). First of all, Chapter 15 of the EMCA, unlike the ICLEG and ECLE initiatives mentioned above, not only analyses the key

⁷ The EMCA is designed as a free-standing general company statute that can be enacted by Member States either substantially in its entirety or by the adoption of selected provisions. This approach differs from previous European company law initiatives, as it is a general settlement of the debate on which of the two regulatory approaches is superior – regulatory competition or harmonization. The EMCA offers the Member States a harmonized company law, but leaves it to each Member State to decide whether it will offer its businesses the advantages given by harmonization (EMCA, 2017, p. 1).

issues of company regulation, but also provides a specific model for the law on companies, including provisions concerning groups of companies. Second, the provisions of Chapter 15 of the EMCA were developed following an analysis of the regulation of groups of companies in the EU Member States and an assessment of the positives and negatives of the regulation of groups of companies in the EU Member States. In other words, when drafting the provisions of Chapter 15 of the EMCA, the drafters of the EMCA have assessed the existing models of regulation of groups of companies in the EU countries, such as Germany, France, Italy, etc., and the EMCA presented what the EMCA's authors considered to be the most appropriate regulation of groups of companies. Third, the novelty of the EMCA, the EMCA being drafted in 2017, fourth, the provisions of Chapter 15 of the EMCA aim to ensure a more flexible governance of the group of companies while protecting the interests of minority shareholders and creditors, sixth, the provisions of the EMCA apply to both open-end and closed-end companies.

4.1. Protection of shareholders of the parent company

First, certain significant operations of the parent company are transferred to a subsidiary whose shareholders are not the minority shareholders of the parent company. In this case, the position of these shareholders is weakened as the subsidiary may be able to take decisions that would not normally have been accepted by the parent company's minority shareholders. Unfortunately, the EMCA does not provide a solution to this problem. However, in the opinion of the author, this problem must also be solved, therefore, if the Lithuanian legislator decides to regulate the issues of protection of minority shareholders of groups of companies on the example of the EMCA, a solution for the above problem should be found as well.

Second, the structure of the group of companies makes it possible to restrict the availability of information to the minority shareholders of the parent company. For example, according to the current regulation of the Law on Companies of the Republic of Lithuania, both the right to ask questions to the company in advance and the right to receive information can be exercised only by the person who is a shareholder of that company. This means that a shareholder of the parent company may not be provided with certain information about the operations of the subsidiary, indicating that the subsidiary is a separate, independent company and the shareholder requesting the information is not a shareholder of the subsidiary. Meanwhile, Section 12 of Chapter 15 of the EMCA provides that relations between a group of undertakings, including relations with undertakings which previously belonged to the group, are subject to the right of access to information and the right to request a special investigation. Given that the EMCA confers the same rights on shareholders of both the parent company and the subsidiary, the right referred to in Section 12 of Chapter 15 of the EMCA will be discussed in the analysis of the provisions of Section 14 of Chapter 15 of the EMCA.

4.2. Protection of shareholders of the subsidiary

Chapter 15 of the EMCA contains 3 articles relating to the protection of minority shareholders in a subsidiary, i.e. EMCA Section 15.13 *“Corporate Opportunity within a Group”*, EMCA Section 15.14 *“Right of Shareholders to Request a Special Investigation”*, EMCA Section 15.15 *“Right to Sell-out”*.

Traditionally, the corporate opportunity doctrine has been designed to protect the interests of a company from cases where members of a management body or a member take advantage of a particular business opportunity that the company itself could have taken advantage of (Jackson, 1988, p. 394). Meanwhile, Section 13 of Chapter 15 of the EMCA discusses the specific application of the opportunity doctrine. The provisions of this section are intended for groups of companies in which the subsidiary is not wholly dependent on the parent company, the subsidiary has minority shareholders. In such a case, the parent company is prohibited from taking advantage of the business opportunity of the subsidiary in question, either directly or through other subsidiaries, with the exception of the cases where the consent of the independent directors or, in the absence thereof, the approval of the non-controlling shareholders of the subsidiary concerned has been obtained. For example, a subsidiary has the option of entering into a profitable agreement, but the parent company decides that another subsidiary will enter into the agreement instead. It is clear that the loss of the possibility of concluding a profitable agreement will primarily affect the interests of the subsidiary, but also (indirectly) the interests of the minority shareholders of the subsidiary, as the non-conclusion of the agreement would be detrimental to the subsidiary’s revenue. Thus, the application of the provision in Section 13 of Chapter 15 of the EMCA should protect the interests of both the subsidiary itself and its minority shareholders.

It has been mentioned that Section 12 of Chapter 15 of the EMCA establishes the right of shareholders of a parent company to request an investigation of the company’s activities, while Section 14 of Chapter 15 of the EMCA establishes the right of shareholders of a subsidiary to request an investigation of a company’s activities. Thus, both provisions of the EMCA establish the same right, but in one case this right is reserved for the shareholders of the parent company and in another case - for the shareholders of the subsidiary. It should be noted that the right to request an investigation of a company’s operations under Section 12 of Chapter 15 of the EMCA is detailed in Section 32 of Chapter 11 of the EMCA, which provides that a shareholder or shareholders may propose to the general meeting a special auditor to assess particular operation of the company and draft a report on its consequences for the company and its shareholders and its compliance with legislation and good business practice. The key advantage of the right to request an operational investigation under Sections 12 and 14 of Chapter 15 of the EMCA is that, unlike a normal operational investigation, the operational investigation is group-wide, meaning that the shareholders of the subsidiary (or the shareholders of the parent company, respectively), initiating the investigation, are able to access the financial situation not only of the subsidiary of which they are shareholders, but of the group of companies as a whole.

Finally, Article 15 of Chapter 15 of the EMCA provides for the right of subsidiary's minority shareholders to sell-out. The right to sell-out is enshrined in Section 15 of Chapter 15 of the EMCA, which provides for two cases in which minority shareholders in a subsidiary may exercise the right in question. First, Section 15 (1) of Chapter 15 of the EMCA states that when a parent company owns directly or indirectly more than 90 % of the shares and of the voting rights of a subsidiary, any other shareholder(s) may request that their shares be purchased by the parent company. Second, Section 15 (2) of Chapter 15 of the EMCA states that the shareholders of a subsidiary can request in court that the parent company or another person designated by it purchase their shares. Thus, the provisions of Section 15 of Chapter 15 of the EMCA allow minority shareholders in a parent company to leave the company.

Summarizing all the above, it can be stated that the provisions, proposed by the EMCA, on safeguarding the interests of minority shareholders of both the parent company and a subsidiary have advantages and at the same time enable identification of issues persistent in the Lithuanian company law, which concern the protection of minority shareholders in groups of companies. Firstly, the Lithuanian company law does not provide for regulation aimed at protecting a business opportunity of a subsidiary, and secondly, under the current regulation, shareholders of both the parent company and a subsidiary may exercise their rights only in respect to a specific company (e.g. exercise the right to information, request operational investigation of a legal person only of the company of which they are shareholders), and minority shareholders have rather limited options to leave a company of the group of companies in question. For example, according to the Lithuanian regulations currently in place, the right to sell-out can be exercised only in such public limited companies' securities are admitted to trading on a regulated market. This means that neither public limited companies whose shares are not traded on a regulated market nor private limited companies are covered by the said institute.

CONCLUSIONS

There is no specific regulation on groups of companies under EU company law. Regulation of groups of companies, including the protection of minority shareholders' rights, is left to EU Member states. The author agrees there is no need to develop a comprehensive EU law on groups of companies. However, certain issues, including the protection of the minority shareholders' rights in multinational groups of companies, must be regulated at EU level.

The lack of regulation of company groups in Lithuania leads to the fact that the rights of the minority shareholders of the company group are not fully ensured. Minority shareholders are forced to exercise their rights under legal norms, which are adapted to the classical concept of a legal entity, but only partly comply with the specifics of company groups. The author suggests evaluating the possibility of implementing certain provisions of EMCA into the national legislation.

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