Exit Right of Shareholders

by

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This paper explores the legal framework governing shareholder exit rights, with particular emphasis on European Union law. It investigates how company law in England, Germany, and Hungary – as well as relevant EU directives – seeks to reconcile the principle of capital "lock-in" with the need to grant shareholders a right to exit in exceptional circumstances.

Among the rules on cross-border mergers of limited liability companies, Directive (EU) 2017/1132[1] (the 'Company Law Directive') introduced a notable exception to the lock-in principle.[2] It provides that shareholders of merging companies who voted against the approval of the common draft terms of the cross-border merger must be offered the option to exit by receiving adequate cash compensation for their shares.[3] Such rights, allowing dissenting shareholders to receive cash consideration, are rare in company law. Typically, modern company law assumes that shareholders may only exit by transferring their shares to a willing buyer; a direct return of capital from the company is not permitted during its lifetime. This restriction stems from the fundamental rule that shareholders' capital contributions remain locked in the company and are not returnable outside formal dissolution.

This article identifies circumstances in which company law permits shareholder exit and the legal mechanisms used to facilitate it. These include takeover situations under Directive 2004/25/EC on takeover bids (the 'Takeover Directive'), which entitle shareholders to sell their shares at a fair price in response to a mandatory bid. Some national laws extend similar rights to minority shareholders in private companies where a shareholder acquires a qualified majority. Further, the Company Law Directive recognises an exit right in cross-border conversions, cross-border mergers and cross-border divisions, while certain domestic legal systems also provide exit options in the context of domestic conversions.

The article argues that although the underlying purpose of these rules is to protect shareholders by facilitating the transfer of their stake, the detailed legal provisions vary significantly across jurisdictions and contexts. By analysing English, German, and Hungarian law, it contends that Hungary's approach offers valuable insights for other jurisdictions seeking to refine their regulation of exit rights – both within the scope of the Company Law Directive and beyond. While Hungarian law serves as the primary case study, the article's broader contribution lies in identifying doctrinal inconsistencies, interpretive ambiguities, and practical challenges that remain unresolved under EU law. Ultimately, the paper advocates for a more coherent and principled legal framework that aligns exit rights more closely with private law doctrines and enhances the protection of minority shareholders across the internal market.

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1 Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law.

2 See Title II of the Company Law Directive.

3 Article 126a of the Company Law Directive.

Table of Contents ECFR 2025, 660–696

1. Introduction 661
2. Exit right of shareholders in general 666
2.1. Exit right under English law 666
2.2. Lack of a statutory exit right under German law 668
2.3. Do shareholders have an exit right under Hungarian law? 670
3. Exit right under the Takeover Directive 672
3.1. Introductory thoughts 672
3.2. Mandatory takeover bid in the Takeover Directive 672
3.3. The Companies Act 2006 and the City Code in England 673
3.4. Conclusion of the contract under the German Takeover Act 674
3.5. Offer and acceptance in the Hungarian Capital Market Act 675
4. Exit right in the case of takeover of private companies 676
4.1. Introduction 676
4.2. Sell-out right or obligation to conclude a contract? 677
4.3. The content of the contract to be concluded 679
4.4. Differences between private and public takeovers 680
4.5. Proposals for an effective protection of minority shareholders in the case of private takeovers 681
5. Exit right of shareholders in the case of domestic and cross-border conversions 684
5.1. Introduction 684
5.2. Exit right under English law 685
5.3. Exit under the German Transformation Act 685
5.4. Exit under the rules of the Hungarian Civil Code 686
5.5. Cross-border conversions, mergers and divisions of limited liability companies 688
6. Exit right in the case of corporate groups 692
7. Summary 694

1. Introduction

A typical criterion for distinguishing partnerships and companies is the availability of an exit right.[4] In the case of partnerships, such a right is typically recognised. The UK Limited Liability Partnerships Act 2000 provides that a

4 This article focuses on partnerships with legal personality. Consequently, the analysis does not extend, e.g., to UK general partnerships, governed by the Partnership Act 1890 that (with the exception of Scotland) do not have legal personality (see Section 4 (1) and (2) of the Partnership Act 1890, c. 39 (Regnal. 53_and_54_Vict), available at: https://www.legislation.gov.uk/ukpga/Vict/53-54/39/contents (last accessed: 25 September 2025)), or the partnership contract under Hungarian law regulated by Section 6:498 of Act V of 2013 on the Hungarian Civil Code (the 'Civil Code') as a contract between the members of the partnership.

person may cease to be a member of a limited liability partnership by giving reasonable notice to the other members.[5] A similar rule exists in the case of Hungarian partnerships,[6] where members of a partnership can terminate their membership with three months' notice.[7] German law also recognises this right both for general and limited partnerships:[8] if the partnership was formed for an indefinite period, a partner may withdraw by giving six months' notice to the end of the financial year. If the partnership was created for a fixed term, early termination is permitted only for good cause.[9]

Upon termination, members have a claim against the partnership's assets. Although the UK Limited Liability Partnership Act 2000 does not regulate this directly, Morse and Braitwaite state that a departing member is entitled to any unpaid profits and a repayment of capital. While case law is lacking, it is likely that the departing member is not entitled to capital profits.[10] The Hungarian Civil Code requires the company to settle accounts with the departing member within three months.[11] The value of the partnership's assets must be determined at the time of termination, and the former member is entitled to a share proportional to their capital contribution, payable in cash.[12] These default rules can be modified by agreement, but excluding the obligation to settle accounts is null and void.[13] Under the German Commercial Code, the departing party is similarly entitled to receive the value of their share.[14]

5 Section 4 (3) of the Limited Liability Partnerships Act 2000, c. 12. Available at: https://www.legislation.gov.uk/ukpga/2000/12/contents (last accessed: 25 September 2025).

6 In Hungarian: *közkereseti társaság* (Sections 3:138-3:153 of the Civil Code) and *betéti társaság* (Sections 3:154-3:158 of the Hungarian Civil Code). (The major difference between the two types of partnerships is that all members of a *közkereseti társaság* have unlimited liability (Section 3:138 of the Hungarian Civil Code), whereas at least one member of a *betéti társaság* is not liable for the obligations of the partnership (Section 3:154 of the Hungarian Civil Code).

7 The 3-month rule is a default rule from which the parties may deviate, but if the partnership was established for an unlimited term, the right to terminate membership cannot be excluded or limited [Section 3:147 (1) of the Hungarian Civil Code].

8 Both the general partnerships (*'offene Handelsgesellschaft'*) and the limited partnerships (*'Kommanditgesellschaft'*) are regulated by the German Commercial Code, see Sections 130 (1) 2 and 132 that are also applicable to limited partnerships based on Section 161 (2) of the German Commercial Code (*Handelsgesetzbuch*, HGB, revised version published in the *Bundesgesetzblatt* (BGBl.) III at 4100–1, as last amended by Article 1 of the Act of 28 February 2025 (BGBl. 2025 I Nr. 69).

9 Sections 132 (1) and (2) of the German Commercial Code.

10 *Geoffrey Morse/Thomas Braithwaite,* Partnership and the Law, 2020, p. 414–416, para 16.10—16.12.

11 Section 3:150 (1) of the Hungarian Civil Code.

12 Section 3:150 (2) of the Hungarian Civil Code.

13 Section 3:150 (3) of the Hungarian Civil Code.

14 Section 135 (1) of the German Commercial Code.

In contrast, the rules for companies are different. Company law generally does not permit shareholders to unilaterally exit. As Paul Davies notes: "the starting point is that company law 'locks in' the contribution the investor makes to the company in exchange for the shares. [...] Only in liquidation will the then value of the shares be returned to the shareholders as of right, assuming there is a surplus after the creditors have been paid off. Thus, one might say that once the investment is made, it is 'locked into' the company in the sense that it cannot be unilaterally withdrawn from the company by the investors whilst the company is a going concern."[15] The lack of an exit right is offset by the transferability of the shares: "The investor cannot get the value of the share back from the company, but she can obtain its current value by transferring it to another investor, who will stand in the shoes of the prior holder as against the company."[16]

Hungarian law follows the same logic. Shareholders' contributions become part of the company's share capital,[17] and allowing shareholders to exit and reclaim these contributions could endanger the company's financial stability. The Hungarian Civil Code permits payments to shareholders from the share capital only in cases specified by law.[18] The restriction is balanced by ensuring the transferability of shares.[19] A similar approach is seen in UK company law, which places mandatory limits on distributions – typically dividends.[20]

15 *Paul Davies,* Introduction to company law (Oxford University Press 2020), 3rd ed., 2020, p.15–16.

16 *Paul Davies,* Introduction to company law), 3rd ed., 2020, p. 16. Similarly, *Reinier Kraakman et al.,* The Anatomy of Corporate Law – A comparative and Functional Approach 3rd ed., 2017, p. 10.

17 Sections 3:159 and 3:210 of the Hungarian Civil Code.

18 The Hungarian Civil Code provides that the company may make payments to its shareholders from its retained earnings supplemented by the after-tax profit of the previous financial year [Sections 3:88 (2), 3:184 (1), and 3:261 (1) of the Hungarian Civil Code].

19 In this respect, the rules applicable to limited liability companies and share companies differ. In the case of limited liability companies, the Hungarian Civil Code itself restricts the free transferability of shares by means of a default rule. If the transfer is made against monetary consideration, the other shareholders, the company, or a person designated by the company shall have the right of first refusal (Section 3:167 of the Hungarian Civil Code). The articles of association may also introduce further restrictions. In the case of share companies, the Hungarian Civil Code does not lay down such restrictions, but allows that the shareholders introduce restrictions in the articles of association [Sections 3:215 (2) *c)* and 3:219-3:220 of the Hungarian Civil Code].

20 *Paul Davies,* Introduction to company law, 3rd ed., 2020, p. 246., see further Part 26 of the Companies Act 2006 on distributions. Distribution and share buy-back rules are not addressed in this article. Share buy-backs typically lead to a proportionate reduction of the number of shares without shareholders exiting the company.

The German Limited Liability Companies Act[21] also does not provide a right of exit for shareholders.[22] However, as will be shown, German legal literature and court decisions have developed exceptions that do allow shareholders to exit in specific cases.

It follows from these rules that if shareholders disagree with the decisions made by the company's general meeting or management, their only option is to sell their shares. This option depends on the existence of transfer restriction clauses and the availability of a buyer's willingness to meet the seller's price expectations.

This is not a flaw in national company law but a consequence of the logic underpinning company law, which allows the majority to prevail over the minority. Minority shareholders are afforded some protection, such as the right to have the decisions reviewed,[23] and in many jurisdictions, the majority is required to consider the interest of minority shareholders.[24] While the Hungarian Civil Code prohibits the abuse of rights among its general principles,[25] Hungarian courts have not applied this principle to protect minority shareholders.[26]

21 Gesetz betreffend die Gesellschaften mit beschränkter Haftung – GmbHG, revised version published in the *Bundesgesetzblatt* (BGBl.) III at 4123–1, as last amended by Article 21 of the Act of 23 October 2024 (BGBl. 2024 I Nr. 323).

22 *Christoph H. Seibt,*in: Scholz Kommentar zum GmbH-Gesetz mit Anhang Konzernrecht (O. Schmidt 2022), 13th edition, Volume I, Anhang § 34, § 1–34, p. 1827, para 1.

23 For UK law, see *Paul Davies/Sarah Worthington,* Gower's Principles of Modern Company Law (Thomson Reuters 2016) 10th ed., p. 636–645, para 19–4–19–12, for German law, see, e.g., *Christine Windbichler/Gregor Bachmann,* Gesellschaftsrecht (Beck 2024) 25. ed., p. 352, § 24, para 56 and p. 536, § 33, para 58, for Hungarian law see Section 3:35 of the Hungarian Civil Code.

24 For German law, see e.g., BGHZ 103, 184 = NJW 1988, 675, W-B § 32 57 p. 519. The situation seems more complex under English law, where some judgments refer to bona fide requirements for shareholders exercising their voting right, but it is also recognised that "votes are proprietary rights [...], which the holder may exercise in his or her own selfish interests" [*Paul Davies/Sarah Worthington,* Gower's Principles of Modern Company Law (Thomson Reuters 2016) 10th ed., p. 636, para 19–4]. The limits of the exercise of such proprietary right are disputed [*Paul Davies/Sarah Worthington,* Gower's Principles of Modern Company Law (Thomson Reuters 2016) 10th ed., p. 636, para 19–4].

25 "The Civil Code prohibits the abuse of right." [Section 1:5 (1) of the Hungarian Civil Code].

26 The Hungarian Civil Code grants the minority the right to initiate the convening of a meeting of the general meeting (Section 3:103 of the Hungarian Civil Code), the right to initiate an audit (Section 3:104 of the Hungarian Civil Code), and the right to assert a claim against a member, a director, a member of the supervisory board and the auditor (Section 3:105 of the Hungarian Civil Code). Given that the purpose of these rules is to

Although company laws generally provide limited protection to minority shareholders, the exit rights can be seen as strong minority protection tools. In Hungarian law, for example, an exit right is granted to a minority shareholder in the case of a mandatory bid, in line with the Takeover Directive[27] and also in private companies if a shareholder acquires qualified majority,[28] to shareholders not willing to participate in a domestic[29] or cross-border conversions, mergers and divisions[30] and to minority shareholders of controlled entities in the case of corporate groups.[31]

Comparing these rules, one finds that although they attempt to provide solution to similar problems, they follow different logic. Thus, while from a practical point of view it is true that each of these rules gives the shareholder an exit right, from a legal point of view they do so in different and inconsistent ways. This divergence is problematic: ideally, the legislator should provide consistent solutions for similar issues. More troublingly, these exit mechanisms are often not integrated into the broader system of contract law, which complicates their implementation and enforcement.

This analysis proceeds as follows. Chapter 2 examines whether English, German, and Hungarian laws recognise a general exit right of shareholders. The article will show that English law does not, though shareholders may petition the courts for relief in cases of unfair prejudice. German law also lacks a general exit right, but members of GmbHs may agree on such rights in the articles of association, and courts allow exits for material reasons even without an exit right in the articles of association. Hungarian law provides no such general right, and this paper argues that provisions of the articles of association granting such rights are invalid. Chapter 3 discusses how a contract is formed between the bidder and the shareholder in a mandatory takeover bid. It is shown that whereas the English and German rules follow the typical offer-acceptance model, the Hungarian rule does not clearly fit into this model. Chapter 4 ad-

protect the minority shareholders, the shareholders may not deviate from them in the articles of association to the detriment of the minority (Section 3:106 of the Hungarian Civil Code). Additional minority protection rights exist, e.g., in the case of share companies.

27 Section 68 (1) of Act CXX of 2001 on the Capital Market (the 'Capital Market Act').

28 Section 3:324 § (2) of the Hungarian Civil Code.

29 Section 3:134 of the Hungarian Civil Code and Section 5 (2) of Act CLXXVI of 2013 on the Conversion, Merger and Division of Certain Legal Persons (the 'Domestic Transformation Act').

30 Act CXXIV of 2021 on the cross-border transformation of capital companies, mergers, divisions and other legislative amendments for harmonisation purposes (the 'Cross-Border Transformation Act').

31 Section 3:52 (1) of the Hungarian Civil Code.

dresses whether minority shareholders in private companies have an exit right in takeover situations. Unlike English and German laws, Hungarian law does provide such a right when one shareholder acquires at least 75% of the votes. The chapter identifies the rule's weaknesses and proposes reforms. Chapter 5 reviews exit rights under the Company Law Directive, focusing on how domestic and cross-border conversions, mergers and divisions are treated in contract law in the three jurisdictions. Chapter 6 analyses the exit right in corporate groups, again concluding that the Hungarian solution should not serve as a model. The final chapter summarises the findings, arguing that while the Hungarian context may be unique, the lessons learned are relevant to other EU Member States. A set of questions is proposed for legislators seeking to regulate exit rights effectively.

Finally, a note on methodology: this analysis focuses on limited liability companies and companies limited by shares. We review rules on English limited companies formed and registered under the Companies Act 2006, German GmbHs and, where necessary, share companies, Aktiengesellschafts,[32] Hungarian limited liability companies (*korlátolt felelősségű társaság*) and share companies (*részvénytársaság*). For the ease of reading, a distinction between these companies is made only where it is essential, and thus the terms 'share' and 'shareholder' is used irrespective of the technical terminology in national law.[33] Listed companies are only discussed where comparison requires it.

2. Exit right of shareholders in general

2.1. Exit right under English law

English courts traditionally allow only limited opportunities for members to challenge company decisions. The courts will not overrule decisions made by the board of directors if those decisions were taken in good faith, based on adequate information and appear reasonable. Moreover, members are bound by the company's articles of association, which restricts their ability to bring claims against the company.[34] At first glance, therefore, the English rules on the

32 *Aktiengesetz vom 6. September 1965 (BGBl. I S. 1089),* as last amended by Article 18 of the Act of 23 October 2024 (BGBl. 2024 I Nr. 323).

33 E.g., in Hungarian law, limited liability companies ('*korlátolt felelősségű társaság*') have members and not shareholders, and the members hold business quotas and not shares in the company (see Sections 3:159 and 3:164 of the Hungarian Civil Code).

34 For an overview of these principles, see pages 4–5 of the Law Commission's report on Shareholder Remedies (Law Commission Shareholder Remedies, LC246).

exit right may seem surprising, given the generally restrictive approach of English company law.

The Companies Act 2006 allows a member to apply to the court if the affairs of the company are being or have been conducted in a way that is unfairly prejudicial to the interests of the members or some of the members, or if a future act or omission of the company would be so prejudicial.[35] If the court finds the application well founded, it is granted broad discretion to decide how to remedy the situation. As legal literature notes, when this rule was introduced in 1980, it "posed a serious challenge to courts with a traditional attitude of avoiding interference in the internal affairs of companies."[36] Indeed, the Act states that it empowers the court to "make such order as it considers appropriate to remedy the matters complained of."[37]

The Companies Act 2006 provides only an illustrative list of potential remedies. The court may regulate the future management of the affairs of the company; order the company to refrain from certain conduct or make good any failure to act, authorise civil proceedings in the name and on behalf of the company; prevent changes to the articles of association without the permission of the court; order the purchase of shares of any member of the company by other members or by the company itself, and, in the case of the company's own purchase of shares, a corresponding reduction in its capital.[38] In practice, the latter right is usually exercised: the court orders the company to buy the shares of a minority member who wishes to leave at a fair price.[39]

The terms "unfair" and "prejudice" are interpreted separately by the courts. On the one hand, it is required to be shown that the situation is disadvantageous to the member's interest,[40] and on the other hand, it must be unfair. Initially, court took a narrow view of "unfair", equating it with unlawfulness, but this was later extended to cover conduct that was not unlawful.[41] Hoffmann LJ held that a decision may be unfair if it does not take account of the member's

35 Section 994 (1) of the Companies Act (2006).

36 *Paul Davies/Sarah Worthington/Christopher Hare,* Gower Principles of Modern Company Law (Thomson Reuters – Sweet & Maxwell 2021) 11th ed., p. 538, para 14–014.

37 Section 996 (1) of the Companies Act (2006).

38 Section 996 (2) of the Companies Act (2006).

39 *Brenda Hannigan,* Company Law (Oxford 2012), 3rd ed., p. 386, para 17–17. Section 122(1)(g) of the Insolvency Act 1986 also gives the court the power to order the winding up of a company if the court considers that the winding up of the company is just and equitable (Insolvency Act 1986, c. 45, available at https://www.legislation.gov.uk/ukpga/1986/45/contents, last accessed: 25 September 2025).

40 See e.g. *Re Saul D Harrison & Sons Plc* [1995] 1 B.C.L.C. 14.

41 *Paul Davies/Sarah Worthington/Christopher Hare,* Gower Principles of Modern Company Law (Thomson Reuters – Sweet & Maxwell 2021) 11th ed., p. 541, para 14–017.

legitimate expectations.[42] For example, a serious breach of an informal agreement between members may be deemed unfair;[43] a typical case is the dismissal of a shareholder from the board of directors in a quasi-partnership company, where participation in management was part of the mutual understanding. In some cases, courts have found unfair prejudice where the majority shareholder diverted company assets from the minority shareholder,[44] or where a capital increase aimed solely to dilute a member's shareholding.[45]

In conclusion, English company law does offer a general mechanism for minority shareholders to exit the company through court order. Its strength lies in not specifying predefined circumstances but allowing the courts to assess exit rights on a case-by-case basis.

2.2. Lack of a statutory exit right under German law

As discussed in the introduction, German law grants members of partnerships an exit right.[46] The GmbH is positioned between partnerships and share companies, so while the business quota is transferable, members of a GmbH are not granted statutory exit right.[47] This has drawn criticism in the legal literature and case law.[48] In response, the *Reichsgericht,*[49] and later the *Bundesgerichtshof*[50] recognised that a member may withdraw from the company for material reasons[51] – a right that cannot be excluded in the articles of associa-

42 In *Re Saul D Harrison & Sons Plc* [1995] 1 B.C.L.C. 14, 19. See the decision of Lord Hoffmann *in O'Neill v Phillips* [1999] 1 W.L.R. 1092.

43 *Paul Davies/Sarah Worthington/Christopher Hare,* Gower Principles of Modern Company Law (Thomson Reuters – Sweet & Maxwell 2021) 11th ed., p. 542–547, para 14—018–14–021.

44 See, e.g., *Re Little Olympian Each-Ways Ltd (No 3)* [1995] 1 BCLC 636, *Lloyd v Casey* [2002] 1 BCLC 454, *Irvine v Irvine (No 1)* [2007] 1 BCLC 349.

45 *Re Coloursource Ltd, Dalby v Bodilly* [2005] BCC 627.

46 Section 723 of the German Civil Code [*Bürgerliches Gesetzbuch* as published on 2 January 2002 (BGBl. I S. 42, 2909; 2003 I S. 738), as last amended by Article 4 of the Act on 7 April 2025 (BGBl. 2025 I Nr. 109)] and Section 132 of the HGB.

47 *Christoph H. Seibt:* in: Scholz Kommentar zum GmbH-Gesetz mit Anhang Konzernrecht (O. Schmidt 2022), 13th ed., Volume I, Anh, § 34, § 1–34, p. 1827, para 1.

48 *Franz Scholz,* Ausschliessung und Austritt eines Gesellschafters aus der GmbH (O. Schmidt 1950), 3rd ed.

49 RG Urt. of 2.7.1926 – II 570/25, RGZ 114, 212.

50 BGH Urt. of 1.4.1953 – II ZR 235/52, BGHZ 9, 157, 162.

51 BGHZ 116, 359, 369. See also *Steffen Limpert,* § 61. in *Holger Fleischer/Wulf Goette* (eds.), Münchener Kommentar zum Gesetz betreffend die Gesellschaften mit beschränkter Haftung, vol. 3, § 53–88 (Beck 2022), 4th ed., p. 668, para 14.

tion.[52] Courts justify this on the basis that a long-term legal relationship must allow exit when cooperation between shareholders is no longer viable.[53]

Because this extraordinary exit right is judicially developed, the criteria for its application evolve case by case. Courts primarily aim to provide relief in situations where share transfer restrictions prevent a member from exiting – such as prohibition in the articles of association. Where no such restrictions exist, courts typically do not recognise an exit right.[54]

Importantly, this jurisprudence does not create a general exit right, therefore, the shareholder may exercise an exit right in two scenarios. First, it is widely recognised that under the principle of freedom of contract ('*Gestaltungsfreiheit*'), the shareholders may include such an exit right in the articles of association of the company.[55] Second, even without an explicit provision in the articles of association, courts may permit the shareholder to leave the company in exceptional circumstances,[56] such as fundamental changes to the corporate structure, abuse of the voting rights by the majority shareholder, or, in rare cases, for reasons personal to the exiting member.[57]

The shareholder's exit right is further supported by the possibility of dissolution by court order if the company can no longer fulfil its purpose or other serious reasons exist.[58] A member holding at least 10% of the subscribed capital may request dissolution,[59] indicating that this mechanism serves to protect minority shareholders.[60]

52 *Martin Lohr*, 'Austrittrechts des Gesellschafters – Formulierungsvorschläge zur Gestaltung der Satzung' (2004) GmbH–Steuerberater, 11, p. 347.

53 BGH Urt. v. 1.4.1953 – II ZR 235/52, BGHZ 9, 157, 161. See also *Lutz Strohn,* in: *Holger Fleischer/Wulf Goette* (eds.): Münchener Kommentar zum Gesetz betreffend die Gesellschaften mit beschränkter Haftung. vol. 1 §§ 1–34 (Beck 2022), 4th ed., p. 2776, para 113.

54 *Christoph H. Seibt:*In: Scholz Kommentar zum GmbH-Gesetz mit Anhang Konzernrecht (O. Schmidt 2022), 13th ed., Volume I, § 1–34, p. 1830, para 7.

55 *Klaus Berner,* in: *Holger Fleischer/Wulf Goette* (eds.), Münchener Kommentar zum Gesetz betreffend die Gesellschaften mit beschränkter Haftung: GmbHG (Beck 2025), 5th ed., § 60 Rn. 232.

56 *Christoph H. Seibt,*in: Scholz Kommentar zum GmbH-Gesetz mit Anhang Konzernrecht (O. Schmidt 2022), 13th ed., Volume I, § 1–34, p. 1831, para 9.

57 *Hendrik Schindler,* Das Austrittsrecht in Kapitalgesellschaften, Eine rechtsvergleichende Untersuchung zum Austrittsrechts als Mittel des Individual- und Minderheitenschutzes im deutschen und französischen Kapitalgesellschaftsrecht (Beck 1999), p. 54–60.

58 Section 61 of the GmbHG.

59 Section 61 (2) of the GmbHG.

60 *Christine Windbichler/Gregor Bachmann,* Gesellschaftsrecht (Beck 2024), 25th ed., p. 369, § 26 para 5.

In the absence of statutory provisions, German legal literature and case law continue to struggle with defining the contours of this exit right. Scholars and judges agree that it was a legislative oversight not to provide for an exit right in exceptional cases. Courts therefore examine whether it is justified to allow a shareholder to exit the company with a corresponding settlement of accounts.

German law does not recognise the shareholder's exit right in the case of share companies, nor does the legal literature support such a right.[61]

2.3. Do shareholders have an exit right under Hungarian law?

Hungarian company law does not grant shareholders a general exit right. Courts likewise have no authority to compel companies to repurchase shares. The only option available to a shareholder who wishes to leave is to sell their shares.

Similarly to German law, Hungarian law permits shareholders to regulate internal matters flexibly. Unlike Germany, this flexibility extends to all company types. Section 3:4 of the Civil Code states:

"The members of a legal person may [...], in regulating their relations with each other and with the legal person and the organisation and operation of the legal person, deviate in the articles of association from the rules of this Act applicable to legal persons. The members of a legal person may not deviate from the provisions of this Act if a) this Act prohibits the deviation or b) the deviation is manifestly prejudicial to the rights of creditors, employees or a minority of the members of the legal person or impedes the supervision of the lawful operation of the legal person."[62]

One might argue that, although the Civil Code does not provide for a statutory exit right, the articles of association could create one – similar to the German GmbH practice. We argue, however, that such provisions would be invalid under Hungarian law.

The Civil Code applies a three-step test when determining whether the shareholders may deviate from a rule. The first question is whether the rule from which the parties wish to deviate concern the internal matters of the company, i.e. does the rule concern the relations among the shareholders, the relations

61 *Jens Koch*, in: *Wulf Goette/Mathias Habersack,* Münchener Kommentar zum Aktiengesetz (Beck 2021) 5th ed., § 262 para 20–21.

62 For a detailed analysis of this rule, see Péter Gárdos/Leszek Dziuba (2024) 'The Flexibility of Company Law: The Lessons of the Hungarian Law Reform' European Business Law Review. 35, 651–676. 10.54648/EULR2024036.

between the shareholders and the company, the organisation and operation of the company. The second question is whether the Civil Code expressly prohibits deviation from the rule. And the third question, if the rule concerns an internal matter and the Civil Code does not prohibit deviation, is whether the deviation would be manifestly prejudicial to the protected constituencies (creditors, employees, or minority shareholders) or it would hinder the supervision of the lawful operation of companies.

A rule that would allow an exit right for the shareholders would be invalid both under the second and the third step of this test.

Both for limited liability companies[63] and share companies,[64] the Civil Code allows distribution to shareholders from the company's own funds, during the company's existence only in circumstances expressly defined in the law. An exit right would necessitate reducing share capital and settling accounts with the departing shareholder, which is not permitted under the Civil Code. Thus, any articles of association granting such a right would violate a statutory prohibition.

Although as the deviation would violate a statutory prohibition, no further analysis is necessary, it is worth noting that enabling exit and repayment would lead to the reduction of the company's share capital. It might also be argued, therefore, that settling accounts with the shareholder leaving the company would be manifestly prejudicial to the creditors. This argument is supported by the Company Law Directive which provides safeguards for creditors in case of reduction in the subscribed capital. These safeguards could not be provided by the articles of association.

In conclusion, current Hungarian law does not allow for shareholder exit rights, nor does it permit their creation in the articles of association.[65]

63 Section 3:184 (1) of the Civil Code.

64 Section 3:261 (1) of the Civil Code.

65 It should be noted that the validity of drag-along and tag-along rights is not affected. The differential treatment of these instruments arises from the fact that their exercise does not entail any diminution of the company's subscribed capital. Rather, such rights operate within the framework of share transfers and may be invoked when a prospective acquirer expresses willingness to purchase the company's shares.

3. Exit right under the Takeover Directive

3.1. Introductory thoughts

The Takeover Directive recognises that "the move from dispersed to concentrated shareholding is potentially disadvantageous to non-controlling shareholders"[66], and therefore provides an exit right for minority shareholders. Company law is based on the premise that, except in sole-shareholder companies or where one shareholder has held controlling power since the company's formation, decisions result from cooperation among shareholders. If a dominant power emerges after the company has been established, this foundational principle no longer applies. Such a fundamental change justifies allowing shareholders who have become 'redundant' to exit by transferring their shareholding.

This is why Article 5 of the Takeover Directive requires Member States to ensure that a shareholder acquiring a certain percentage of the voting rights in the company "is required to make a bid as a means of protecting the minority shareholders of that company."[67]

The justification for a mandatory public bid has long been debated. Some argue it prevents value-destroying transfers and protects minority shareholders;[68] others believe it hinders beneficial transactions and impairs market efficiency.[69] This chapter does not assess the policy justifications, but instead focuses on the legal mechanisms through which a mandatory takeover offer enables shareholder exit.

3.2. Mandatory takeover bid in the Takeover Directive

Article 5 of the Takeover Directive stipulates that when a person acquires, directly or indirectly, a certain percentage of the voting rights, they must make a takeover bid to all other shareholders at a fair price, to protect the minority

66 *Paul Davies,* Introduction to Company Law (Oxford 2020) 3rd ed., p. 134.

67 See also COM (2002) 534 final, OJ 25.3.2003 C 45/1, 7.

68 See for example *Edmund-Philipp Schuster,* "The Mandatory Bid Rule: Efficient, After All?", Modern Law Review 2013, 76/3, p. 529–563 and *Klaus J. Hopt,* "European Takeover Reform of 2012/2013 – Time to Re-examine the Mandatory Bid", European Business Organisation Law Review (2014), 15, p. 143–190.

69 *Luca Enriquez,* "The Mandatory Bid Rule in the Takeover Directive: Harmonization Without Foundation?"European Company and Financial Law Review (2004), 1/4, 440–457.

shareholders of that company.[70] The Takeover Directive leaves the determination of the relevant percentage to the Member States, provided it reflects control of the company.[71] The mechanism for determining the fair price outside the scope of this analysis.[72]

Focusing on the contractual aspects of share purchases, the Takeover Directive outlines the required content of the bid[73] and the acceptance period.[74] These provisions reflect standard contract formation principles: the acquirer makes an offer, and the minority shareholders may accept it within the defined time. Acceptance concludes the contract between the parties.

The Takeover Directive also introduces a sell-out right for the remaining shareholders.[75] Member States must ensure that holders of residual shares can require the offeror to buy their shares at a fair price.[76] However, the Takeover Directive does not specify how the contract comes into being when this right is exercised.

3.3. The Companies Act 2006 and the City Code in England

The UK City Code[77] adheres to the traditional offer-and-acceptance structure set out in the Takeover Directive.[78] Rule 31.9 governs the deadline for the settlement of consideration. The shareholder's right to withdraw acceptance is also based on standard contractual logic: if the offer is conditional, acceptance is revocable, since no contract is yet formed. If the offer is unconditional, acceptance creates a binding contract, and withdrawal is no longer possible.[79]

Section 983 of the Companies Act 2006 also provides for a sell-out right. If the acquirer obtains at least 90% in value of all the voting shares in the company, shareholders who have not accepted the offer may, under certain conditions, require the offeror to acquire their shares. To exercise this right, the share-

70 Article 5(1) of the Takeover Directive.
71 Article 5(3) of the Takeover Directive.
72 Article 5(4) of the Takeover Directive.
73 Article 6 of the Takeover Directive.
74 Article 7 of the Takeover Directive.
75 Article 16 of the Takeover Directive.
76 Article 16 (2) of the Takeover Directive.
77 The Takeover Code, available at: https://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/code.pdf (last accessed: 25 September 2025).
78 For the statutory basis empowering the Panel on Takeovers and Mergers to regulate takeover matters, see section 943 of the Companies Act 2006.
79 Rule 34.1 of the City Code.

holder must send written notice to the offeror.[80] To facilitate the exercise of the sell-out right, the Companies Act 2006 requires that the offeror must give notice to the non-accepting shareholders about their sell-out right.[81]

Although the Companies Act 2006 does not provide exact rules on how the contract comes to an existence if the shareholder wishes to exercise the sell-out right, it appears from the structure that the shareholder's notice does not, in itself, create the contract – acceptance by the offeror is still required. Section 986 supports this reading: it authorises the court, upon application by either party, to determine the terms of acquisition.[82] This only makes sense if the shareholder's notice alone does not finalise the contract.

This interpretation aligns with Davis and Worthington, who observe that "[t]he parties may be in disagreement about whether there is an obligation on the offeror to acquire the shares at all or they may be in disagreement about the terms."[83] Accordingly, under the Companies Act 2006, in the non-accepting shareholder makes an offer by invoking the sell-out right, but the contract is concluded only upon the offeror's acceptance.[84]

3.4. Conclusion of the contract under the German Takeover Act

The German Takeover Act[85] also frames takeover bids within an offer-and-acceptance model.[86]

The bidder must notify the Federal Financial Supervisory Authority (BaFin) after the acceptance period ends.[87] Non-accepting shareholders are then entitled to accept the original offer within 14 days of the notification.[88] This rule

80 Section 984 (1) of the Companies Act 2006.
81 Section 984 (3) of the Companies Act 2006.
82 Section 986 (3) of the Companies Act 2006.
83 *Paul Davies/Sarah Worthington,* Gower Principles of Modern Company Law (Sweet and Maxwell 2016) 10th ed., p. 998, para 28–76.
84 The City Code provides an alternative to Section 986 (3) of the Companies Act 2006. Rule 31.2 (b) provides that after an offer becomes or is declared unconditional it must remain open for acceptance for not less than 14 days. This rule allows those shareholders who did not accept the offer to change their position and accept the offer, irrespective of whether the 90% threshold of the Companies Act 2006 has been reached.
85 Wertpapiererwerbs- und Übernahmegesetz *(WpÜG)* of 20 December 2001, published in the *Bundesgesetzblatt* (BGBl.) I at 3822, as last amended by Article 8 of the Act of 11 December 2023 (BGBl. 2023 I Nr. 354.).
86 See, e.g., Section 16 of the WpÜG, regulating the acceptance of the offer.
87 Section 23 (1) 2 of the WpÜG.
88 Section 16 (2) of the WpÜG.

was introduced in order to avoid the prisoners' dilemma scenario among the shareholders.[89]

The German Takeover Act also provides a sell-out right. As a general rule, this may be exercised if the bidder acquires at least 95% of the voting shares.[90] The statute clearly describes how the contract is formed: the non-accepting shareholder "may accept the offer within three months after the expiry of the acceptance period". This effectively extends the offer's validity, so the contract is formed in the same way as during the original acceptance period – through shareholder acceptance.[91]

3.5. Offer and acceptance in the Hungarian Capital Market Act

The Hungarian Capital Market Act regulates takeovers in line with the Takeover Directive. From the perspective of contract formation, the Capital Market Act sets out the obligation to make a public bid,[92] the duration of that obligation,[93] the rules for the calculation of the bid price,[94] and the process for acceptance.[95] As a general rule, the contracts with accepting shareholders are concluded on the closing date of the offer period.[96] The acquirer must, as a general rule, pay the purchase price within five working days from the closing date.[97]

The Capital Market Act also recognises a sell-out right: if the bidder acquires at least 90% influence in the target company, they must purchase the remaining

89 *Ulrich Wackerbarth*, WpÜG, in: *Wulf Goette/Mathias Habersack,* Münchener Kommentar zum Aktiengesetz (Beck 2024) 6th ed., § 16 para 18.

90 Section 39c of the WpÜG.

91 *Dieter Leuering*, WpÜG, in: *Wulf Goette/Mathias Habersack,* Münchener Kommentar zum Aktiengesetz (Beck 2024) 6th ed., § 39c para 19.

92 Section 68 (1) of the Hungarian Capital Market Act. Under domestic law, a mandatory takeover bid must be made in the case of an acquisition of influence exceeding 25% if no one other than the shareholder acquiring the influence has an influence exceeding 10% of the voting rights. Otherwise, a mandatory takeover bid is required for acquisitions of control exceeding 33%.

93 The time limit for the acceptance of the takeover bid shall be at least thirty days, but not more than sixty-five days, including any extension [Section 70 (5) of the Hungarian Capital Market Act].

94 Section 72–73 of the Capital Market Act.

95 Section 74 of the Capital Market Act.

96 Section 74 (5) of the Capital Market Act.

97 Section 74 (6) of the Capital Market Act. The sell-out right can e exercised if 90% of the voting rights is acquired, where other arrangements, such as options for voting shares, repurchase rights, or cooperation of persons acting in concert shall also be taken into account in line with Section 5 (1) 22 of the Capital Market Act.

shares upon written request by the minority shareholders.[98] The price is the higher of the bid price and the equity value per share.

The Hungarian Civil Code regulates how a sales agreement is formed when a sell-out right is exercised:[99] the holder of the sell-out right may sell the asset through a unilateral declaration at the specified price. The right to sell is therefore a unilateral right, the exercise of which creates the contract without further acceptance or similar acts.

However, the Capital Market Act's rule is inconsistent with this approach. The inconsistency arises from the fact that even though the non-accepting shareholder's right is a sell-out right, and therefore the shareholder would have the right the unilaterally create the contract, the law requires that the shareholder shall "request" the bidder to buy the shares. The terms used by the Capital Market Act are not in line with the traditional offer and acceptance model of the Civil Code, and therefore, it is difficult to determine when the contract is concluded: when the sell-out right is exercised or when the bidder buys the shares. It would be advisable to remove this contradiction by making it clear that, in the case of the exercise of the sell-out right, the contract is created when the declaration of the exercise of the sell-out right takes effect.

4. Exit right in the case of takeover of private companies

4.1. Introduction

The scope of the Takeover Directive is limited: it applies only to takeover bids for the securities of companies governed by the laws of Member States, where all or some of those securities are admitted to trading on a regulated market.[100] As a result, the European Union does not regulate the takeovers of private limited liability companies. Whether minority shareholders are granted an exit right in such cases is therefore left to the discretion of Member States.

An exit right triggered by a fundamental change is commonly referred to as an appraisal remedy. "The appraisal remedy in corporate law confers upon shareholders a statutory right to dissent from specified fundamental or structural changes in the life of their corporation. The remedy requires the corporation to facilitate the shareholders' withdrawal by buying back their shares for fair

98 Section 76/D (6) of the Capital Market Act.
99 Section 6:225 (2) of the Hungarian Civil Code.
100 Article 1 (1) of the Takeover Directive.

value, or its equivalent".[101] As Paul Davies observes, "although the Takeover Code contains two strong versions of the shareholder's right to exit upon a change of control, the Companies Act shows little interest in this technique",[102] accordingly the UK Companies Act 2006 does not provide for appraisal rights.

German law likewise does not recognise a general exit right for the takeover of private companies. However, the Bundesgerichtshof has developed the possibility for shareholders to exit the company for important reasons ('*Austritt aus wichtigem Grund*').[103] While the mere acquisition of a majority stake does not in itself justify such an exit, the right may be exercised if the new controlling shareholder abuses their power – e.g., by refusing to distribute profits.[104]

Since 1997, Hungarian law has provided an exit right for minority shareholders in the case of a takeover also in the case of private companies.[105] The Civil Code stipulates that if a shareholder of a limited liability company or a share company acquires, directly or indirectly, at least 75% of the voting rights, they must notify the court of registration.[106] Within sixty days from the publication of this notification, any shareholder may request that the majority shareholder acquire their shares. The purchase must be made at the market value as of the date of the request, but not less than the proportionate share of the company's share capital.[107]

4.2. Sell-out right or obligation to conclude a contract?

The statutory language has remained unchanged since 1997: the shareholder "may request that the shareholder holding a qualified majority acquire the shares". Interestingly, the ministerial explanatory memorandum to the 1997 Act interpreted this provision as a sell-out right, stating this right: "provides a way for any member (shareholder) of a controlled company to terminate his or

101 *Saul Levmore/Hideki Kanda*, "The Appraisal Remedy and the Goals of Corporate Law" 32 UCLA Law Review 429 (1985) p. 429.

102 *Paul Davies,* Introduction to company law. (Oxford 2020), 3rd ed., p. 137.

103 BGH Urt v 01.04.1953 – II ZR 235/52, BGHZ 9, 157; BGH Urt v 16.12.1991 – II ZR 58/91, BGHZ 116, 359. See further *Hendrik Schindler,* Das Austrittsrecht in Kapitalgesellschaften (Beck 1999).

104 *Alan K. Koh,* "Shareholder withdrawal in close corporations: an Anglo-German comparative analysis", Journal of Corporate Law Studies (2022), 22:1, 197–228, DOI: 10.1080/14735970.2021.2012883, 205.

105 The original rule was introduced as Section 295 (1) of Act CXILV of 1997 on Companies, Section 53 (1) of Act IV of 2006 on Companies maintained the rule, which was taken over as Section 324 (2) of the Hungarian Civil Code.

106 Section 3:324 (1) of the Hungarian Civil Code.

107 Section 3:324 (2) of the Hungarian Civil Code.

her partnership by exercising a sell-out right."[108] However, this interpretation appears *contra legem*, although, as we will explain below, a sell-out right would arguably provide a more effective remedy.

Case law on the matter is sparse. In a judgment by the Budapest Court of Appeal, the rule was interpreted as imposing an obligation on the acquirer to enter into a contract with the minority shareholder: "Since the qualified majority influence enables the control and influence of the controlled company, the Companies Act lays down a specific minority protection rule in the interest of the other members and shareholders of the company, when it grants the minority member (shareholder) a sell-out right under certain conditions. As the other side of the coin, this rule creates an obligation for the acquirer to buy (obligation to conclude a contract)."[109] The judgment recognised that in the case of an obligation to conclude a contract, if the parties do not agree, the court may, unless otherwise provided by law, create the contract and determine its content. The same idea can be found in other judgments as well[110] and also appears in the commentary literature: "The Civil Code maintains the provisions on the sell-out right of the shareholders of the controlled company, and the buy-out obligation of the acquirer."[111]

However, this reasoning is self-contradictory. A sell-out right and an obligation to conclude a contract are not two sides of the same coin. If the minority shareholder had a sell-out right, the contract would be concluded unilaterally, upon the shareholder's declaration. Under an obligation to contract, the shareholder's request merely triggers a duty for the acquirer to respond by making an offer.

This conclusion is supported by the Civil Code's general rule on the formation of contract under a statutory obligation. It provides that if someone requests the conclusion of a contract, they must disclose the necessary information and submit the relevant documents to the other party. The obligated party must then make an offer within thirty days of the request.[112]

Accordingly, the statute does not grant a unilateral right to sell, but imposes a duty on the acquirer to conclude a contract with the minority shareholder, upon the latter's request.

108 Ministerial explanatory notes to Section 52–53 of the Act.

109 BDT2011. 2453.

110 Metropolitan Court of Appeal Gf. 40.801/2013/5.

111 *Enikő Ribaritsné Győri,* Befolyásszerzés, in: Zoltán Csehi (eds.), *2013, évi V. törvény a Polgári Törvénykönyvről kommentárja* (Magyar Közlöny 2021), p. 463.

112 Section 6:71 (2) of the Civil Code.

4.3. The content of the contract to be concluded

As discussed, in the case of a statutory obligation to contract, the requesting party must share the necessary information to enable the formation of a valid agreement. However, it remains unclear what this "necessary information" entails in the context of minority exit rights.

Typically, a contract is formed once the parties agree on (i) the parties themselves, (ii) the subject matter of the contract, (iii) the title (legal cause), and (iv) the consideration. In the present case, the law clearly defines the first three elements: the parties (minority shareholder and acquirer), the subject matter (the shares), and the cause (a share purchase agreement).

The determination of the purchase price is more problematic. As Paul Davies notes, in private companies, "there is not necessarily available a recent and reliable market price which can be used as a proxy for fairness [of the purchase price]."[113] Section 3:324 (2) of the Civil Code provides that the purchase must be made at the market value as of the date of the request, but not less than the proportionate share of the company's share capital. This rule fails to address at least two fundamental questions.

The first question concerns the calculation of the market value. Should such value take into account a minority discount as recognising that the shareholder acquired 75% of the votes or should the market value be calculated disregarding this fact. The answer to this question depends on what we see as policy driver behind the rule. Although no legal literature or case law discusses this matter, we believe that the purpose of the rule is the same as in the case of the Takeover Directive, and therefore, similarly to the Takeover Directive, minority discount should not be applied.

The second question concerns whether the minority shareholder must propose a price in the request or whether the obligation lies with the acquirer to determine and include the price in their offer.

Although the Civil Code does not provide an answer to this question, it seems reasonable to accept that calculating the market price is the acquirer's obligation. The Civil Code obliges the party requesting the conclusion of the contract to share the necessary information with the other party as this party is not aware of the terms of the contract to be concluded. E.g., electricity companies are under an obligation to conclude contract with customers. In order for the electricity company to be in a situation where they can send an offer including all terms necessary under the law for the creation of the contract, the customer

113 *Paul Davies,* Introduction to company law (Oxford 2020), 3rd ed., p. 137.

needs to inform the company about the location where the electricity will be used, the intended purpose of the contract, etc. However, in the case of an exit right, the acquirer is in a better position to make an offer. It seems reasonable, therefore, that the minority shareholder's request only needs to include that the minority wishes to exercise their exit right.

We also note that a more detailed regulation would also have further benefits. The Civil Code provides that even though a party is under a statutory obligation to conclude the contract, it may avoid the conclusion of such contract if the party was not able to perform it.[114] As the exit right is a minority protection tool, this exemption should not be applicable. Anyone acquiring 75% in a private company, should do so knowing that it may be required to acquire the remaining 25% of the shares. We note that we are not aware of any litigation where the majority shareholder as defendant argued that as they are unable to pay the purchase price, they can avoid the conclusion of the contract, and we believe that such an argument would be rejected by Hungarian courts in line with the purpose of the rule.

4.4. Differences between private and public takeovers

At first glance, the Hungarian private takeover rule resembles the public takeover regime under the Takeover Directive: both oblige a controlling shareholder to offer an exit opportunity to the minority. However, this similarity is superficial.

Public takeover rules prevent the acquisition of control until the takeover bid is made. In contrast, the Hungarian rule allows the acquirer in a private company to gain control (75% or more) immediately – without first concluding an agreement with the minority shareholder or at least making an offer to the remaining shareholder. This discrepancy is critical: the controlling shareholder, having already obtained benefits from their stake, may be less motivated to promptly offer an exit to minority shareholders.

The question, then, is whether court judgment enforcing the minority exit right provides any incentive for the acquirer to conclude the contract without delay. In some published cases, courts have ordered the acquirer to pay late interest on the purchase price, calculated from the date the shareholder requested the conclusion of the contract.[115] In a high-interest environment, this could serve as an incentive for timely cooperation.

114 Section 71 (4) of the Civil Code.

115 See e.g. Debrecen Court of Appeal Gf. 30.194/2010/7.

However, in our view, the Civil Code does not allow the courts to award the payment of interest in such cases. When the court creates the contract by its judgment, the judgment has a constitutive effect, i.e. the judgment constitutes the acquirer's obligation to pay. It follows, that it is not possible to claim interest for late payment, as the obligation to pay the purchase price only arises when the judgment establishing the payment obligation becomes final and binding. Before this, the acquiring party has no payment obligation, hence there is no default on the acquirer's side for not paying the purchase price.[116]

Nonetheless, the minority shareholder might still seek damages, provided they can prove damage arising from the delay. To date, no published judgment has addressed the question whether such a damages claim may be enforced.

4.5. Proposals for an effective protection of minority shareholders in the case of private takeovers

The challenges in Hungarian law are relevant for any jurisdiction considering minority exit rights in the case of the takeover of a private company. In this chapter, we suggest potential solutions to these problems with a view to ensure that the exit right provides a viable solution to shareholders.

Any jurisdiction that wishes to provide an effective exit right for the minority shareholders when someone acquires control, needs to address the following problems: (i) what percentage of voting rights qualify as control, (ii) should the minority shareholder have a sell-out right or should the parties be compelled to conclude a contract, (iii) how should the fair value of the minority's share be determined, and (iv) when should the purchase price be paid.

Ad (i), the Takeover Directive recognises that the percentage providing control of a company depends largely on the particularities of national company laws and the typical structure of companies in a given Member State, most notably how well dispersed shareholders are. Consequently, the Takeover Directive does not specify the ratio of voting right that confers control for the purposes of the Takeover Directive.[117]

In the case of private takeovers, Hungarian law follows a simpler logic. As the rule is also applicable in the case of small companies, and as qualified majority decisions in Hungarian company law require four thirds of the votes, Hungar-

116 Although the reasoning of the judgment is very concise in this respect, a decision of the Metropolitan Court of Appeal (Gf. 40.801/2013/5.) seems to support the position expressed here.

117 Article 5 (3) of the Takeover Directive.

ian law provides an exit right to the shareholder if the acquirer acquires at least 75% of the votes. This solution seems appropriate as it only intrudes in the internal matters of shareholders where the minority shareholders no longer have the chance to influence the outcome of any decision of the shareholders.[118]

Ad (ii)-(iii), the second and the third question should be addressed together. We have seen that to serve its protective purpose, the law should grant the minority shareholder a sell-out right. The advantage of this solution is that the exercise of the right of sale creates the sales contract, so that the buyer's obligation to pay the purchase price is established without the buyer's involvement and the seller is also entitled to default interest in the event of the buyer's default.

However, a sell-out is only viable if the price is undisputed – which is rarely the case in private companies. The seller is typically not in a position to determine the current market value of the company and thus calculate the purchase price for their shares. And even if the seller was able to determine the market price, the buyer may not agree with the seller's calculation. The purchase price is also key because the regulation should ensure that the seller receives the purchase price as soon as possible. To address this situation, the following hybrid solution is recommended.

The Civil Code provides for two methods of calculation of the purchase price: the equity share-based and the market price. Since the Civil Code provides that the equity share based purchase price is the minimum price to which the minority shareholder is entitled in any circumstances, and since the equity share based price can easily be calculated, if the shareholder requires the equity share based purchase price, the contract is concluded at that price.

If the minority shareholder believes that the market price is higher than the equity share-based purchase price, the minority shareholder shall determine the purchase price. Since we proposed that the seller shall be granted a sell-out right, it necessarily follows that the contract will be concluded at the market value determined by the seller. This rule is, therefore, unworkable in this version, as the law should enable the buyer to challenge the market value indicated by the seller.

118 This rule reflects the principle that decisions requiring a qualified majority of shareholders are generally subject to a 75% approval threshold. However, the parties retain contractual freedom to depart from these default voting requirements. The articles of association may, for instance, introduce enhanced minority protections by granting veto rights or by stipulating a higher percentage of shareholder approval for specific resolutions.

To resolve this conflict, we suggest that the buyer should have 30 days from the date on which the sell-out right is exercised to dispute the market value (purchase price) indicated by the seller. If within this period the buyer does not dispute the purchase price, the contract will remain in force at the purchase price indicated by the seller. If the buyer disputes the purchase price, the buyer shall indicate the purchase price he considers to be correct. If the seller accepts the indicated purchase price, the purchase price originally indicated by the seller shall be replaced by the purchase price determined by consensus of the parties. If the seller does not accept the purchase price indicated, the seller may request that the purchase price is determined by court. In this case, the price determined in the judgment will replace the price in the contract.

In the absence of an additional rule, the buyer would act reasonably if he disputed the price set by the seller and made counteroffer equalling the equity share based price, knowing that the seller would not accept this price. To avoid this outcome, the law should provide that (i) the buyer shall pay the amount proposed in the counteroffer when the counteroffer is made, and (ii) the buyer shall pay late payment interest on the difference between the counteroffer and the price determined by the court.[119]

This solution ensures that the seller receives at least the undisputed part of the purchase price, and the buyer should only have to pay the difference when the judgment becomes final. The advantage of this solution is that it might reduce the number of cases that have to be decided by the court if the parties agree on the price in line with our proposal above. However, the number of cases would not increase even if no agreement was reached, as these cases would need to be decided by the court even under the current regime.

The market price should be calculated disregarding any minority discounts to ensure a fair exit right to the shareholder.

ad (iv) The last question that needs to be addressed is when the obligation to pay the purchase price arises.

In public takeovers, the purchase price needs to be paid immediately when the contract is created. It would seem logical to include a similar rule for private takeovers. However, there seems to be a significant difference between the two scenarios, which requires different treatment. In the case of a bid under the Takeover Directive, the bidder is necessarily aware that he is under an obliga-

119 Although procedural aspects lie beyond the scope of this article, it should be noted that any reference to the court determining the price refers to a civil proceeding conducted in accordance with the applicable national rules on evidence. Under Hungarian law, for instance, this would typically entail the appointment of experts to assess and establish the price.

tion to make a takeover bid to all shareholders, and therefore must have the funds available already when making the offer. However, the Civil Code's rule is also applicable in the case of 'involuntarily' takeovers. Such a situation may occur, e.g. if a shareholder reaches the 75% threshold by inheriting further shares. In this case, it seems reasonable to allow some time to pay the purchase price. However, this period should not be unnecessarily long, since, as pointed out above, it would make it practically impossible for the seller to exercise the exit right. We therefore believe that a period of 60 days takes due account of the interests of both parties.

Recognising that the purchase price will only be paid subsequent to the transfer of the shares, a further issue needs to be addressed. According to the Civil Code, the ownership of the share is transferred to the buyer when the shares are handed over to the buyer (together with endorsement, if necessary),[120] even though the purchase price has not yet been paid by the buyer.[121] This is the correct solution in the present case, since any other rule would have to deal with the situation where the purchase price is finally determined by the court. This situation is, however, certainly unfair in the sense that the *in rem* right of the former shareholder is replaced by a mere contractual claim to payment of the purchase price. It therefore seems appropriate to reduce this vulnerable situation by creating a lien on the shareholding by operation of law.

5. Exit right of shareholders in the case of domestic and cross-border conversions

5.1. Introduction

As indicated above, company law is based on the premise that, by becoming a shareholder, an individual accepts that the company's operational rules may change and that decisions may be made with which the shareholder disagrees. Provided these decisions are lawful, shareholders cannot prevent them. However, certain changes in the life of a company might be so radical that a different approach is warranted.

As previously discussed, if one shareholder alone controls all decisions, the general meeting's function of debating and resolving fundamental issues be-

120 Section 6:569 of the Hungarian Civil Code on the transfer of negotiable instruments.

121 In the case of business quotas in limited liability companies, the Civil Code does not contain an explicit rule on the manner and moment of transfer, but according to the legal literature, the share is transferred to the buyer by the conclusion of the contract [*András Kisfaludi,* 3:166, in: Lajos Vékás/Péter Gárdos (eds.): Nagykommentár a Polgári Törvénykönyvhöz. (Wolters Kluwer 2020), p. 433].

comes meaningless. In such cases, the law offers minority shareholders who became shareholders of the company before one shareholder acquired 75% of the votes the possibility of leaving the company.

This chapter addresses another form of a radical change: the conversions of the company. While shareholders are generally aware that the company may transform into a different legal form, many legal systems recognise a shareholder's right to exit during such transformations. The principle is also reflected at the EU level: the Company Law Directive provides for an exit right in cross-border transformations.

5.2. Exit right under English law

The Companies Act 2006 does not include rules on domestic transformations. The rules on re-registration, when a company 'transforms' from a private company to a public company, from a public company to a private company, from a private limited company to an unlimited company, from an unlimited private company to a limited company or from a public company to an unlimited private company, do not establish an exit right for the shareholders.[122] Similarly, schemes of arrangement, that may be used for reorganisation of companies, including mergers and divisions, also do not include statutory rules on exit right.[123]

5.3. Exit under the German Transformation Act

Germany takes a different approach. Under certain conditions, it grants an exit right to shareholders unwilling to participate in a transformation.[124]

The German Transformation Act[125] requires the successor company in the case of a merger of a company with another legal form, a merger of a public limited company with a private limited company and a merger of companies with the same legal form, where the successor has limited rights to dispose of the shares, to make an offer for the shares of all shareholders of the predecessor company who voted against the adoption of the draft terms of merger.[126] The law also

122 Part 7 of the Companies Act 2006.

123 Part 26 of the Companies Act 2006.

124 *Barbara Grunewald,* in: *Marcus Lutter*, Umwandlungsgesetz Kommentar, Vol. I § 1–173 (O. Schmidt 2024), 7th ed., p. 439, § 29 para. 1.

125 *Umwandlungsgesetz,* UmwG (BGBl. I at 3210) as last amended by Article 17 of the Act of 23 October 2024 (BGBl 2024 Nr. 323).

126 Section 29 (1) of the UmwG.

provides for an exit right in the case of conversions for shareholders voting against the conversion.[127] The law sets a time limit for the shareholders to accept the takeover bid.[128] The purchase price offered must be reviewed by an auditor.[129] If a shareholder considers the purchase price inadequate, they may request judicial determination of the appropriate price.[130]

These rules mirror general contract law principles: the successor makes an offer and a shareholder may accept or reject it. If accepted, a contract is formed; if not, the shareholder remains a shareholder of the legal successor. If the shareholder wants to exit but disputes the price, the price will be determined by the court.

5.4. Exit under the rules of the Hungarian Civil Code

Hungarian law adopts a similar structure. As Kisfaludi points out, "[t]he Civil Code recognises the right of shareholders of legal entities to freely choose the type of legal entity they wish to become shareholders of, and therefore gives them the choice as to whether they wish to maintain their membership in the predecessor legal entity in the legal entity created by the transformation."[131]

The Hungarian legislator introduced recently an exception to this rule. Under the new rule, the shareholders of listed companies do not have an exit right in the case of spin-offs.[132] The Civil Code defines spin-offs as divisions by separation where the legal person being divided remains in existence and establishes the successor legal person with part of its assets, becoming its sole member.[133] The explanatory notes to the new rules give two reasons for the exception: first, that in the case of a spin-off, the shareholders of the original company do not become shareholders of the new company, and second, that the shareholders of listed companies can freely sell their shares on the stock exchange if they wish to leave the company. Both arguments seem to be wrong. If the legislator believed that the first argument was convincing, similar exceptions

127 Section 207 of the UmwG.

128 Section 31 of the UmwG.

129 Section 30 (2) of the UmwG.

130 Section 34 of the UmwG. The valuation is governed by the rules of the law on the valuation of companies under company law [*Gesetz über das gesellschaftsrechtliche Spruchverfahren (Spruchverfahrensgesetz – SpruchG)* (BGBl. I at 838) as last amended by Article 1 of the Act of 11 December 2023 (BGBl. 2023 I Nr. 354)].

131 *András Kisfaludi,* 3:42, in: Lajos Vékás-Péter Gárdos (ed.), *Nagykommentár a Polgári Törvénykönyvhöz.* (Wolters Kluwer 2020), p. 297.

132 Section 3:321 (1a) of the Hungarian Civil Code.

133 Section 3:45 (1a) of the Hungarian Civil Code.

would have been necessary in the case of all types of companies and not only in the case of listed companies. The second argument fails to recognise that by selling the shares on the stock exchange the shareholder have to suffer a loss, if the market finds the spin-off transaction to be value-destroying.[134]

A shareholder not wishing to remain in the successor entity must notify the company within 30 days of receiving the draft terms of the conversion. These shareholders cease to be members upon the date of conversion, merger of division and are entitled to cash settlement.[135] The rules concerning the amount to be paid are difficult to interpret. The Civil Code provides that the amount corresponds to the share of assets the exiting shareholders would receive if the company was liquidated.[136] The rationale behind this rule is unclear and this could lead to significant loss to the shareholder as the liquidation value of a company is lower than its going concern value. By applying the liquidation value, significant value may be expropriated from the exiting members. The Domestic Transformation Act repeats this rule,[137] but adds a further rule providing that "If a shareholder's entitlement is determined at market value under the provisions of the articles of association, then – taking into account the requirements of the Accounting Act – an asset revaluation must be carried out."[138] This provision seems to imply that the shareholders are free to choose in the articles of association whether, upon conversion, merger or division, the company will settle with the exiting shareholder based on liquidation value or market value. The company must settle with the exiting members within 60 days of the successor's registration, unless otherwise agreed.[139]

Unlike the German approach, Hungarian law does not treat the exit as a contract between the shareholder and the company. Instead, the share capital is reduced to allow payment under the Civil Code.

No specific mechanism is provided to resolve disputes over valuation. The company pays the amount it considers appropriate, irrespective of whether the shareholder disputes this amount. If the exiting shareholders find that the

134 See further *András Kisfaludi,* 3:321, in: *Lajos Vékás/Péter Gárdos* (eds.): Nagykommentár a Polgári Törvénykönyvhöz. (Wolters Kluwer 2025, online: https://uj.jogtar.hu/#doc/db/1/id/A1300005.TV/ts/20250822/lr/3%253A321, last accessed: 25 September 2025).

135 Section 3:42 of the Hungarian Civil Code.

136 Section 3:42 (2) of the Hungarian Civil Code. See also Article 5 (2) and Article 6 (3) and (5) of the Domestic Transformation Act.

137 See the first sentence of Section 6 (3) of the Domestic Transformation Act.

138 See the second sentence of Section 6 (3) of the Domestic Transformation Act.

139 Section 6 (5) of the Domestic Transformation Act.

amount is lower than required by law, they may request the payment of the difference from the company, and they may also enforce such right in court.

Under Hungarian law, it is problematic that exiting shareholders lose their shareholder status upon succession, while the legal successor is granted sixty days to fulfil its payment obligation. During this period, the law offers no security to safeguard the exiting shareholders' claims.

5.5. Cross-border conversions, mergers and divisions of limited liability companies

In cross-border conversions, mergers and divisions, the Company Law Directive adopts a mechanism largely similar to the Hungarian domestic one.[140] It recognises that diverging national laws may obstruct cross-border transformations,[141] and provides shareholders the right to exit for adequate cash compensation.[142] It is based on the premise that, although minority shareholders must bear the consequences of majority decisions, if the result is a change in the applicable law, they must be given the right to leave the company.[143]

The procedure is simple: shareholders must declare their intent to exit within a specific timeframe, and the company must pay compensation promptly.[144] If the shareholder disputes the adequacy of the compensation, they may seek adjustment through designated national authorities.[145]

Hungary transposed these provisions through the Cross-Border Transformation Act.[146] Under this Act, shareholders voting against the transformation are

140 Article 4 (2) of Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies already provided Member States with the right in the case of companies participating in a cross-border merger to adopt provisions designed to ensure appropriate protection for minority members who have opposed the cross-border merger. Several Member States, such as Germany, introduced exit rights in line with this rule.

141 See recital 17 of the Directive. For the problems of national regulations prior to the Directive, see *Jessica Schmidt,* Protection of Minority Shareholders in Conversions: Developments in European Company Law, in *Burkhard Gehle/Heribert Hirte/Daniel Lochner* (eds.), Festschrift for Thomas Heidel (Nomos 2021), p. 353–368.

142 Article 126a (1). The precise conditions under which this may be done are not relevant for the present assessment and will therefore not be examined below.

143 See recital 18 of the Directive and *Jessica Schmidt,* in: *Walter Bayer/Jochen Vetter* (eds.), Umwandlungsgesetz (O. Schmidt 2024), p. 2415, § 13 para 10.

144 Article 126a (3) of the Company Law Directive.

145 Article 126a (4) of the Company Law Directive.

146 Act CXXIV of 2021 on Cross-Border Conversions, Mergers, Divisions of Limited Liability Companies and Other Amendments for the Purpose of Approximation.

entitled to sell their shares for an appropriate cash compensation,[147] The shareholders may notify the company of their request to have their shares sold within 30 days after the date of the general meeting that decides on the cross-border conversion.[148] The cash compensation due to the shareholder shall be paid by the end of the second month following the date of the cross-border transformation.[149] If the shareholder does not consider the amount of the compensation offered by the company to be adequate, the shareholder may bring an action to have the amount of the financial compensation be determined by court.[150]

At first glance, it is clear that the law follows a different logic than in the case of domestic transformations. Whereas in the case of domestic transformation, the shares of the exiting shareholders are not purchased, but the share capital of the company is reduced, in the case of an EU cross-border transformation, a sales contract is established. It is not clear, however, whether the law provides for a unilateral right to create the contract or whether the general offer-and-acceptance scheme must be followed in such a case.

If we look at the wording of the law, we find a contradiction between Section 17 (1) and (2) of the Cross-Border Transformation Act, which unfortunately makes the interpretation difficult. According to Section 17 (1) of the Cross-Border Transformation Act, a member is entitled to "sell" his shares "for compensation". This rule is perhaps best understood as a sell-out right. Unfortunately, the law does not specify against whom this right may be exercised.

During the drafting of the Company Law Directive, a number of views were expressed on the regulation of this issue. For example, the final Commission proposal stated that the company, the shareholders of the company or third

147 Section 17 (1) of the Cross-Border Transformation Act. Hungarian law recognises non-voting shares, but as the exit right is linked to shareholders who voted against the transformation, Hungarian law seems to provide no exit right for shareholders with non-voting shares.

148 Section 17 (2) of the Cross-Border Transformation Act.

149 Section 17 (3) of the Cross-Border Transformation Act.

150 Section 17 (4) of the Cross-Border Transformation Act. This provision implements Article 86i (4) of the Company Law Directive. In this context, the Company Law Directive states that "[Member States] shall ensure that members who have declared their intention to exercise their right to sell their shareholding in a company but who consider that the amount of financial compensation offered by the company has not been properly determined shall be entitled to claim further financial compensation before the competent authority or body empowered to do so by national law. Member States shall set a time limit for the submission of a claim for additional financial compensation."

parties by agreement with the company could be entitled to acquire the shares and pay the cash compensation.[151] However, this option did not survive into the final text of the Company Law Directive, and so it seems that, as a general rule, the company is obliged to pay the compensation.[152] It is worth noting that neither the Company Law Directive, nor the Cross-Border Transformation Act states that the cash compensation must be paid by the company, but this follows from rules such as Article 86i (4), which regulates "cash compensation offered by the company".

Section 17 (2) of the Cross-Border Transformation Act differs markedly from subsection (1). Instead of a sell-out right, it states that the shareholders may "request the sale" of their shareholding and specifies that this request must be addressed to the company. This implies that the legislator intended to give shareholders the right to ask the company to arrange a sale of their shares. This reading is reinforced by the ministerial explanatory memorandum to the Cross-Border Transformation Act, which states: "[t]he Directive does not contain any restrictive rules on the exercise of the exit right and the sale of shares, and the rules of the Member States therefore apply. For example, the pre-emption right of the shareholders, the company, and the person appointed by the company in the event of the sale of the limited liability company's shares to a third party, as provided for in Section 3:167 of the Civil Code, is also applicable." The reference to pre-emption rights suggests that the legislator envisaged a sale or the shares by the company, rather than a mandatory acquisition by the company. However, this rule is flawed for several reasons.

First, the ministerial explanatory memorandum also refers to exit right. The general part of the explanatory memorandum states that "[f]or members holding shares who voted against the approval of the draft terms of conversion, the Proposal provides the right to withdraw from the company and to receive cash compensation corresponding to the value of their shares." This explanation seems to imply that the members have the right to leave the company regardless of whether a buyer has been found for their shares. Second, the company is obliged to pay the cash compensation within the deadline laid down by the Cross-Border Transformation Act.[153] This provision excludes the possibility that the cash compensation is linked to the potential conclusion of the sales contract with a third party. Third, it would also be logically inconsistent for the company to pay compensation if the shares are sold to someone else.

151 Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2017/1132/EC as regards cross-border transformations, mergers and divisions [COM/2018/241 final – 2018/0114 (COD)], Article 126a (2).

152 *Jessica Schmidt*, in: *Walter Bayer/Jochen Vetter* (eds.), Umwandlungsgesetz (O. Schmidt 2024), p. 2424, § 313 para 54.

153 Section 17 (3) of the Cross-Border Transformation Act.

In light of these contradictions, the Cross-Border Transformation Act must be interpreted as granting the shareholders a right to have their shares purchased by the company itself, even though the Act does not express this clearly. The subsequent analysis is based on this interpretation.

The next question is how this exit right should be exercised from a contract law perspective. In other words, how is the contract concluded between the exiting shareholder and the company?

There are three conceivable models:

The first possibility is that, following the shareholder's notice of intention to exist, the company makes an offer, indicating the price at which the company would buy their shares. The shareholder may then decide whether to accept the offer. Although this interpretation provides sufficient flexibility, but it seems incompatible line with the Company Law Directive, which presumes that the contract already exists: it allows the shareholders to challenge the amount of the compensation, and not the refusal to purchase.

The second possibility is that the law gives the exiting shareholder a unilateral sell-out right. The problem with this interpretation is that the Civil Code's rules on sell-out right require that the purchase price at which the sell-out right can be exercised is specified in advance in the contract.[154] The rule is self-evidentiary: since the contract of sale is concluded when the sell-out right is exercised, and the purchase price is an essential condition in sales contracts, the purchase price has to be fixed in advance. When the sell-out right is exercised, the one price at which the company may be obliged to buy the shares is the price indicated in the draft terms of conversion.[155] If the shareholder does not agree with this price, the seller must have the right to request the adjustment of the price from the court. This solution would be in line with the proposal we made in the context of private takeovers in that if there is a dispute between the parties as to the market value, the buyer should pay the equity share of the purchase price, and the court will decide on the market value of the shares. The same logic would apply here, but instead of the equity price the purchase price set out in the transformation plan will be paid by the company when the sell-out right is exercised, and the court may increase the price upon the shareholder's request.

Finally, the third possibility is that the law imposes on the company an obligation to buy the shares of the exiting shareholders. In this case, the contract

154 Section 6:225 (2) of the Hungarian Civil Code.

155 The draft terms of conversion shall set out in detail the detailed offer of financial compensation to be offered to the withdrawing member [Section 7(1) 8 of the Cross-Border Transformation Act].

would be formed by the company's declaration.[156] The company is obliged to exercise the obligation to purchase at the purchase price specified in the draft terms of conversion, but the shareholder may apply to the court to have the purchase price adjusted after the contract has been concluded. This solution also leads to the right result, but with the problem that if the company does not make a purchase offer despite the invitation, the shareholder cannot effectively leave the company but must apply to the court so that the contract is established.[157] We believe that this outcome is incompatible with the Company Law Directive, which aims to ensure that the member can easily exit the company and at most have to argue about the appropriate purchase price afterwards.

Given the options above, the most coherent interpretation is that the Cross-Border Transformation Act should establish a sell-out right, exercisable by unilateral declaration of the shareholder, at the price set out in the draft terms of conversion. The shareholder should have the right to request judicial adjustment of this price.

It is understandable that, given the differences in national contract law regimes, the Company Law Directive does not prescribe how the exit right must be exercised. However, the Hungarian implementation illustrates the practical difficulties that arise in the absence of clear rules. EU lawmakers may wish to consider introducing more detailed provisions on the contractual mechanism for exercising exit rights in future legislative revisions.

6. Exit right in the case of corporate groups

The final context in which exit rights are examined in this article concerns corporate groups. In such groups, a parent company exercises control over its subsidiaries, and decisions often prioritise the interests of the corporate group as a whole over the individual interests of the subsidiary. An exit right for minority shareholders can help mitigating the risk of prejudice or economic disadvantage arising from such a structure.

English company law does not provide for a general statutory exit right for minority shareholders in corporate groups. However, as discussed earlier, the unfair prejudice rule under the Companies Act 2006 may entitle the court to order the buyout of the minority shareholder in cases of misconduct or unfair treatment.[158]

156 Section 6:71 (2) of the Hungarian Civil Code.
157 Section 6:71 (1) of the Hungarian Civil Code.
158 Section 944 of the Companies Act 2006.

In contrast, the German legal system offers a more structured approach. *Konzernrecht,* the law applicable to corporate groups is well developed in Germany.[159] Under the Share Company Act, minority shareholders are granted an exit right if a control or profit and loss transfer agreement is concluded between the parent company and its subsidiary.[160] A similar right is also available in the event of a merger between the parent and the subsidiary, provided that the parent already holds at least 95% of the shares in the subsidiary.[161]

Hungarian law likewise recognises an exit right for minority shareholders within corporate groups. A corporate group under Hungarian law is defined as a cooperation between at least one controlling member that is obliged to prepare consolidated financial statements and at least three members controlled by the controlling member, all subject to a uniform business policy as laid down in the controlling agreement.[162] This agreement must be approved by the general meetings of all members and defines the strategic direction of the entire group.[163]

Once approved, the controlling member must publish two information notices concerning the formation of the corporate group.[164] Following publication, minority shareholders in the controlled members may request the controlling member to purchase their shares at the market value at the date of the notice.[165] Importantly, the registration of the corporate group may only take place when the claims of the shareholders and creditors of the controlled legal entities have been satisfied or the court has finally dismissed such claims.[166]

Among the various exit right mechanisms discussed in this article, the Hungarian corporate group regime appears to be the least well thought out.

One issue lies in the rule that permits registration of the corporate group if the court dismisses the shareholders' claims. This rule is clearly flawed. The Civil Code unambiguously guarantees minority shareholders the right to have their shares purchased by the controlling member. Any legal dispute should only

159 See, e.g., *Volker Emmerich/Mathias Habersack* (eds.), Aktien- und GmbH-Konzernrecht (Beck 2022) 10th ed.; *Jan Lieder/Nima Ghassemi-Tabar* (eds.), Münchener Handbuch des Gesellschaftsrechts, Band 8: Umwandlungsrecht – Gesellschaftsrecht, Insolvenzrecht, Steuerrecht, Bilanzrecht, Arbeitsrecht, Kartellrecht, Öffentliches Recht (Beck 2025) 6th ed. *Thomas Liebscher,* GmbH-Konzernrecht (Beck 2006).

160 Section 305 of the AktG.

161 Section 320b of the AktG.

162 Section 3:49 (1) of the Hungarian Civil Code.

163 Sections 3:50 and 3:51 (2) of the Hungarian Civil Code.

164 Section 3:51 (3) of the Hungarian Civil Code.

165 Section 3:52 (1) of the Hungarian Civil Code.

166 Section 3:52 (3) of the Hungarian Civil Code.

concern the amount of compensation, not the right itself. Therefore, courts should not have the authority to dismiss shareholders claims altogether – only to decide the amount of the compensation. By contrast, creditor claims may legitimately be dismissed by the court if the claims are already secured or if no further security is warranted in light of the controlled member's financial position or the term of the control agreement.[167] We can, therefore, assume that the legislator wanted to state that the corporate group can only be registered if the controlling entity purchased the shares of the minority shareholders that have exercised their exit right, and the creditors' claims for security have been addressed.

The second issue is even more serious. If a dispute arises over the purchase price between the minority shareholder and the controlling entity, the group cannot be registered until the court has given a final decision on the dispute. Given that such disputes often require expert valuation, resolution could take years, severely delaying the formation of the group.

A better approach would be for the Civil Code to adopt the same mechanism used for situation involving influence conferring a qualified majority. In both cases, the legislative aim is to facilitate exit for a shareholder who no longer wishes to remain part of the company. Under this model, the minority shareholder would have a sell-out right. The purchase price could be based on either equity value or market price.[168]

If the minority shareholder opts for equity-based price, the contract is automatically concluded at that price. However, following the approach proposed earlier in the article, the shareholder should also be allowed to propose a higher price. If the controlling entity accepts this price, it becomes binding. If the price is contested, the controlling entity must nonetheless pay at least the equity share-based amount. The shareholder would then retain the right to initiate court proceedings to determine the final purchase price.

7. Summary

This article critically examines the concept of shareholder exit rights, with a particular focus on their treatment under European Union law. Traditional company law doctrine is built around the principle of capital lock-in, which generally prohibits shareholders from unilaterally reclaiming their contribu-

167 Section 3:52 (2) of the Hungarian Civil Code.

168 The law does not answer the question whether a minority discount should be applied when determining the market price. In this respect, the arguments explained in Section 4.3 above apply *mutatis mutandis.*

tions. However, exceptional circumstance – such as public takeovers, mergers, divisions and company transformations – can justify granting an exit right to minority shareholders. The EU regulatory framework reflects this balance between capital stability and minority protection.

The Takeover Directive provides that when control shifts following a public takeover, minority shareholders are protected through the mandatory bid and the sell-out right. These mechanisms ensure that minority shareholders can exit the company at a fair price on short notice, reinforcing both market confidence and the principle of fairness.

The Company Law Directive entitles shareholders voting against a cross-border conversion, merger or division to adequate cash compensation if they opt to exit the company. This right addresses the significant legal transformation that arises from the change in the applicable corporate law of the company post-transformation.

Our comparative analysis of UK, German, and Hungarian law reveals additional national protection for minority shareholders. This comparative perspective yields two major conclusions. First, since the relevant EU directives do not contain detailed rules on how the exit rights should be exercised, Member States have introduced diverging solutions, leading to uncertainties in interpretation and application. Second, there are considerable differences in the scope and effectiveness of national protections, resulting in highly divergent levels of minority shareholder protection across jurisdictions.

The analysis of Hungarian in particular offer lessons that may be valuable for other Member States. We have shown that the detailed procedural and substantive rules surrounding exit rights can either transform them into effective tools of minority protection or reduce them to weak mechanisms. An efficient regulatory framework must strike balance between the interests of the exiting shareholder and those of the company or the counterparty to the transaction.

The law should offer clear answers to five key questions: *(i)* will the shareholder's exit take place through a sales contract or a reduction of share capital, *(ii)* if a sales contract is used, who will be the contracting parties, *(iii)* how will the contract be concluded – as a result of a sell-out right, or some other means, *(iv)* how will the purchase price be determined and can the purchase price be challenged in court, *(v)* how can the system ensure that at least the undisputed part of the purchase price is paid out promptly to facilitate the shareholder's exit?

This article has proposed solutions to these open questions that aim, on the one hand to ensure coherence with general principles of contract law, and on the other hand, to reflect the legitimate concerns of both the seller, the buyer, and where relevant, the company. We hope that these recommendations will assist

the Hungarian legislator in revising its legal framework, aid other Member States in identifying the core regulatory issues surrounding shareholder exit, and support the EU institutions in formulating more detailed rules to realise the objectives outlined in the preambles of the Takeover Directive and the Company Law Directive.