DOI: https://doi.org/10.14505/jarle.v8.3(25).37

The Experience of the European Union in the Field of Administrative and Legal Support for Asset-Grabbing Prevention

Roman Volodymyrovych SHAPOVAL
Yaroslav Mudryi National Law University, Kharkiv, Ukraine
rvshapoval1@gmail.com

Olga Ivanivna DEMENKO
Simon Kuznets Kharkiv National University of Economics, Kharkiv, Ukraine
dem1962med@gmail.com

Khrystyna Volodymyrivna SOLNTSEVA
Yaroslav Mudryi National Law University, Kharkiv, Ukraine
kvsolntseva@gmail.com

Suggested Citation:

Shapoval, R.V. *et al.* 2017. The Experience of the European Union in the Field of Administrative and Legal Support for Asset-Grabbing Prevention. *Journal of Advanced Research in Law and Economics*, Volume VIII, Summer, 3(25): 994 – 1008. DOI: 10.14505/jarle.v8.3(25).37. Available from: http://journals.aserspublishing.eu/jarle/index

Article's History:

Received March, 2017; *Revised* April, 2017; *Published* June, 2017.
Copyright © 2017, by ASERS® Publishing. All rights reserved.

Abstract:

The relevance of the study is determined by the necessity to improve criminal and legal antitakeover measures in the current context. The article deals with the comparative analysis of asset-grabbing as a wide-spread phenomenon existing all over the world and mainly typical for the CIS countries. The authors also analyze the experience of the European Union in counteracting illegal takeover of businesses. The analysis has shown that the phenomenon of 'asset-grabbing' is absent in the countries with a developed economies. Special state structures should be created to regulate the merger and acquisition transactions in the stock market. The present study is unique as it generalizes a broad legislative experience and shows significant discrepancy between legislation aimed at protecting the interests of shareholders in the countries with developed market economies and in the CIS countries.

Keywords: asset-grabbing, European Union, counteraction to illegal takeover of a business.

JEL Classification: K22; K23; K42.

Introduction

Asset-grabbing is understood as illicit takeover of a business against the will of its owners having a predominant position in this business, and (or) its top manager. The term 'raider' came from the United States of America, where raiders refer to the attacking party in the processes of mergers and acquisitions. In addition, there are terms such as 'friendly/ unfriendly takeover', 'corporate raid' and others, which originated in Europe and the United States of America (hereinafter referred to as the US) and are the result of the development of foreign legal and economic thought in this field.

Asset-grabbing is an unlawfully obtained possibility to exercise managerial powers with respect to a legal entity, as well as the alienation of property and (or) property rights belonging to a legal entity in favor of the guilty or other persons, resulting from unlawfully obtained possibility of exercising managerial authority over such a legal entity.

The authors are of the opinion that this wording being a laconic one will simultaneously allow for the fullest coverage of the entire list of possible external manifestations of illegal seizures of legal entities, including both their physical (forcible) and legal takeover (establishment of formal control over them).

Merger and acquisition processes are traditional methods of actions of the participants in the corporate sector of all developed countries at the present stage. However, the existing legal and normative framework for the regulation of these processes is constantly undergoing various changes.

Asset-grabbing is a dynamically developing highly intellectual phenomenon. This is reflected in the fact that it is able to overcome the barriers that the legislator creates on the way to illegal seizure of firms, and also that it is stable, as evidenced by the creation of organized groups engaged in asset-grabbing professionally.

It is possible to successfully counteract asset-grabbing in various ways, including by improving both corporate legislation and encouraging the law enforcement officials to implement their work in a qualitative way.

As is known, scientific research of criminal legal phenomena and institutions is most effective when the study is conducted using a comparative legal method, especially when a legal phenomenon that has not been unambiguously evaluated by representatives of science and practice is being investigated (Pshipiy 2014). To develop the problems of counteracting hostile takeovers, it seems necessary to explore foreign experience in this field.

The international level represented by the regulatory framework of the European Union and designed to guide the participating countries towards the creation of unified legislation in the matter of merger and acquisition is one of the highest levels for regulation of these processes.

The European Union (hereinafter referred to as the EU) was established on the basis of the Treaty of Rome that came into force on January 1, 1958 and represents the economic and political union of 27 European states. The main goal of forming a union of this kind was to create conditions for successful economic interaction of the participating countries, including through the formation of a single market for goods, works and services.

In this sense, the processes of merger and acquisition in modern conditions are universal mechanisms for the development of the world trade turnover. The issue of legal regulation of companies' activities, including the problems of legislative support for merger and acquisition processes, is given great attention in the EU activities.

1. Research background

Merger and acquisition processes are traditional methods of actions of the participants in the corporate sector of all developed countries at the present stage. However, the existing legal and normative framework for the regulation of these processes is constantly undergoing various changes.

Asset-grabbing is a dynamically developing highly intellectual phenomenon. This is reflected in the fact that it is able to overcome the barriers that the legislator creates on the way to illegal seizure of firms, and also that it is stable, as evidenced by the creation of organized groups engaged in asset-grabbing professionally.

It is possible to successfully counteract asset-grabbing in various ways, including by improving both corporate legislation and encouraging the law enforcement officials to implement their work in a qualitative way.

As is known, scientific research of criminal legal phenomena and institutions is most effective when the study is conducted using a comparative legal method, especially when a legal phenomenon that has not been unambiguously evaluated by representatives of science and practice is being investigated (Pshipiy 2014). To develop the problems of counteracting hostile takeovers, it seems necessary to explore foreign experience in this field.

The international level represented by the regulatory framework of the European Union and designed to guide the participating countries towards the creation of unified legislation in the matter of merger and acquisition is one of the highest levels for regulation of these processes.

The European Union (hereinafter referred to as the EU) was established on the basis of the Treaty of Rome that came into force on January 1, 1958 and represents the economic and political union of 27 European states. The main goal of forming a union of this kind was to create conditions for successful economic interaction of the participating countries, including through the formation of a single market for goods, works and services.

In this sense, the processes of merger and acquisition in modern conditions are universal mechanisms for the development of the world trade turnover. The issue of legal regulation of companies' activities, including the problems of legislative support for merger and acquisition processes, is given great attention in the EU activities.

A great deal of academic papers is dedicated to such phenomenon as a takeover (Laabs and Schiereck 2010; Masulis *et al.* 2007; Mukherjee *et al*. 2004; Schneper and Guillen 2004; Walker and Hsu 2007; Williams *et al*. 2008; Coates 2003; Stout 2002; McCahery *et al*. 2003; Rose 2002; Faccio and Lang 2002; Berglöf and Burkart 2003; Winter 2002, Cain *et al*. 2017, Jandik *et al*. 2017, Wang and Lahr 2017 and others).

Different classifications based on the corresponding grounds are presented in them. When a takeover is referred to companies manufacturing similar goods or services, the main purpose is fulfilled by the growth in 'market share, synergy effect and scale effect' – such takeover is defined as horizontal integration. Besides, there is the so-called vertical integration, when one company takes over its former (e.g., distributor or supplier), which helps a company take control over the whole production process (Puziak 2012, 62).

In the above-mentioned case the acquiring company possesses a lot of financial resources for such an investment and it can be generally performed in a relatively short period of time. There may be cases when the attacking company continuously and consistently buys shares at a market price. In such situation the process of buying shares takes a considerable time.

Takeovers may be hostile or friendly (Schwert 2000). They are distinguished by their purpose. The hostile takeover may become friendly upon mutual agreement during negotiations between top management of two companies. The objective of friendly takeovers is to receive profit from the synergy effect. The aim of hostile takeovers is the growth of competitiveness. In any case, takeovers result in restructuring of an acquired company, its current board and growth of profitability (Puziak 2012, 63).

Many articles focus on hostile takeovers and defensive strategies of the resisting companies at totally different markets, for instance, in the USA (Puziak 2012), in the UK (Raj 2011; Gregory 2005), in Australia (Brown and Sarma 2007), in Russia (Bloom 2004), in Germany (Puziak 2012), in Spain (Fernandez and Baixauli 2003), in Poland (Puziak 2012), in China (Zhi 2004), in Malaysia (Ali 2014), Romania (Şumandea-Simionescu 2015) and others. The authors pay attention to the facts, which can influence specificity, frequency and possibility of hostile takeovers. They mention 'organized entities with the majority of shares, and speak of banks in case of Germany, governments, referring to France and Austria or families as exemplified by Italy and Sweden in which case these entities have the control over public limited companies (Puziak 2012).

Hostile takeovers were not considered a European way of leading business. But it was before the 1990s. Afterwards, these cases became more frequent, and legal basis had to be adjusted. In order to tackle hostile activity, the European Commission executed updated merger regulation and a Takeover Directive. The change of the situation leads to 'continued evolution in the law' (Beach 2016). The main worry of Europeans was not just takeovers within the EU, but also activities aiming at EU companies from abroad. An example is the Cadbury (the second largest confectionary brand in the world after Wrigley's) takeover by Kraft, a US company, which asserted the United Kingdom – 'a traditionally raider-friendly jurisdiction – making substantive changes to its takeover rules, including permitting boards to solicit alternative offers and placing stricter timetables on the offeror party' (Beach 2016). Besides, in the European countries an important aspect in public limited companies is attributed to local governments or members of labor unions. Due to these facts hostile takeovers are rarer at these markets as compared to those in the USA or Britain (Puziak 2012).

The process of a hostile takeover may be influenced by both internal and external factors. One of the main factors is dispersion of shares. Besides, internal factors include domination of single, private shareholder; poor management, undervaluation of share price, low level of debt and/or high level of liquid assets (Puziak 2012, 61). The most significant external factors include (1) liberal government policy referring to processes of capital concentration; (2) the absence of cultural barriers as, for example, in countries loyal to family property (Puziak 2012, 61; Ferrarini 2009). External circumstances may be specific of certain countries. So, in China, many state-owned Chinese companies used to keep a certain number of non-tradable shares at hand to make secure an absolute regulating power over the company by the state (Ali 2014). The study of failed takeovers in a banking sector demonstrated that among the determinants leading to the failure are 'deal specific characteristics, in particular the hostility of the bidder and the presence of multiple potential acquirers' and the length of negotiations, 'lengthier negotiations have a lower probability of success' (Caiazza 2016).

In the situation with a hostile takeover there are three potential outlines. In the first case, the attacked company defenses itself, but it is inefficient and the company is taken over. In the second case, the target and acquiring companies are merged. It takes place when the boards of two companies conclude to make an agreement related to a vision of another economic structure. In the last case, a target company takes up defensive activity and is successful to avoid hostile takeover (Puziak 2012). The board neutrality rule inherent to European legislation concerning takeovers was adopted to protect shareholder interests and aiming at harmonization across the EU, but in some cases it is criticized and scholars speak of 'uncertain results' after its implementation (Beach 2016; Humphery-Jenner 2012). We can even encounter the following conclusion: 'The European Directive 2004/25/EC creates a disadvantage for European companies compared to their non-European equivalents, primarily in regard to U.S. companies' (Şumandea-Simionescu 2015). The result is

attempts of certain European countries to refer to a number of defensive activities. In Germany, for instance, Securities Acquisition and Takeover Act (20 December 2001, last amended by Art. 2 (46) of the Act of 22 December 2011) allowed possible defensive procedures, supplying boards and executives with a number of defensive strategies (e.g., a White Knight tactics).

The scientists analyze and systematize different strategies used by companies against hostile takeovers and their effect on the process of restructuring of a company, which is the purpose in this situation (Puziak 2012). These methods are divided into two main groups: preventive actions hindering potential buyers and counteractions performed after receiving takeover bid. In both instances the objective of the board is to persuade current shareholders to preserve status quo by making a company more attractive to its present shareholders or making a company less interesting to the attacking companies. The most frequently used defensive strategies include: clauses in the articles of association, present before takeover offer (staggered board, supermajority, fair price); counteractions initiated when the takeover offer is made: providing current shareholders' support by sending particular requests or by arranging the meetings with the most important shareholders; lobbing, Pacman defense, Greenmail, restructuring of assets (Puziak 2012, 63).

In recent years, techniques of defending against a hostile takeover have been transformed. It occurred due to changes in legal system, which made those strategies unproductive or even illegal regarding the new law. An example of such situation is poison pill strategy (Kahan 2002, Gleason 2009). This strategy is related to actions leading to high indebtedness when a company is under threat of unwanted takeover. Target debt issuance is mentioned to be used to prevent takeovers (Jandik *et al*. 2017). There are two competing approaches concerning the role of the poison pill strategy in corporate governance literature. One of them considers short-run effects after referring to poison pill tactics. This theory is frequently called the management entrenchment hypothesis. Another theory gives an explanation as to why shareholders benefit from the poison pill (Gleason 2009). Gompers *et al*. (2003) describe takeover defenses as weak corporate governance. The legislative arguments over dead hand poison pills are no more apparent than the policy arguments. In the USA, for example, 'states' legal codes are generally silent on dead hand provisions', and 'the legality is a matter of judicial interpretation' (Gleason 2009, 371).

In case of defense against a hostile takeover, there is another strategy including the intervention of 'white knight'. In business, the target firm searches for white knight investors for a friendly takeover by buying shares (Beach 2016).

Some authors write about such techniques as tender offer and proxy contest (or proxy fight) (Ali 2014). A tender offer is an offer to buy some or all of shareholders' shares in a corporation. A proxy contest (or proxy fight) is a fight for the control of a firm in which the acquirer persuades existing shareholders to vote those shareholders' shares so that the company will be easier to take over.

Different scholars argue a matter pro and con relating the estimate of a hostile takeover (Billett 2007; Jo 2009; Charles 2008; Fraser 2009). Some of them consider this situation useful, a kind of 'an effective measure of external inspection' (Ali 2014, 559). Additionally, some authors believe that a hostile takeover is totally arbitrage activity. They demonstrate that it may not only influence internal and external shareholders, but also give impact to management, employees and even customers both in a positive and a negative way (Ali 2014, 559).

The study of the vast academic literature on the main issue has demonstrated the lack of publications dealing with the comparative analysis of legislative base related to the phenomenon of takeovers in countries with the developed economy and the CIS countries. Hence, the uniqueness of the present study generalizing a broad legislative experience and showing significant discrepancy between legislation aimed at protecting the interests of shareholders in these countries. In the second half of the 20th century major changes have been made to the national laws regulating the activities of companies in almost all member countries of the EU. The desire to create a single economic space, the globalization of production and capital is called by numerous experts the reason for this modification.

2. Results and discussion

It should be noted that the European Union carries out its activities mainly on the basis of constituent treaties concluded with its member states. In accordance with them, the EU carries out a set of measures to coordinate national legislations of member states concerning the regulation of companies' activities. At the same time, the EU, taking into account the different features of the legal systems of the member states, leaves solutions to a number of issues on regulating the merger and acquisition processes at the discretion of the national laws of the participating countries.

The essential role in the formation of a single legal field is given to the directives of the EU Council and interstate negotiations. Fourteen major directives form the so-called EU Company Law Harmonization Program.

The First directive on the company law was approved by the European Council on March 9, 1968 (68/151/EEC). This directive established an exhaustive list of existing grounds and the strict procedure and conditions for recognizing the registration of the company as invalid.

The Second Company Law Directive of December 13, 1976 (77/91/EEC) regulated the procedure for increasing and decreasing the authorized capital, the procedure for accessing information on corporate capital and so on.

The Third Directive of October 9, 1978 (78/855/EEC) and the Sixth Directive of December 17, 1982 (82/891 EEC) deal with the structural reorganization of public limited liability companies. The Third Directive establishes the basic principle of companies' mergers, according to which the merger of the company is made without its liquidation. The directive provides for two forms of mergers: 'division by acquisition', which means the transfer of assets to an already existing company, and 'division by formation of new companies', where assets are transferred to a newly formed company. It is noteworthy that the Third Directive obliges the member countries, which previously were not familiar with the institution of merger, to introduce it into their national acts (Article 2 of the Directive). In addition, the Third Directive contains a number of provisions aimed specifically at protecting the rights of shareholders. Thus, for example, it establishes that the decision to merge is taken by the General Meeting of Shareholders (Article 7), prior to the adoption of a decision by the meeting a merger agreement shall be made, etc. Legislation of the member countries that have ratified this Directive should provide for an adequate system for protecting the interests of creditors of merging companies concerning obligations to them that arose before the publication of merger and whose validity has not yet expired by the time of this publication.

Special attention on the part of the European Union is paid to preventing violations of the rights of company members during the merger. Thus, legislative consolidation of the regulations for the protection of the rights of employees of each of the merging companies is directly stipulated in the Council Directive of February 14, 1977 (77/187/EEC), and in the Council Directive of 12 March 2001 (2001/23/EC).

The EU Merger Directive of 1982was followed by the Division Directive (Sixth). Its requirements, like the requirements of the Third Directive, apply only to joint-stock companies and are aimed at harmonizing the process of dividing companies that are under the jurisdiction of one state, that is, 'national divisions'. At the same time, this Directive does not oblige the states, where such a procedure of division is not envisaged, to introduce this institution (Article 1).

The Fourth Directive of July 25, 1978 (78/660/EEC), the Seventh Directive of June 13, 1983 (83/349/EEC), and the Eighth Directive of April 10, 1984 (84/253/EEC) deal primarily with addressing the issues of the rules for compiling and publishing financial information of companies.

The provisions concerning the regulation of the procedure for handling financial statements of the Fourth and Seventh Directives are reflected and clarified in the Eleventh Council Directive (89/666/EEC), adopted on December 22, 1989, with a special procedure for the provision of information of this kind by branches and representative offices of foreign companies.

In addition, it is required to mention the Directive 2005/56/EC of the European Parliament and of the Council of October 26, 2005. Paragraph (1) of the Directive stipulates that the co-operation and unification of economic societies, based on pooling of capitals from different Member States is necessary. At the same time, this Directive defines rather clearly business companies for which the merger guidelines can apply, and clarifies what is specifically understood under the 'cross-border merger', as well as the order, conditions of control and consequences of the conducted merger.

Thus, cross-border mergers imply the mergers of economic societies, united on the basis of pooling of capitals, established in accordance with the legislation of any member state and having their legal address, their central administration or their parent enterprise, provided not less than two of them are subject to the legislation of different member states.

And finally, the Directive 2004/25/EC of the European Parliament and of the Council of April 21, 2004, the so-called Thirteenth Directive, regulating the takeover bids, and Council Regulation 139/2004 of 20 January 2004 on the control of the concentration between undertakings (the EU Merger Regulation, the latter modernized the Council Regulation 4064/89, which regulated these issues previously). The development and harmonization of these two instruments in the European Union bodies have been carried out for many years, and they, in fact, were the best synthesized result of a huge number of regulations issued by many countries for a long time. It is

important to note that the legislative acts that are adopted in individual countries constituting the EU must necessarily be harmonized with the regulatory and legal acts of the EU itself.

The Directive 2004/25/EC establishes general principles and requirements that should be taken into account by the participating states in their company laws on with regard to the systems of national law and cultural characteristics. Considerable attention is paid to the formation and use of protection mechanisms in the course of companies' acquisition. The following rules are of fundamental importance: the board neutrality rule, article 9, the breakthrough rule, article 11, the optionality and the reservation of reciprocity clause. These provisions are aimed at limiting the use of various 'protective measures' that companies can apply as a way of repelling unfriendly takeovers ('takeover protection'). Moreover, the Directive contains a number of provisions with respect to minority shareholders, which include the Equal Treatment Principle, the Equitable Price Principle. However, the provisions of the Directive are mainly dispositive, which allows the national legislator to deviate from its text. Thus, the implementation and application of the Directive remain entirely at the discretion of the State.

In addition, the Directive 2004/25/EC provides six general principles that should be applied in the procedure of acquisition:

- the same rules shall apply to all holders of securities of the same class of an offeree company. If a person acquires control of a company, other holders of securities must be protected;
- the holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the bid;
- the board of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid;
- false markets must not be created in the securities of the offeree company, of the offeror company or of any other company concerned by the bid resulting in artificial the rise or fall of the prices of the securities becomes and distorting the normal functioning of the markets;
- an offeror must announce a bid only after ensuring that he/she can fulfil in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration;
- an offeree company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities (Popova and Popov, 2008).

However, perhaps the main objective pursued by the above Directive was to improve national legislation in the field of mergers and acquisitions and eliminate obstacles in the legislation of individual countries in the field of corporate regulation. Since each state in Europe is endowed with its national legislation establishing the procedure for the implementation of companies' merger and acquisition, it is important to foresee the possibility of liability for violations of its norms in cases of an unfriendly acquisition. In the member countries of the European Union, a two-tier regulatory system has been developed: all merger and acquisition transactions are considered by a special Merger Regulation Commission within the European Union, along with local antimonopoly bodies.

The United Kingdom is one of the member countries of the European Union. As a member of the EU, the UK regulates merger and acquisition issues under the 2006 Regulations on the EU Directive on Takeover Bids of 2004 (Interim Implementation). As for national legislation, the UK is a unique example of self-regulation of the merger and acquisition market. It is interesting that in this country there is still no single normative legal act possessing the legal force of law and covering all issues related to the reorganization of legal entities.

The British Companies Act 2006 is the main document of the United Kingdom governing corporate relations. The provisions of this law introduced significant changes to many of the previously existing aspects of corporate law. The Companies Act of 2006 (the most voluminous, by the way, a document in the British legislative history) changed a number of provisions of the Companies Act 1985, but in essence it, being similar to its normative predecessor, gives definitions of public and private companies. It is interesting that there was an even earlier Companies Act of 1948, which was so significantly and repeatedly amended and supplemented (in particular, in 1967, 1976, 1980, 1981), that its use in practice became rather difficult. Whereas the adoption of the new Companies Law in 1985 pursued its main goal of formal streamlining of the legal material without making any significant amendments to its content, in the Companies Act 2006, amendments and innovations appear in a rather large volume. In particular, the provisions on the contents of the memorandum of association are substantially changed, a number of amendments are introduced relating to company's registration which are specifically aimed at simplifying the registration process, changes are made to take measures to store information about the company, it is made possible to provide various kinds of notifications via e-mail or through

the website and so on. Despite the fact that the Act obtained the royal sanction and was officially published in 2006, only a few of its provisions entered into force in that year. This is explained by the fact that this document was put into effect step by step. Thus, on October 1, 2009, the last aspects of the Companies Act 2006 came into force (as the final stage of the introduction of the Act), according to which, for example, stricter rules are applied when registering the chosen company name. In general, the Companies Act 2006 contains about 700 pages, includes 1300 articles and 16 schedules.

Along with the aforementioned normative legal act, the City Code on Takeovers and Mergers (CCTM, 2016) is an important document of the UK devoted to the reorganization of businesses. For the first time the Code was published in 1968 and was repeatedly changed subsequently. The provisions of the Code did not have the force of law until the implementation of the 2006 EU Merger Directive in the UK. After that, the City Code acquired the status of a normative legal act. All UK companies follow its norms, as soon as the company acquisition situation arises and if this situation meets the criteria provided for in the Code. The British government formally recognized the power of the Code in the Financial Services and Markets Act 2000. The Code enshrines a number of limitations on the powers of the company's directors in the matter of anti-takeover, while assigning a decisive role in accepting the proposal to shareholders, and also singles out a friendly takeover, according to which the takeover bid is transferred at first to the board of directors of the offeree company, and an unfriendly takeover, when such a bid is not directly sent to the board of directors.

The most principled provisions of this Code were borrowed by national legislators of many European countries.

In Britain direct control over the activity of the merger and acquisition market is carried out by the Panel on Takeovers and Merges (Takeover Panel), which uses the City Code f on Takeovers and Mergers in its activities. The Takeover Panel was established in 1968 and has always been an informal body. It consists of the representatives of the Central Bank of England, the London Currency Exchange, as well as leading financial institutions of the country. The Executive Board is the main body of the Panel. The Executive Board is chaired by the General Director (as a rule, the director of a large investment bank), who has been the Panel General Director for two years. The Panel has the right to make comments to violators of the City Code provisions, apply subsequently to the leadership of trade unions with the requirement to bring the violators to disciplinary responsibility, impose sanctions on their own behalf, demand compensation, initiate cases against violators of the City Code in the courts of England, etc. Working on an ongoing basis, the Panel assesses the controversial issues arising in the course of takeover, and they are respectfully accepted by the parties to the dispute.

In addition to the above-mentioned documents, merger and acquisition processes are regulated in the United Kingdom by the Financial Services and Markets Act 2000 (FSMA) and Criminal Justice Act 1993 (the provisions relating to insider dealing). The regulator of the UK stock market – the Financial Services Authority (FSA) – issued the Listing Rules, the *Prospectus Rules*, and the *Disclosure* and Transparency *Rules*. Additionally, the British and European competition law applies. In particular, the government Office of Fair Trading plays an important role in regulating corporate interests among the companies of the United Kingdom, which, in essence, is a regulator of consumer markets and a body for the enforcement of competition protection. The activities of the Office are based on The UK Competition Act 1998, which directly establishes the procedure for combating unfair competition, and, interestingly, amending UK legislation in the field of consumer markets as one of its functions.

Actions defined in Russian law as asset grabbing do not apply to those in England. Any departure from the accepted practice of business or law is considered a fraud.

The UK Fraud Act of 2006 established that fraud is a generic concept of all types of deception connected with obtaining any benefit or associated with causing damage. Three independent actions that constitute a criminal offense are stipulated as a fraud: they include fraud committed by:

(b) making false statements;
(b) illegal non-disclosing of information;
(b) using own official position (LAW COM No 276, 2002).

Obviously, in this case, both in Russian and in English criminal law, deception is recognized as a constitutive sign of fraud.

In order to establish deception, there are a number of terms that differ slightly in their semantic content. Thus, a person is found guilty of committing fraud by making false statements in the event that he/she:

(a) dishonestly makes a false statement;
(b) intends, with the help of this false statement: (i) to obtain benefit for himself/herself or for another person, or (ii) to incur losses to another person or subject another person to the risk of losses.

A person is convicted of fraud by unlawful non-disclosure of information in the event that he/she:

(a) unlawfully does not disclose information to another person,

(b) does it dishonorably,

(c) intends, with the help of this: (i) to obtain benefits for himself/herself or for another person, or (ii) to incur losses to another person or subject another person to the risk of losses.

A person (D) is convicted of committing fraud by using his/her official position in case he/she:

(a) occupies an official position in accordance with which he/she must act with caution or refrain from acting contrary to the financial interests of the other person (P),

(b) dishonestly or secretly uses his/her official position;

(c) intends, with the use of his/her official position: (i) to obtain benefit for himself/herself or for another person, or (ii) to incur losses to another person or subject another person to the risk of losses.

Among the European countries that are distinguished by a relatively well-developed regulatory and legal framework regulating mergers and acquisitions are Sweden (Companies Act 1977), Germany (Joint-Stock Companies Act and Takeover Act 1991, Securities Law of September 6, 1965), Belgium (Royal Decree of 8 November 1989 on public takeover bids and the change of control in companies), the Netherlands (Dutch Civil Code) and others.

In the Western markets, friendly takeover first of all is understood as a process when the buyer submits a proxy statement to the authorized body (the US Securities and Exchange Commission, the UK Takeover Panel); after approval by this body this statement is sent to shareholders who at the general meeting of shareholders either approve or disapprove this transaction.

A single approach to the definition of the essence of unfriendly takeover is absent in the EU countries. Unfriendly takeover is understood as primarily sending letters containing the buyer's desire to purchase the company's shares directly to the shareholders (Begaeva 2010). Thus, Jan Steinbacher (2007) defines a hostile takeover as 'the acquisition of a target company whose management does not agree with this potential transaction.'

A whole set of measures has been worked out as a very effective mechanism to counter unfriendly takeover abroad that hamper their implementation (Arutyunova 2007). The essence of these measures is to make the object of attack less attractive. The arsenal of these methods is very broad, but in general, all these means can be characterized as the creation of additional encumbrances of the company's property, such as liens, loans, etc. (Mikryukov 2012), as well as guarantees for the management of companies in the form of significant compensation in the event of a change of the firm owner (Zaichenko and Kotkova 2010).

This example demonstrates that, despite effective protection of business and property by the state, private capital takes independent measures to protect itself, not trusting anyone. We regarded the opposite situation as a condition for the emergence of asset-grabbing in Russia. Only relatively recently in our country complexes of measures for antitakeover self-protection of legal entities from seizures have begun to develop (Smirnov 2013; Zinkovsky 2011).

3. Criminal laws

Having studied the criminal legislation of such economically developed countries as Australia, Austria, Great Britain, Germany, Denmark, Israel, Spain, China, Poland, USA, France, Switzerland, Sweden, South Korea, Japan, the authors have not revealed any norms on combating illegal takeovers of legal entities, which indicates that this phenomenon is not criminalized abroad. The most obvious explanation for this is that asset-grabbing is absent in foreign countries.

In the process of studying the criminal legislation of these countries, the authors established a number of norms that represent a certain interest. It seems that they quite successfully perform the function of counteracting certain phenomena that can contribute to asset-grabbing.

It should be noted that these norms were created not as a means of combating asset-grabbing, but for criminal-legal counteraction to various violations of corporate legislation, which, according to the legislator, had sufficiently high social danger to be criminalized.

Next, we will dwell on a separate review of the antitakeover legislation of various countries.

Thus, the Commercial Code of France contains a complex of criminal legal norms that protect corporate relations and provide for penalties for offenses against the management order in all organizational and legal forms of legal entities existing in France.

They are responsible for the following types of crimes:

(1) Articles L. 241.3 (in partnerships with limited liability) and L. 242-6 (in joint-stock partnerships) provide for criminal liability for the submission of annual accounting reports that do not reflect the exact financial situation to the participants of a legal entity, as well as for the unfair use of managerial powers and the right to vote. The punishment is very severe – up to five years in prison and a fine of 375 thousand euros.
(2) Articles L. 241.5 and L. 242.10 (each for the appropriate organizational and legal form of a legal entity) punish managers who did not convene a general meeting of participants within six months after the end of the financial year by imprisonment for up to six months and a fine of 9 thousand euros.
(3) Impeding the participation of a shareholder in a general meeting of shareholders, obtaining benefits or their promise for voting in a certain way or not participating in voting (in other words, bribing shareholders) is punishable under art. L. 242.9 in the form of imprisonment for up to two years and a fine of up to 9 thousand euros.
(4) Failure to enter any decision of the meeting in the minutes, in accordance with Art. L. 242-15, is liable to punishment in the form of a fine of 3.75 thousand euros.
(5) Unlawful issue of shares and illegal trade in shares (including up to payment of 1/4 of the authorized capital) is punishable by imprisonment for up to one year and a fine of up to 9 thousand euros. Earlier, there was article L. 242.16, which punished for a wrong vote count with a fine of 3.75 thousand euros, but it was canceled by Ordinance on August 1, 2003 (Fedorov 2010).

It is worth noting that the criminal liability for these crimes occurs regardless of the purpose of their commission, in particular without reference to the possibility of seizing control of a legal entity by committing these crimes.

The Criminal Code of Spain provides for the responsibility for a number of acts against the procedure of legal entities' management. Thus, the following actors are subject to criminal liability:

(1) the actual or legal manager of an association that had been or is being established, forging annual and other documents which must reflect the legal or economic situation of the organization, in such a way that it may cause economic harm to the association itself, its members or third parties (Article 290) ;
(2) someone who, using own dominant position in the governing body of a company that had been or is being established, will take an unlawful decision for the benefit of himself or a third person to the detriment of other members of the association and will not return profits (Article 291);
(3) a person who will take a damaging decision or use it for himself or for third parties to the detriment of the association or its member, which decision was fictitiously taken using the signed blank form, illegally appropriating the voting right not belonging to him, illegally denying the voting rights of persons having it by law, or by any other method or similar method (Article 292);
(4) the actual or legal head of any association that had been or is being established who without legal grounds will refuse or prevent a member of the association from exercising the right to information, participation in the management or control over the activities of the association or the right to preferential signing of agreements recognized in the current legislation (Article 293)
(5) the actual or legal head of any association that had been or is being established who, for his own benefit or benefit of third parties, exceeding its official functions, will fraudulently dispose of the assets of the association or enter into obligations through association, directly causing significant economic damage to its members, treasurers, account co-owners or owners of property, securities or money, which he disposed of (Article 295) (CCS, 2013).

Article 258 of the Spanish Criminal Code is of particular interest, according to it, a person guilty of a criminal offense who, after committing it for the purpose of avoiding the performance of civil liability resulting from this act, will execute acts by order or take upon himself obligations that reduce his property, becoming completely or partially insolvent (CCS, 2013).

In this situation, the above does not refer to the legalization of property obtained by criminal means, since the goals of giving a legitimate form to owning, using and disposing of it are not pursued.

However, in the course of the asset grabbing, sooner or later the fact of illegality of the origin of the property obtained as a result of committing this takeover will become evident, accordingly, in order to preserve it in one form or another, its alienation must be effected so that punishment cannot be drawn upon it.

On the one hand, the property obtained as a result of asset grabbing passes through the chain from one one-day firm to another in order to create the ultimate bona fide purchaser, who would not be able to claim this property. On the other hand, in the above norm it is not a matter of property obtained as a result of a crime, but

of the property of the offender, at the expense of which it is planned to cover expenses for its obligations arising from the commission of a crime, such as a fine or compensation for a civil claim.

Since in the course of asset grabbing of legal entities, sometimes such an approach is used as initiating criminal prosecution against the management of a victim firm, it seems useful to study foreign experience of criminal legal counteraction to these phenomena.

Thus, §344 of the German Criminal Code contains the norm according to which the person shall be liable to prosecution if being an official this person was appointed to participate in the criminal process, except for the proceedings in imposition of punitive measures not related to deprivation of liberty, deliberately or knowingly prosecutes the innocent or another person who in general, according to the law, cannot be subjected to criminal prosecution, or influences the conduct of such a prosecution (CCG 2001).

While studying the US criminal legislation, the author drew attention to such an institution of criminal law as 'burglary'. According to article 221.1 of the Model Penal Code of the United States, 'a person is guilty of burglary if he enters a building or a occupied structure or a separately secured or occupied portion thereof, with purpose to commit a crime therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter' (Pashkov's Library 2012). It should be noted that this institution was very dynamically changed in the Anglo-Saxon system (Golovanova *et al*. 2013), and the norms concerning it are not the same the criminal legislation of different states (Kozochkin 2007).

A similar rule is contained in Article 245 of the Spanish Criminal Code, which establishes liability for a person who will occupy, without proper authorization, immovable property, another person's house or a building that is not a dwelling, or will be located in it against the will of the owner (CCS 2013).

It seems that the main idea of this institution, namely the inviolability of other people's real estate, can be used to create a criminal legal mechanism to counter asset grabbing, committed in the form of forceful seizure of a legal entity.

It is worth noting separately that the legislation of European countries establishes criminal liability for violation of the mode of treating the confidential information of companies (Stavilo 2010). These measures also seem to contribute to increasing protection against illegal takeover of a legal entity.

The phenomenon of criminal asset grabbing is absent in such world powers as the United States of America, Great Britain, etc. As a general rule, in these countries such conflicts are recognized as a normal institution for the development of corporate relations and are called 'unfriendly (hostile) takeover'.

At the same time, it should be noted that criminal asset-grabbing has its counterparts in the countries of the post-Soviet space. Ukraine and Belarus are bright representatives of countries that have recently been actively counteracting to this dangerous behavior.

In Ukraine criminal and legal antitakeover measures resemble the levers that are present in the criminal law of Russia; however, in Ukraine the criminalization of such acts occurred much earlier. Thus, in 2008, Law No. 801-VI of December 25, 2008 introduced two completely new articles in the Criminal Code of Ukraine: 223-1 'Forging documents that are filed for registration of the securities issue' and 223-2 'Violation of the procedure for keeping the register of registered securities holders.' As it was noted above, asset-grabbing in Ukraine is quite similar to asset-grabbing in Russia by its nature and set of actions. In this regard, quite often, the 'classical' hostile takeover 'in the Ukrainian manner' begins with the falsification of share registers. Such legislative innovations, adopted in 2008, allowed Ukrainian lawmakers to sue the perpetrators of illegal takeovers in the early stages of criminal asset grabbing. It is quite obvious that Russia's response to the fight against criminal asset-grabbing in this direction was made only a year later, with the adoption of Federal Law No. 241-FZ of October 30, 2009, which introduced Article 185 'Violation of the procedure for recording rights to securities' into the RF Criminal Code. And also two years later Federal Law No. 147-FZ of July 1, 2010 was adopted, which introduced article 170[1] 'Falsification of the Unified State Register of Legal Entities, the Register of Securities Holders and the Depository Accounting System'.

Around the same time, Belarus adopted Law No. 146-3 of July 1, 2010 'On introduction of amendments and supplements to certain codes of Belarus regarding protection of information recorded in the register of securities holders', according to which the Criminal Code of Belarus was supplemented with article 226[1] 'Illegal use or disclosure of information entered in the register of securities holders or information on the results of financial and economic activities of the securities issuer.'

It is quite obvious that this criminal offense is noticeably narrower than similar crimes, the responsibility for which is provided for in the criminal laws of Ukraine and Russia, since such an act as the provision of data for entry into the register of securities holders remained beyond the scope of criminalization. The purpose of

adopting such a rule is identical to the Russian and Ukrainian ones – the suppression of criminal asset grabbing already at the first stages of the development of criminal activity.

Conclusion

The foregoing enables to draw the following conclusions:

In the course of the research, legal acts of such states as the USA, the United Kingdom, China, the Netherlands, Sweden, Belarus, and Ukraine were studied. The authors concluded that there is a significant discrepancy between legislation aimed at protecting the interests of shareholders in the countries with developed market economies and in the CIS countries:

(1) A two-tier regulatory system has been established in the member states of the European Union: all merger and acquisition transactions are considered by a special Merger Regulation Commission, along with local antimonopoly bodies, within the European Union.

(2) The merger and acquisition scene in foreign countries was formed and began to function much earlier than in Ukraine; in this regard, the level of legislative regulation of these processes seems to be more optimal, protecting the interests of all parties to the transaction, the mechanism for their implementation is extremely detailed, which in fact excludes violation of the law.

(3) The processes of companies' mergers and acquisitions are controlled by state structures specially created to regulate the activity of participants in the stock market.

(4) As such, the concept of 'asset-grabbing' is absent in the countries with a developed market mechanism. Actions similar to the classical manifestations of Ukrainian illegal takeover are considered as various variants of fraudulent behavior, associated with deception, forgery, counterfeit, illegal concealment of information, use of official position, banks, and state telecommunications systems.

(5) Criminal asset-grabbing, known in Ukraine, has its analogies mainly in the countries of the post-Soviet space. Criminal and legal tools for combating criminal asset-grabbing in Ukraine and in Belarus resemble the levers contained in the criminal law of Russia; however, the criminalization of such acts in Ukraine occurred much earlier.

References

[1] Ali, Hasani Mohd. 2014. Hostile takeovers as corporate governance: A legal analysis of tender offer and proxy contest in China and Malaysia. *Corporate Ownership and Control*, *11*(4 Continued 6), 558-566. DOI: 10.22495/cocv11i4c6p6.

[2] Arutyunova, Karina G. 2007. Ways of protection against unfriendly takeovers in the USA. *Law and Politics*, 9: 46–55.

[3] Barragato, Charles A and Ariel Markelevich. (2008). Earnings quality following corporate acquisitions. *Managerial Finance*, 34(5): 304-315.

[4] Beach, Julian. 2016. Taking Takeover Struggles to the Courts. *Columbia Journal of European Law*. http://cjel.law.columbia.edu/preliminary-reference/2015/taking-takeover-struggles-to-the-courts/.

[5] Berglöf, Erik, and Mike Burkart. 2003. European Takeover Regulation, Economic Policy, 18(36): 171-213. DOI: 10.1111/1468-0327.00105.

[6] Begaeva, Aleksandra A. 2010. Corporate takeover: problems and prospects for legal regulation. Edited by N.I. Mikhailov. Moscow: Infotropic Media, p. 149.

[7] Billett, Matthew T., and Hui Xue. 2007. The Takeover Deterrent Effect of Open Market Share Repurchases. *Journal of Finance*, 62(4): 1827-1850. DOI: 10.1111/j.1540-6261.2007.01258.x.

[8] Bloom, Derek A., Ratnikov, Kirill Y., Osipov, Konstantin A., Areshev, Sergei M. 2004. Corporate Takeovers, Russian Style, And Necessary Legal Reform. *Corporate Ownership and Control*, 1(3), 127-138. DOI: 10.22495/cocv1i3p12.

[9] Caiazza, Stefano, and Alberto Franco Pozzolo. 2016. The determinants of failed takeovers in the banking sector: Deal or country characteristics? *Journal of Banking and Finance*, 72, Supplement: S92-S103. https://doi.org/10.1016/j.jbankfin.2016.04.011.

[10] Cain Matthew D., McKeon, Stephen B., and Steven Davidoff Solomon. 2017. Do takeover laws matter? Evidence from five decades of hostile takeovers, *Journal of Financial Economics*, 124(3): 464-485. doi: 10.1016/j.jfineco.2017.04.003

[11] CCG, 2001. The Criminal Code of Germany. (Foreign legislation). Moscow: Zertsalo-M, p.195.

[12] CCS, 2013. The Criminal Code of Spain. The Federal Legal Portal 'Legal Russia'. http://law.edu.ru (accessed: 17.07.2014).

[13] Coates, IV, John C. 2003. Ownership, Takeovers and EU Law: How Contestable Should EU Corporations Be? ECGI - Law Working Paper No. 11/2003; Harvard Law and Economics Discussion Paper No. 450. DOI: 10.2139/ssrn.424720

[14] Companies Act, 2006. http://www.legislation.gov.uk/ukpga/2006/46/contents

[15] Council Directive 2001/23/EC. 2001. On the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses. *Official Journal of the European Union L294*, p. 22. http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32001L0023

[16] Council Directive 77/187/EEC. 1977. On the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses. *Official Journal of the European Union L61.* p. 26. http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31977L0187

[17] Council Regulation (EC) No 139/2004. 2004. On the control of concentrations between undertakings (the EC Merger Regulation). http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32004R0139

[18] Criminal Justice Act, 1993. http://www.legislation.gov.uk/ukpga/1993/36/contents

[19] Directive 2004/25/EC. 2004. On takeover bids. *Official Journal of the European Union L294,* p. 1. http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004L0025

[20] LAW COM No 276. 2002. Draft Fraud Bill. S. 2. http://www.lawcom.gov.uk/app/uploads/2015/03/lc276_Fraud.pdf

[21] Faccio, Mara, and Larry H.P. Lang. 2002. The Ultimate Ownership of Western European Companies. *Journal of Financial Economics*, 65(3): 365-395. DOI: 10.1016/S0304-405X(02)00146-0.

[22] Fedorov, Alexey Yu. 2010. *Asset-grabbing and corporate blackmail (organizational and legal countermeasures)*. Moscow: Walters Kluver, pp. 398–399.

[23] Ferrarini, Guido, and Geoffrey P. Miller. 2009. A Simple Theory of Takeover Regulation in the United States and Europe. *New York University Law and Economics Working Papers.* Paper 197. http://lsr.nellco.org/nyu_lewp/197

[24] First Council Directive 68/151/EEC. 1968. On co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community. *Official Journal of the European Union L65*, p.8. http://eur-lex.europa.eu/eli/dir/1968/151/oj

[25] Fraser, Donald R., and Hao Zhang. 2009. Mergers and Long Term Corporate Performance: Evidence from Cross-Border Bank Acquisition. *Journal of Money, Credit and Banking*, 41(7): 1503-1513. DOI: 10.1111/j.1538-4616.2009.00265.x.

[26] FSMA, 2000. Financial Services and Markets Act http://www.legislation.gov.uk/ukpga/2000/8/pdfs/ukpga_20000008_en.pdf

[27] Gleason, Katherine I., and Mark S. Klock. 2009. Is There Power Behind the Dead Hand? An Empirical Investigation of Dead Hand Poison Pills. *Corporate Ownership and Control*, 7(1): 370-379. DOI: 10.22495/cocv7i1c3p4.

[28] Golovanova, Natalya A., Eremin Vladimir N., Ignatova Milena A., Kozochkin Ivan D., Krylova Natalya E. and Anna V. Serebrennikova. 2013. *Criminal law of foreign countries. General and Special parts*. 4th ed. Moscow: Yurayt, pp. 742–745.

[29] Gompers, Paul, Ishii, Joy, and Andrew Metrick. 2003. Corporate governance and equity prices. *Quarterly Journal of Economics*, 118(1): 107-155. DOI: 10.1162/00335530360535162

[30] Gregory, Alan. 2005. The Long Run Abnormal Performance of UK Acquirers and Free Cash Flow Hypothesis. *Journal of Business Finance and Accounting*, 32(5/6): 777-814. DOI: 10.1111/j.0306-686X.2005.00614.x

[31] Humphery-Jenner, Mark. 2012. The impact of the EU takeover directive on takeover performance and empire building. *Journal of Corporate Finance,* 18(2): 254-272. DOI: 10.2139/ssrn.1992888

[32] Jandik, Tomas, Lallemand, Justin, and William McCumber. 2017. The value implications of target debt issuance in withdrawn takeovers: What role do country-specific M&A regulations play? *Journal of Multinational Financial Management,* 40: 14-32. DOI: 10.1016/j.mulfin.2017.02.002.

[33] Jo, Hoje, and Carrie Pan. 2009. Why are firms with entrenched managers more likely to pay dividends? *Review of Accounting and Finance*, 8(1): 87-116. DOI: 10.1108/14757700910934256.

[34] Kahan, Marcel, and Edward B. Rock. 2002How I Learned to Stop Worrying and Love the Pill: Adaptive Responses to Takeover Law, *Faculty Scholarship. Paper* 1281. http://scholarship.law.upenn.edu/faculty_scholarship/1281.

[35] Kozochkin, Ivan D. 2007. *Criminal law of the USA: successes and problems of reforming*. St. Petersburg: Legal Center Press, pp. 421–423.

[36] Laabs, Jan-Peer, and Dirk Schiereck. 2010. The long-term success of M&A in the automotive supply industry: determinants of capital market performance. *Journal of Economics and Finance,* 34(1): 61-88. DOI: 10.1007/s12197-008-9065-z.

[37] Masulis, Ronald W., Wang, Cong, and Fei Xie. 2007. Corporate Governance and Acquirer Returns', *Journal of Finance*, 62(4): 1851-1889. DOI: 10.1111/j.1540-6261.2007.01259.x

[38] Fernandez, Matilde Olvido, and Juan Samuel Baixauli. 2003. Motives for partial acquisitions between firms in the Spanish stock market. *European Journal of Finance*, 9(6): 581-601. DOI: 10.1080/1351847032000051956

[39] McCahery Joseph A., Renneboog Luc, Ritter Peer, and Haller Sascha. 2003. The Economics of the Proposed European Takeover Directive. Centre for European Policy Studies. CEPS Research Report In Finance and Banking, No. 32. http://aei.pitt.edu/9562/2/9562.pdf

[40] Mikryukov, Viktor A. 2012. Encumbrance as a way of protecting property against asset grabbing. *Lawyer*, 4, 3–10.

[41] Mukherjee, Tarun. K., Kiymaz, Halil, and H.Kent Baker. 2004. Merger Motives and Target Valuation: A Survey from CFOs. *Journal of Applied Finance*, 14(2), 7-24. https://ssrn.com/abstract=670383

[42] Otsubo, Minoru, and Yusuke Miyoshi. 2010. Empirical Study on Subsidiary Reacquisition among Japanese Companies. *Japanese Economy*, 36(4), 31-60.

[43] Pashkov's Library, 2012. Model Penal Code of the United States. Russian legal portal 'Pashkov's Library'. http://constitutions.ru/?p=8105 (Date of access: 10.08.2014).

[44] Popova, Ekaterina V., and Evgeniy V. Popov. 2008. Cross-border acquisition: a comparative legal analysis. *Legislation*, 6, 69-76.

[45] Pshipiy, Rustam M. 2014. Comparative characteristics of criminal law norms with a blanket form of dispositions under the laws of Russia and Germany (a case study of criminal acts in the sphere of economic activity). Criminal law: development strategy in the 21st century: Proceedings of the International Scientific-Practical Conference (Moscow, January 30-31, 2014), pp. 135-141.

[46] Puziak, Marcin, and Maciej Martyniuk. 2012. Defensive strategies against hostile takeovers. The analysis of selected case studies. *Journal of International Studies*, 5(1), 60-69. http://www.jois.eu/files/PuziakV5_N1.pdf

[47] Raj Mahendra, and Uddin Md Hamid. 2011. Bidder Motivation and Long-Term Performance of UK Mergers. *Corporate Ownership and Control,* 8(2), 227-238. DOI: 10.22495/cocv8i2c1p7

[48] Brown, Rayna, and Neal, Sarma, 2007. CEO overconfidence, CEO Dominance, and corporate acquisitions. *Journal of Economics and Business*, 59(5), 358-379. DOI: 10.1016/j.jeconbus.2007.04.002.

[49] Winter, Jaap (Chairman). 2002. Report of the High Level Group of Company Law Experts on A Modern Regulatory Framework for Company Law in Europe, Nov. 4, Brussels. http://www.ecgi.org/publications/documents/report_en.pdf

[50] Rose Caspar. 2002. Corporate Finance Performance and the Use of Takeover Defenses. *European Journal of Law and Economics*, 13(2), 91-112. DOI: 10.1023/A:1013612718581

[51] Schneper, William D., and Mauro F. Guillén. 2004. Stakeholder Rights and Corporate Governance: A Cross-National Study of Hostile Takeovers. *Administrative Science Quarterly*, 49(2), 263-295. http://www-management.wharton.upenn.edu/guillen/PDF-Documents/Hostile_ASQ_2004.pdf

[52] Schwert, G.William. 2000. Hostility in takeovers: in the eyes of the beholder? *Journal of Finance,* 55(6), 2599-2640. DOI: 10.1111/0022-1082.00301

[53] Second Council Directive 77/91/EEC. 1976. On coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent. *Official Journal of the European Union L26*, p.1. http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:31977L0091

[54] Sixth Council Directive 82/891/EEC. 1982. On Article 54 (3) (g) of the Treaty, concerning the division of public limited liability companies. *Official Journal of the European Union L378*, p. 47. http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A31982L0891

[55] Smirnov, Oleg V. 2013. Conceptual bases of counteraction to unfriendly takeover and capture of the enterprises. *Property Management: Theory and Practice*, 4, 9-15;

[56] Stavilo, Sergey P. 2010. *Criminal takeover using instruments of securities markets: the main areas of counteraction: scientific-practical manual*. Krasnodar: Krasnodar University of the Ministry of Internal Affairs of Russia. pp. 11–13.

[57] Steinbacher, Jan. 2007. *Defense strategies against hostile takeovers: Emerging trends and developments of country-specific defense strategies against hostile takeovers*. Bachelor Thesis. Drack und Bindung: Books on Demand GmbH, Norderstedt Germany, p. 17.

[58] Stout Lynn A. 2002. Do Antitakeover Defenses Decrease Shareholder Wealth? The Ex Post/Ex Ante Valuation Problem, Cornell Law Faculty Publications. Paper 760. 845-861. DOI: 10.2139/ssrn.338601

[59] Şumandea-Simionescu Ioan. 2015. The Impact of the European Neutrality Rule on Romanian Directors' Duties in Hostile Takeovers - A Case Study of Romanian Companies Present on the Bucharest Stock Exchange. *Procedia Economics and Finance*, 32: 383-393. DOI: 10.1016/S2212-5671(15)01408-2.

[60] CCTM, 2016. The City Code on Takeovers and Mergers. 12th edition. http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/code.pdf?v=2May2017

[61] The UK Competition Act 1998. http://www.legislation.gov.uk/ukpga/1998/41/contents

[62] Third Council Directive 78/855/EEC.1978. Based on Article 54 (3) (g) of the Treaty concerning mergers of public limited liability companies. *Official Journal of the European Union L295,* p. 36. http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31978L0855

[63] Walker, Mark M. and Chi-Sheng Hsu. 2007. Strategic objectives, industry structure and the long-term stock price performance of acquiring and rival firms. *Applied Financial Economics*, 17(15), 1223-1244. DOI: 10.1080/09603100600905095

[64] Wang, Ying, and Henry Lahr. 2017. Takeover law to protect shareholders: Increasing efficiency or merely redistributing gains? *Journal of Corporate finance,* 43, 288-315. DOI: 10.1016/j.jcorpfin.2017.01.007

[65] Williams, Melissa A., Michael, Timothy. B., and Edward R. Waller. 2008. Managerial incentives and acquisitions: a survey of the literature. *Managerial Finance,* 34(5), 328-341 DOI: 10.1108/03074350810866207

[66] Zaichenko, Elena, and Kotkova, Ekaterina. 2010. Struggle for 'golden parachutes': legal regulation and review of judicial practice. *Corporate Lawyer*, 12, 51–57. http://epam.ru/articles/rus/Zaichenko_Kotkova_Korp_Yurist_12-2010.pdf

[67] Zhi Yi. 2004. Case Studies on the Proxy Fight of Chinese Listed Companies. *Business Economics and Administration*, 157(11), 53.

[68] Zinkovsky, Maxim A. 2011. Misappropriation (asset-grabbing) of business or other assets of third parties: financial and legal schemes, methods of counteraction, the basis of security. *Lawyer*, 13, 19–27. http://www.logosinfo.ru/articles/index.html?id=2022

ASERS

Journal of Advanced Research in Law and Economics

Quarterly
Volume VIII
Issue 3(25)
Summer 2017

ISSN: 2068-696X
Journal's DOI: https://doi.org/10.14505/jarle

Summer 2017
Volume VIII, Issue 3(25)

Editor in Chief
Madalina Constantinescu
Association for Sustainable Education Research and Science, and *Spiru Haret* University, **Romania**

Co-Editors
Russell Pittman
International Technical Assistance Economic Analysis Group Antitrust Division, **USA**

Eric Langlais
EconomiX CNRS and Université Paris Ouest-Nanterre, **France**

Editorial Advisory Board
Huseyin Arasli
Eastern Mediterranean University, **North Cyprus**

Jean-Paul Gaertner
Ecole de Management de Strasbourg, **France**

Shankar Gargh
Editor in Chief of Advanced in Management, **India**

Arvi Kuura
Pärnu College, University of Tartu, **Estonia**

Piotr Misztal
Technical University of Radom, Economic Department, **Poland**

Adrian Moise
Spiru Haret University, **Romania**

Peter Sturm
Université de Grenoble 1 Joseph Fourier, **France**

Rajesh K. Pillania
Management Developement Institute, **India**

Rachel Price-Kreitz
Ecole de Management de Strasbourg, **France**

Laura Ungureanu
Association for Sustainable Education Research and Science, Romania, **Romania**

Hans-Jürgen Weißbach, University of Applied Sciences - Frankfurt am Main, **Germany**

Contents:

1 **From Ideal to Reality: Constitutional Engineering of the XXI Century**
by Marianna Abramova, Anna Popova, Oxana Vasilieva, Marina Milovanova, and Nikolay Polishchuk ... 703

2 **Insurers' Responsibility in Insurance Liability**
by Natalia A. Antonova, and Elena N. Lunyova ... 708

3 **Childhood Legal Protection in Kazakhstan**
by Nurlan Apakhayev, Kultay Adilova, Dina Bugybay, Gulyiya Mukaldyeva, Gulzhan N. Mukhamadiyeva, and Bakhytkali M. Koshpenbetov ... 714

4 **Legal Basis for Ensuring Freedom of Access to Information on the Operation of State Administration Bodies in Kazakhstan**
by Nurlan Apakhayev, Kuanysh Koishybaiuly, Gulnura Khudaiberdina, Ainur Urisbayeva, Zhanna A. Khamzina, and Yermek A. Buribayev ... 722

5 **Topical Issues of Criminal Law and Lawsuit in Kazakhstan: Assignment of Punishment under Criminal Law**
by Aliya Baisseitova, Zhanar Kegembayeva, Irina Shalkarova (Kim), Omerbay Smailov, and Gulnar Sagynbekova ... 730

6 **Improvement of Legal Measures to Prevent Crime with Regard to Minors in Kazakhstan**
by Svetlana M. Baimoldina, and Sholpan A. Zabikh ... 738

7 **Agile Transformation of the Russian Sector of Economy According to the Legislative Framework**
by Elena S. Balashova, and Elizaveta A. Gromova ... 749

8 **Legal Regulation of Municipal Solid Waste Treatment in the Transition of Developing Countries to 'Green Economy'**
by Dauren Bekezhanov, and Lazzat Yerkinbayeva ... 754

9 **The Policy of Combating Crimes Related to Trafficking in Persons: Conceptual Apparatus and Structural Elements**
by Alimzhan Bekmagambetov ... 763

10 **Legal Support of Economic Mechanism of Groundwater Protection and Use Regulation in Central Asia Region**
by Alina Borodina, and Lazzat K. Yerkinbayeva ... 773

11 **Fairness in Dismissal for Business Reasons in Indonesia**
by Budi Santoso ... 783

12 **Uncertainty of the Legal Regulation of Relations in the Sphere of Comparative Advertising: the Essence of the Problem and Possible Solutions**
by Evgenia E. Frolova, Ksenia M. Belikova, Natalia V. Badaeva, and Irina V. Ermakova ... 792

Summer 2017
Volume VIII, Issue 3(25)

13 **The Concept of Real Right in India and South Africa: Specifics of National Regulation and Trends of Harmonization of Law**
by Evgenia Frolova, Ksenia Belikova, Natalia Badaeva, Irina Belozerova, and Victor Ulianischev ... 799

14 **Improvement Directions for the Mechanisms of Corruption Counteracting in Russian Uniform Information System of Procurement**
by Anton N. Gazetov ... 813

15 **Certain Problems of Fighting Ecocide**
by Oksana Y. Grechenkova ... 821

16 **Problems of Legal Regulation Improvement in the Sphere of Science, Technology and Innovation in Post-Soviet space in Keeping with Modern International Regulatory Trends**
by Oleg V. Gutnikov, Anna S. Dupan, and Vladimir P. Emelyantsev ... 821

17 **Syndicated Lending: Intensification of Transactions and Development of Legal Regulation in Modern Russia**
by Agnessa O. Inshakova, Alexander I. Goncharov, Olesya P. Kazachenok, and Svetlana Y. Kochetkova ... 838

18 **Institutional Aspects of Integration in the EEU: Problems and Prospects**
by Natalja Jemeljanova, Vladimir Kartashkin, Olga Meshcheryakova, and Anait Smbatyan ... 843

19 **Problems of Fighting Crimes on the Internet**
by Elena Anatolyevna Kirillova, Rashad Afatovich Kurbanov, Natalia Viktorovna Svechnikova, Teymur El'darovich Zul'fugarzade, and Sergey Sergeevich Zenin ... 849

20 **Occurrence of Resolutive Condition of a Deed as a Juridical Fact in Civil Law of Ukraine**
by Anatoliy V. Kostruba ... 857

21 **The Place and Role of Professional Legal Consciousness in Various Legal Activities**
by Vita Volodymyrivna Kovalska ... 865

22 **Legal Defense of Interethnic and Religious Relationships: Russian and International Experience**
by Elena Kunts, and Vladimir Golubovskii ... 871

23 **Social Foundation and Sociological Substantiation of Positive Legal Responsibility**
by Dmitry A. Lipinsky, and Tatiana N. Ivanova ... 878

ASERS Publishing
Copyright © 2017, by ASERS® Publishing. All rights reserved.

No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, scanning or otherwise, except under the terms of the Romanian Copyright, Designs and Patents Law, without the permission in writing of the Publisher.

Requests to the Publisher should be addressed to the Permissions Department of ASERS Publishing: asers@asers.eu and apg@aserspublishing.eu

http://journals.aserspublishing.eu
ISSN 2068-696X
Journal DOI: https://doi.org/10.14505/jarle
Journal's Issue DOI: https://doi.org/10.14505/jarle.v8.3(25).00

Summer 2017
Volume VIII, Issue 3(25)

24 **Concept and Model of Local Self-Government Using Organizational Design and Public Communications**
by Marina N. Lukiyanova, Elena F. Nikitskaya, and Nadezhda V. Sedova ... 887

25 **Challenges of Court Orders Enforcement**
by Maksim Mateikovich ... 899

26 **Escrow: International Experience and Perspectives of Application in Russia**
by Evgenia V. Medentseva, and Maksim A. Tokmakov ... 906

27 **Police of the Stavropol Province of the Russian Empire in the Second Half of the XIX Century**
Lyudmila V. Medveditskova, Julia A. Burlova, Rashid A. Atayev, Andrey N. Osyak, Viktor V. Shanko, and Anatoly K. Kiselev ... 910

28 **Legal Ideology as an Element of the Relationship of Civil Society and the State**
Viktor Yu. Melnikov, Yuri A. Kolesnikov, Alla V. Kiseleva, and Bika B. Dzhamalova ... 919

29 **Analogy in the Mechanism of Judicial Control over the 'Golden Parachutes' Amount**
by Viktor A. Mikryukov ... 926

30 **Analysis of Illegal Interception of a Computer Data Transmission Crime in Romanian Legislation**
by Adrian Cristian Moise ... 933

31 **The Modern Understanding of Franchising in Theory and Legislation**
by Aigul A. Nukusheva, Ulan M. Khamzin, Gulzhazira A. Ilyassova, Unzila Shapak, and Inkar T. Mussayeva ... 946

32 **Process Approach in Results-oriented Public Administration**
by Dulpariz Nurhalieva, Serik Omirbaev, Bazhan Turebekova, and Zhamila Bopiyeva ... 950

33 **Legal Framework for Combating Corruption in Nigeria -The Upstream Petroleum Sector in Perspective**
by Olusola Joshua Olujobi ... 956

ASERS Publishing
Copyright © 2017, by ASERS® Publishing.
All rights reserved.

No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, scanning or otherwise, except under the terms of the Romanian Copyright, Designs and Patents Law, without the permission in writing of the Publisher.

Requests to the Publisher should be addressed to the Permissions Department of ASERS Publishing: asers@asers.eu and apg@aserspublishing.eu

http://journals.aserspublishing.eu
ISSN 2068-696X
Journal DOI: https://doi.org/10.14505/jarle
Journal's Issue DOI:
https://doi.org/10.14505/jarle.v8.3(25).00

Summer 2017
Volume VIII, Issue 3(25)

34 **Status of Refugees in Accordance with the International Law and Legislation of Kazakhstan**

by Ayman B. Omarova, Nurlan Apakhayev, Kuanysh Koishybaiuly, Tleubek Tleuov, Yermek A. Buribayev, and Zhanna A. Khamzina ... 971

35 **On the National Security Correlation with Freedom of Speech in Kazakhstan**

by Yesbol Omirzhanov, Zulfiya Baimagambetova, Almagul Tusupova, Roza Omirtay, and Serik Uteuliev ... 980

36 **On the Question of the Concept and Forms of Cyberbullying in Russia**

by Nikolai Ivanovich Polishchuk, Sergei Mikhailovich Vorobyov, Alexandra Andreevna Orlova, and Edgar Parhamovich Abovyan ... 987

37 **The Experience of the European Union in the Field of Administrative and Legal Support for Asset-Grabbing Prevention**

by Roman Volodymyrovych Shapoval, Olga Ivanivna Demenko, and Khrystyna Volodymyrivna Solntseva ... 994

38 **Modern Paradigms of Legal Consciousness and Development of Legal Awareness in Post-Socialist Space**

by Galina V. Stankevich, Maxim I. Tsapko, Ruzanna A. Babayan, Radmila E. Arutyunian, and Polina N. Durneva ... 1009

39 **Rechssttaat and Rule of Law: Some Aspects**

by Zhalgas Temirbekov, Alpysbay Zhussupov, Aliya Orazbayeva, Dina Suleimenova, and Raushan Omarova ... 1017

ASERS Publishing
Copyright © 2017, by ASERS® Publishing. All rights reserved.

No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, scanning or otherwise, except under the terms of the Romanian Copyright, Designs and Patents Law, without the permission in writing of the Publisher.

Requests to the Publisher should be addressed to the Permissions Department of ASERS Publishing: asers@asers.eu and apg@aserspublishing.eu

http://journals.aserspublishing.eu
ISSN 2068-696X
Journal DOI: https://doi.org/10.14505/jarle
Journal's Issue DOI: https://doi.org/10.14505/jarle.v8.3(25).00

Call for Papers
Volume VIII, Issue 5(27), Fall 2017

Journal of Advanced Research in Law and Economics

Journal of Advanced Research in Law and Economics is designed to provide an outlet for theoretical and empirical research on the interface between economics and law. The Journal explores the various understandings that economic approaches shed on legal institutions.

Journal of Advanced Research in Law and Economics publishes theoretical and empirical peer–reviewed research in law and economics–related subjects. Referees are chosen with one criterion in mind: simultaneously, one should be a lawyer and the other an economist. The journal is edited for readability both lawyers and economists scholars and specialized practitioners count among its readers.

To explore the various understandings that economic approaches shed on legal institutions, the Review applies to legal issues the insights developed in economic disciplines such as microeconomics and game theory, finance, econometrics, and decision theory, as well as in related disciplines such as political economy and public choice, behavioral economics and social psychology. Also, *Journal of Advanced Research in Law and Economics* publishes research on a broad range of topics including the economic analysis of regulation and the behavior of regulated firms, the political economy of legislation and legislative processes, law and finance, corporate finance and governance, and industrial organization.

Its approach is broad–ranging with respect both to methodology and to subject matter. It embraces interrelationships between economics and procedural or substantive law (including international and European Community law) and also legal institutions, jurisprudence, and legal and politico – legal theory.

The quarterly journal reaches an international community of scholars in law and economics.

Submissions to *Journal of Advanced Research in Law and Economics* are welcome. The paper must be an original unpublished work written in English (consistent British or American), not under consideration by other journals.

Journal of Advanced Research in Law and Economics is currently indexed in SCOPUS, EconLit, RePec, CEEOL, EBSCO, ProQuest, and Cabell's Directory.

Invited manuscripts will be due till July 1st, 2017, and shall go through the usual, albeit somewhat expedited, refereeing process.

Deadline for submission of proposals:	1st of July 2017
Expected Publication Date:	September 2017
Web:	http://journals.aserspublishing.eu
E–mail:	jarle@aserspublishing.eu

Full author's guidelines are available from: http://journals.aserspublishing.eu/jarle/about