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Towards (More) Flexible Corporate Law? Corporate structures and requirements of venture financing and innovative economy. The example of Polish Simple Joint-Stock Company

SOMMARIO: 1. Introduction. - 2. Financing Innovation and Modern Corporate Law: a Paradigm Shift? - 3. The Changes and Limits of Existing Corporate Law. - 4. Polish Simple Joint-Stock Company: General Characteristics and Origins. - 5. Share Fund, Shares and Contributions. - 6. Corporate Distributions and Creditors Protection. - 7. Optional Management Structures. - 8. An Attempt of Evaluation: Paradise Promised or Paradise Lost? - 9. Conclusion.

1. Introduction.

European company (corporate¹) law – both at EU and national level – has long been influenced by the German legal tradition. As a consequence,

¹ Although the term "company law" used especially in Europe and the phrase "corporate law" popular especially in the US, have a slightly different meaning and a scope of designations, they are used interchangeably for the sake of simplicity. Moreover, due to the subject of the article, the term „company" is being used only for limited liability

it is featured by i.a. statutory (fixed) share capital, limited capacity for non-cash contributions, strictly applied principle of proportionality (in a radical approach expressed by the “one share – one vote” rule), limited (or at least disputable) scope of private autonomy and statutory freedom of the founders, or a two-tier system of corporate bodies. Although formally the scope of application of the Second Directive², replaced finally by the consolidated company law Directive 2017/1132³, covered only joint-stock companies and thus the structure of the company's bodies remained ungoverned by EU law, many national jurisdictions decided to follow pattern appointed therein applying it also towards closed or closely-held (private) companies⁴, in common perception treated as “small joint-stock companies”. This specific “path dependence”, explainable to some extent by historical reasons⁵, is perpetuated by the conservatively oriented doctrine and the case law, which tends to reach back to more

companies, having separate legal personality and characterized by the non-liability of shareholders’ rule and the delegated management system (so-called „capital companies”; German “*Kapitalgesellschaften*”; Polish “*spółki kapitałowe*”), apart from the observation that in many jurisdictions partnerships, involving personal liability of partners, are also called „companies” (German “*Gesellschaften*”, Italian “*società*”, French “*sociétés*”; Polish “*spółki*”).

² Second Council Directive 77/91/EEC of 13 December 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 Communities L 26, 31.1.1977, p. 1-13), replaced by Directive 2012/30/EU of the European Parliament and of the Council 25 October 2012 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 54 of the Treaty on the Functioning of the European Union, 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 L 315, 14.11.2012, p. 74-97).

³ Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to the certain aspects of company law (codification) (Official Journal of the European Union L 169, 30.6.2017, p. 46-127).

⁴ To put it simple, these companies are characterized *mostly* by: (a) the relatively small number of shareholders, (b) no ready market for the corporate stock, and (c) substantial (majority) shareholders’ involvement in management, direction and operation of the firm. See: Joseph A. McCahery, Erik P.M. Vermeulen, Masato Hisatake, and Jun Saito, “The New Company Law: What Matters in an Innovative Economy?,” *ECGI Law Working Paper* No. 75 (2006): 1-67, at 10.

⁵ Indeed, from the historical point of view, first regulations on closed (private) limited liability companies in continental Europe (Germany – 1892, Portugal – 1901, Austria – 1906, Poland – 1919, France – 1925, Italy – 1942) were conceived as a simplification of the rules and requirements applicable to joint-stock, and especially public companies.

comprehensive regulation of joint-stock company law. As a consequence, limits and barriers contained in the mandatory, paternalistic provisions of the joint-stock (public) companies' law, have been repeatedly extended to closely held (private) companies through reasoning by analogy and doctrinal legal thought. Foreseeable consequences of such an approach can be divided into three groups.

Firstly, the existing corporate law forms are widely regarded as overly bureaucratized and ill-suited to the contemporary business needs of micro-, small- and medium-sized enterprises (MSMEs)⁶. This applies in particular, but not exclusively, to the regulatory method (mandatory instead of dispositive, strict rules instead of standards).

Secondly, the criticism of equity and financing structure based on statutory (fixed) share capital expressed in continental corporate law doctrine⁷, expert reports and legislative proposals⁸ for at least two decades, remains relevant also for closed companies. The list of objections raised in this regard is extensive. It is argued that the statutory minimum of a share capital is completely arbitrary, and the value of a given company's share capital is usually completely unrelated to the scale of its actual operations. The requirement to include assets contributed as an equivalent for the shares being acquired in the balance sheet eliminates the possibility of

⁶ See: William Callison, Mark Fenwick, Joseph A. McCahery and Erik P.M. Vermeulen, "Corporate Disruption: The Law and Design of Organizations in the Twenty-First Century," *European Business Organization Law Review* 19, no. 4 (2018): 737-769, at 738.

⁷ In European literature see: Tim Drygala, "Die Vorschläge der SLIM-Arbeitsgruppe zur Vereinfachung des Europäischen Gesellschaftsrecht", *Die Aktiengesellschaft* 8 (2001): 291-299; Jonathan Rickford, "Reforming Capital. Report of the Interdisciplinary Group on Capital Maintenance", *European Business Law Review* 15, no. 4 (2004), 919-1027. In Poland see: Adam Opalski, "Kapitał zakładowy: skuteczny instrument ochrony wierzycieli czy przestarzała koncepcja prawna? Próba porównania modeli ochrony wierzycieli w prawie państw europejskich i Stanów Zjednoczonych", *Kwartalnik Prawa Prywatnego* no. 2 (2004), 435-509; Krzysztof Oplustil, "Reforma kapitału zakładowego w prawie europejskim i polskim," in *Kodeks spółek handlowych po pięciu latach*, edited by Janusz Frąckowiak (Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego, 2006), 51-73; Igor Komarnicki, *Prawo akcjonariusza do udziału w zysku* (Warsaw: C.H. Beck, 2007), 33-39.

⁸ See: European Commission. *Report from the Commission to the European Parliament and the Council: Results of the Fourth Phase of SLIM*. COM(2000) 56 final. Brussels, February 4, 2000; European Commission. *Communication from the Commission to the Council and the European Parliament Modernising Company Law and Enhancing Corporate Governance in the European Union - A Plan to Move Forward*. COM (2003) 284 final. Brussels, 2003; European Commission. *Feasibility study on an alternative to the capital maintenance regime established by the Second Company Law Directive 77/91/EEC of 13 December 1976 and an examination of the impact on profit distribution of the new EU-accounting regime*. Brussels: European Commission, 2008, <https://ec.europa.eu/docsroom/documents/42762?locale=en>.

contributing labour or other services, as well as assets that are problematic for the traditional valuation methods. The figure of a fixed share capital significantly limits equity management and dividend policy, while the prohibition on issuing shares below par value hinders the restructuring of companies in crisis. Above all, it is accurately pointed out that the creditor protection provided through statutory (fixed) share capital is ineffective (for many reasons).

Thirdly, the criticism also applies to other solutions, not necessarily or directly related to the concept of a statutory (fixed) share capital but characterized by a similar lack of flexibility. They all stem from either overly rigid or missing clear approach to the private autonomy and statutory freedom of the founders and/or shareholders (the question of the “rigidity” of the articles of association; German “*Satzungsstrenge*”). The lack of adequate possibilities of enhancing corporate control and allocating powers (for example arbitrary and unnecessary statutory limitations on class shares, special voting rights or privileged dividends), shaping the structure of company’s bodies and corporate governance principles, or effective controlling changes of ownership – these solutions, while effective in traditional “open” joint-stock companies, fail to meet the expectations of investors in closed companies.

2. *Financing Innovation and Modern Corporate Law – a Paradigm Shift?*

The above reservations reveal the need for more flexible solutions, additionally highlighted by more business-friendly Anglo-American models and enhanced by new economic phenomena, including the appearance of so-called startups – usually high-tech companies with significant growth potential, started by entrepreneurs (innovators) alone or with small teams of employees, and supported by external investment, aiming to develop an innovative product or service, create high growth, exiting through a trade sale of the company or IPO⁹. Examples may be projects related to IT: hardware, software & data, fintech, biotechnology, e-

⁹ See: Elisabeth Pollman, “Startup Governance,” *University of Pennsylvania Law Review* 168, no. 1 (2019): 155–221, at 164, with further literature indications, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3352203; Paolo Giudici and Peter Angster, “Startups and Company Law: The Competitive Pressure of Delaware on Italy (and Europe)?,” *ECGI Law Working Paper* No. 471 (2019): 1-53, at 2 <https://ssrn.com/abstract=3433366>.

commerce & retail, energy and environment. Like any innovative activity, startups offer higher revenues but also involve greater risk, due to the increased probability of economic failure in innovative industries. Simultaneously, such ventures require significant financial outlays. The importance of the innovative businesses for the economy is undisputable: such organizations disrupt market equilibria and consumer habits, making profound, nowadays decisive, contributions to job creation and economic growth¹⁰. The figures speak for themselves: currently seven out of ten most capitalized companies (NVIDIA, Microsoft, Apple, Alphabet/Google, Amazon and Meta/Facebook, Tesla) started as VC-backed startups¹¹.

Empirical research concludes that the financing of innovative firms has generally been the prerogative of venture capital (VC) industry¹², which has grown dramatically over the past decades and became a remarkable success, especially in the U.S., even though the total investments of the sector are significantly lower than the internal research and development (R&D) expenditures incurred by leading technology corporations¹³ and governments¹⁴. For the record, venture capitalists do not cover the entire innovation-related financial demand: only ca. 10% of the VC financing is spent on a genuine R&D and ca. 80% is consumed in the next stage of the innovation lifecycle – a commercialization and building the infrastructure required to grow the business¹⁵. At the same time, it is necessary to admit that such funding is crucial for innovative businesses: while typical seed-

¹⁰ See for example: Casimiro A. Nigro and Alperen A. Gözlügöl, “Building an EU Venture Capital Market: What About Corporate Law?,” in *Money, Law, Capital, and the Changing Identity of the European Union*, eds. Gabriella Gimigliano and Valentino Cattelan (Oxford: Hart Publishing, 2022), 165–178, at 166, <https://ssrn.com/abstract=4321474>.

¹¹ For the earlier data see: Elisabeth Pollman, “Startup Governance,” 156. See also: Paolo Giudici and Peter Agstner, “Startups and Company Law: The Competitive Pressure of Delaware on Italy (and Europe)?,” *European Business Organization Law Review* 20 (2019): 597-632 at 600-602.

¹² See: Paul Gompers and Josh Lerner, “The Venture Capital Revolution,” *Journal of Economic Perspectives* 15, no. 2 (2001): 145–168; Josh Lerner and Ramana Nanda, “Venture Capital’s Role in Financing Innovation: What We Know and How Much We Still Need to Learn,” *Journal of Economic Perspectives* 34, no. 3 (2020): 237–261.

¹³ Paul A. Gompers, “Corporations and the Financing of Innovation: The Corporate Venturing Experience,” paper presented at the Federal Reserve Bank of Atlanta Conference (2002): 1–47, at 2, <https://www.atlantafed.org/-/media/Documents/news/conferences/2002/02-financial-markets/papers/corporationsfinancingofinnovationgomperspaul2002mar.pdf>.

¹⁴ Bob Zider, “How Venture Capital Works,” *Harvard Business Review* 76, no. 6 (1998): 131–139, at 132.

¹⁵ See the data for the U.S., *Ibid.*, 132.

and early-stage financing by so-called FFFs (founder's friends, family and founts) and business angels amounts between USD 25.000-500.000, typical VC financing – at early and later stages of development – already amounts to USD 3.000.000-5.000.000¹⁶. Therefore, venture capital fills the void between sources of funds typical for an early-stage innovation (FFF, business angels, corporations, governmental bodies)¹⁷ and traditional, lower-cost sources of capital, available to ongoing concerns (bank loans, capital market), which is crucial for a market success of the product, and creates – especially in Europe – so-called “death valley” for the innovative businesses¹⁸. In other words, “the venture capital industry has four main players: entrepreneurs who need funding, investors who want high returns, investment bankers who need companies to sell and the venture capitalists who make money for themselves by making a market for the other three”¹⁹.

¹⁶ See: Karen E. Wilson, “Policy Lessons from Financing Innovative Firms,” *OECD Science, Technology and Industry Policy Papers* No. 24 (2015): 1–40, at 5, https://www.oecd.org/en/publications/policy-lessons-from-financing-innovative-firms_5js03z8zrh9p-en.html.

¹⁷ Regarding to the subsequent rounds of financing in the startup life cycle see: Paolo Giudici and Peter Angster, “Startups and Company Law,” 7–12.

¹⁸ See: European Commission. *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: The EU Startup and Scaleup Strategy – Choose Europe to Start and Scale*. COM(2025) 270 final. Brussels, 2025 and Testa, Giuseppina, Ramón Compañó, Ana Correia, and Eva Rückert. “In Search of EU Unicorns – What Do We Know About Them?” *JRC Technical Report* EUR 30978 EN, JRC127712. Luxembourg: Publications Office of the European Union, 2022. <https://publications.jrc.ec.europa.eu/repository/handle/JRC127712>. Between 2008 and 2021, nearly 30% of European “unicorns” (private companies/startups with a market valuation of EUR 1 billion or above) relocated outside the EU, and only 8% of global scaleups are based in Europe

¹⁹ Bob Zider, “How Venture Capital Works,” 135.

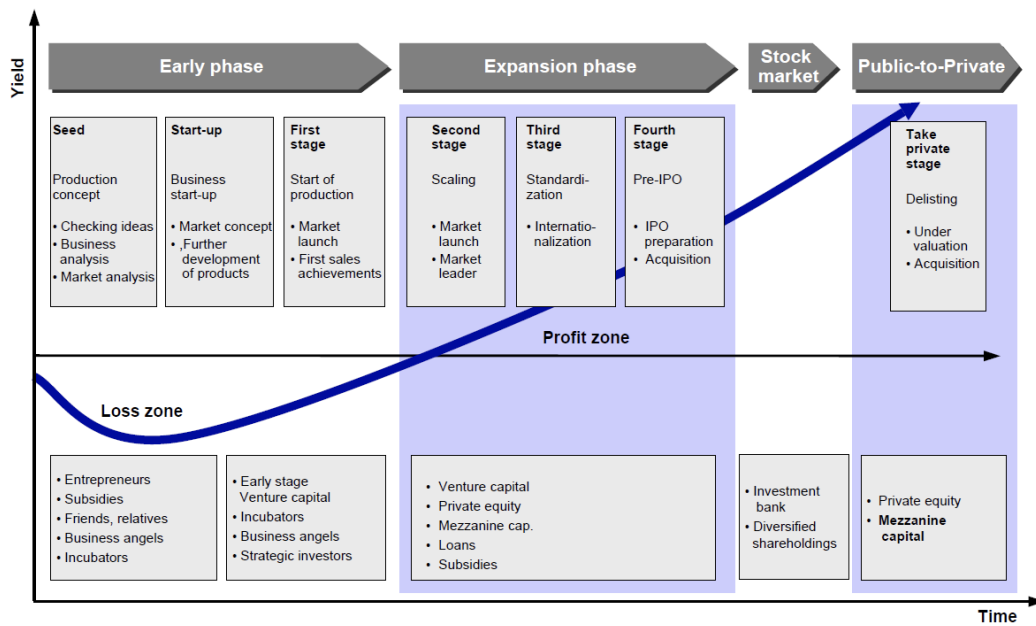


Figure 2. Lifecycle of a firm and stages of financing²⁰.

Suitable for the role, the VC industry consists of financial intermediaries specialized in providing financial and non-financial support to early stage, high-tech firms with significant growth potential in order to generate value within a relatively short timeframe (8-10 years)²¹. Each intermediary incorporates one or more investment funds (which can take on the form of a limited liability partnership; investment companies or functionally equivalent organisational scheme) with passive investors, ranging from pension funds, insurance companies, foundations, to high-net-worth individuals²².

Here, it is crucial to understand that the conflict of interest between an entrepreneur with almost no capital wanting to start an innovative business and VC fund as a specialized capital provider is much more complex than typical agency problem. It cannot be eliminated upon incorporation of a given vehicle (company) or equity investment made by the VC fund. Instead, it exists, changes and interacts during the startup's operations and growth (or collapse). Besides typical issues, such as information asymmetry, moral hazard and adverse selection between

²⁰ See: Karen E. Wilson, "Policy Lessons," 8.

²¹ See: Bob Zider, "How Venture Capital Works", 132; Casimiro A. Nigro, Alperen and A. Gözlügöl, "Building an EU Venture Capital," 166.

²² The scheme affects further the VC investment process. See further: Casimiro A. Nigro, and Alperen A. Gözlügöl, "Building an EU Venture Capital," 166-167.

shareholders (principals) and board members (agents), there appear: (a) problems with valuing the founders' contributions (including the basic concept of an innovative product or service) and the prospects for growth in the value of the company; (b) the need to motivate the founders to work effectively (since the investor cannot measure the quality and quantity of the work efforts in the development of the project until value creation is visible) and monitor the progress of the company's development, which determines the release of further tranches of financing; (c) the need to design the VC fund's exit strategy from the investment once certain parameters have been met (i.e., in a positive and negative scenario); (d) overlapping and shifting roles of founders and the fund (*inter alia* its right to appoint directors and); (e) the heterogeneity of the shareholders (current and future)²³. Furthermore, VC fund is not the ultimate beneficiary of the investment but is responsible for its completion within the agreed time frame to its own investors. Therefore, the deal is structured to motivate the entrepreneur to strive for a value creation, *inter alia* by dividing the financing into tranches (stages), contingent upon the achievement of specific parameters ("milestones"), and appropriate allocation of cash flow rights and control rights over the company in a way that full benefit of the founders' stake is possible only when value is actually created and the firm is sold on the market or an IPO takes place ("reward for performance"). "Thus, the entrepreneur's interest in the company is vested, and the investor gets preference over dividend distribution (when the firm goes well) and/or liquidation proceeds (when the firm is unsuccessful). Moreover, the investor obtains control rights that allow for the appointment of one or more directors on the board (investor directors) and the taking of full control over the board and the company in case performance is below the expectations and the investor wants to sell or stop the business. On the other side, if value is created, the entrepreneur gains full control of his or her stake and receives the uncapped benefits of the work done"²⁴. To this end, venture capitalists negotiate complex contracts with founders (entrepreneurs), allocating cash flow and control rights that, being

²³ Regarding to the latter points see: Elisabeth Pollman, "Startup Governance", 160-161 and Bob Zider, „How Venture Capital Works,” 137, with a detailed summary of venture capitalists' activities and their time consumption. Contrary to common misconception, the VC found is not a typical passive investor. However, it depends on cooperation with founders in fulfilling its obligations and implementing its investment strategy.

²⁴ Paolo Giudici and Peter Angster, "Startups and Company Law," 6.

contingency-based, enable them to engage in adaptive decision-making and thereby adjust to the evolution of the business relationship, at the same time taking under consideration the time-limited investment horizon and the technique of gradual financing, dependent on meeting by the startup identifiable milestones. At each round new investors can step in, thereby creating a complex financial structure with many layers of capital that can give rise to inter-investor conflicts²⁵.

In practise the contracting parties pursue these goals by adopting a myriad of explicit and implicit arrangements, highly complex and standardized, first and foremost according to the US experiences²⁶, and in particular - the law of Delaware, a unique product of US company law competition²⁷. Such contracts assign venture capitalists conversion rights, liquidation preferences, board appointment and removal rights, share transfer rights, pre-emptive rights, buyout rights, redemption rights,

²⁵ Paolo Giudici and Peter Angster, "Startups and Company Law," 10.

²⁶ See National Venture Capital Association (NVCA) 2019, NVCA Model Legal Documents, last amended October 2025, <https://nvca.org/model-legal-documents/>, which provides a preliminary non-binding term sheet containing the main term and condition of the final agreement, and several model contracts which include: (a) a stock purchase agreement, by which investors receive newly issued shares of preferred stock in exchange for money; (b) an amended and restated certificate of incorporation, establishing the rights, preferences, privileges and restrictions of each class and series of the corporation's stock, the classes of shares, and certain investor protections; (c) an investor rights agreement, providing certain rights for the investors (such as information and control rights, registration rights, rights of first offer or preemptive rights); (d) a separated right of first refusal and co sale agreement; (e) a voting agreement, providing the investors with the right to designate the election of certain members of the board of directors and the terms and conditions to execute such a right; (f) a management rights letter, indicating the "contractual rights running directly from the portfolio company to the [venture] fund that give the fund the right to participate substantially in, or substantially influence the conduct of, the management of the portfolio company"; (g) an indemnification agreement, providing indemnification rights by the company in favour of its directors or officers, in case they are part of certain proceedings connected to their role in the company; (h) a legal opinion, concerning the existence and composition of the company and the actual power and authorizations to execute the obligation under the transaction documents; (i) HR policy documents; (l) a code of the company's conduct policy; and a disclosure and confidentiality agreement, regarding proprietary and confidential information of the company. This complex set of contracts, signed in each different VC round provides an industry tested model that is usually taken as a reference point in venture capital financing.

For Europe see Business Angels Netzwerk Deutschland (BAND) and German Startup Verband, GESSI Standardverträge (Model Documents), 2018. <https://www.business-angels.de/standardvertragswerke/gessi/>.

²⁷ Regarding to sources of Delaware's popularity see Paolo Giudici and Peter Angster, "Startups and Company Law," 7-8.

registration rights, co-sale (drag-along and tag-along) rights, bad leaver provisions, protective provisions, anti-dilution provisions, ex ante waivers of fair value protections, fiduciary duty-based remedies and doctrines among others²⁸.

Although the reasons for this are may vary, the figures confirm the disparity in size and potential between the UE and US venture capital markets. Between 1995 and 2010, European venture capital investment has been, on average, approximately one-third the size of investment in the US²⁹. According to the latest statistical data VC funding in Europe reached \$ 34.3 billion in 2019 and near \$ 24 billion in 2020; at the same time US VC investments topped \$ 73.6 billion³⁰. Obviously, the rigidity of corporate law is only one of the factors influencing this situation. The shape and scale of the VC market³¹, in particular its segmentation³², the existence and size of the exit market, favourable tax, labour, bankruptcy law *etc*³³ are no less important. Nevertheless, there is a broad-based consensus that one of the main factors attracting VC financing and enhancing innovative businesses is flexible, private ordering friendly and outcome predictable company law, adequate and consistent with above-mentioned needs and US-oriented standards³⁴. It is also commonly recognized that the German GmbH-

²⁸ See: Casimiro A. Nigro and Alperen A. Gözlügöl, "Building an EU Venture Capital", 168-169; Paolo Giudici, Peter Agstner, and Antonio Capizzi, "The Corporate Design of Investments in Startups: A European Experience," *European Business Organization Law Review* 23 (2022): 787-820, at 790-791 and 794.

²⁹ See: Karen E. Wilson, "Policy Lessons," 9. The Author underlines that the number of venture capital deals in Europe is higher than in the United States, showing that VCs are dispersing funds more broadly through smaller deals. On the other hand, this also demonstrates a potential of European innovative economy.

³⁰ See: Casimiro A. Nigro and Alperen A. Gözlügöl, "Building an EU Venture Capital," 171 and further literature.

³¹ See: Association for Financial Markets in Europe (AFME), *The Shortage of Risk Capital for Europe's High Growth Businesses*, 2017. www.afme.eu/portals/0/globalassets/downloads/publications/afme-highgrowth-2017.pdf.

³² Ibid. In this context further measures are pointed to facilitate cross-border capital raising by European VC funds, such as EuVECA label.

³³ Ibid. See also: Karen E. Wilson, "Policy Lessons," 18-21.

³⁴ The literature on this topic, covering both theoretical analyses and empirical research, is already quite extensive. See for example: Casimiro A. Nigro and Alperen A. Gözlügöl, "Building an EU Venture Capital", 169-174; J.A. McCahery and Erik P.M. Vermeulen, "High-Tech Start-Ups in Europe: The Effect of Regulatory Competition on the Emergence of New Business Forms," *European Law Journal* 7, no. 4 (2001): 459-481, at 464-467; John Armour, "Law, Innovation, and Finance," in *Venture Capital Contracting and the Valuation of High-Technology Firms*, eds. J.A. McCahery and L. Renneboog (Oxford: Oxford University

oriented model of a closely held company, which has been dominant in continental Europe so far, does not meet these requirements. At the same time, due to foreign patterns and pressure from investors, certain template provisions or even entire documents are also used in the European practice of financing innovative firms. These legal transplants are usually implemented through separate subscription agreements (SSA), share purchase agreements (SPA), shareholder agreements (SHA) or investment agreements, and are rarely reflected in the core corporate documents such as memoranda or articles of association. However, this does not solve the problems highlighted, and in the context of questions on the permissibility of certain provisions, the relation of such separate agreements to the articles of association, or the enforceability of the resulting rights and obligations, it actually generates new ones, significantly increasing the transaction costs of the deal.

3. *The Changes and Limits of Existing Corporate Law*

The paradigm shift as for the issue in question is also evident in terms of the role and relationship between EU and national law. Following the failure of the *Societas Privata Europaea* (SPE)³⁵ and the *Societas Unius Personae* (SUP)³⁶ initiatives, further unification or harmonization efforts related to the establishing process and structure of closed companies at the EU level have been limited to a “soft” tool in the shape of the *European Model*

Press, 2003), 133–161, at 135–137; Paolo Giudici, Peter Agstner, “Startups and Company Law,” 155–157; Enriques Luca, Casimiro A. Nigro, and Tobias H. Tröger. “Venture Capital and European Corporate Laws,” Presentation at the 3CL Seminar, University of Cambridge, October 11, 2022.

³⁵ The Proposal for a Council Regulation on the Statute for the European private company of 25 June 2008 (CO (2008) 396 final – 2008/0130 CNS). See also: Heribert Hirte and Christoph Teichmann (eds.), *The European Private Company – Societas Privata Europaea (SPE)*, Berlin: De Gruyter, 2012.

³⁶ The Proposal for a Directive of the European Parliament and of the Council on single-member private limited liability companies (COM/2014/0212 final - 2014/0120; COD) and the Impact Assessment accompanying the document Proposal for a Directive of the European Parliament and of the Council of 9 April 2014 on single-member private limited liability companies, SWD (2014) 123 final. See *inter alia* Pierre-Henri Cogniac, “The Societas Unius Personae (SUP): A ‘Passport’ for Job Creation and Growth,” *European Company and Financial Law Review* 12, no. 2 (2015): 139–176; Corrado Malberti, “The Relationship Between the Societas Unius Personae Proposal and the Acquis: Creeping Towards an Abrogation of EU Company Law?,” *European Company and Financial Law Review* 12, no. 2 (2015): 238–279.

*Companies Act*³⁷. An exception in this regard are EU legislative acts concerning use of digital tools, *inter alia*, during incorporation and registration procedure³⁸, and lately – also multiple-vote share structures³⁹. The need to take action in the area of corporate forms for innovative businesses was highlighted in both the “Letta Report” and the “Draghi Report”, although each of them sketched these solutions in a different way. The Letta Report proposed a European Business Code that particularly MSMSEs could opt into like choosing the legal system of a virtual 28th Member State⁴⁰; the Draghi Report also recommended a 28th regime including the legal statute of an „Innovative European Company”⁴¹. Yet, the shape of the 28th Company Law Regime – a legislative initiative, which is supposed to be a “new opening” for the modern EU company law regulation – is still unclear⁴².

³⁷ See: Theodor Baums and Paul Andersen Krüger, “The European Model Company Act Project,” in *Perspectives in Company Law and Financial Regulation*, eds. M. Tison, H. De Wulf, C. Van der Elst, and R. Steennot, 5–17 (Cambridge: Cambridge University Press, 2009).

³⁸ See: Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law (Official Journal of the European Union 2019 L 186, p. 80-104); Directive (EU) 2025/25 of the European Parliament and of the Council of 19 December 2024 amending Directives 2009/102/EC and (EU) 2017/1132 as regards further expanding and upgrading the use of digital tools and processes in company law (Official Journal of the European Union dated on 10.1.2025).

³⁹ See: Directive (EU) 2024/2810 of the European Parliament and of the Council of 23 October 2024 on multiple-vote share structures in companies that seek admission to trading of their shares on a multilateral trading facility (Official Journal of the European Union dated on 14.11.2024).

⁴⁰ Enrico Letta, *Much More Than a Market – Speed, Security, Solidarity, Empowering the Single Market to Deliver a Sustainable Future and Prosperity for All EU Citizens* (Brussels: European Commission, 2024), 107–109.

⁴¹ Mario Draghi, *The Future of European Competitiveness: A Competitiveness Strategy for Europe* (Brussels: European Commission, 2024), 29, https://commission.europa.eu/topics/competitiveness/draghi-report_en#paragraph_47059

⁴² Anne Sanders, *The Scope of the 28th Regime: A Legal Framework for Innovation the European Way* (Brussels: European Parliament, Policy Department for Justice, Civil Liberties and Institutional Affairs), 1–49, [https://www.europarl.europa.eu/RegData/etudes/IDAN/2025/776311/IUST_IDA\(2025\)776311_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2025/776311/IUST_IDA(2025)776311_EN.pdf). For general information see: European Parliament, “The 28th Regime: A New Legal Framework for Innovative Companies,” Committee on Legal Affairs (JURI), workshop materials, 5 June 2025, <https://www.europarl.europa.eu/committees/en/the-28th-regime-a-new-legal-framework-for-innovative-companies/product-details/20250603WKS06401>; “The 28th Regime: Unlocking Growth with European Rules,” <https://www.digitaleurope.org/resources/the-28th-regime-unlocking-growth-with-european-rules/>; European Commission, “Startup Europe – Shaping Europe’s Digital

Against this backdrop, national legislators have taken the lead, operating in the increasingly growing regulatory competition⁴³, existing – what is important in the analysed context – not only between different Member States but between the EU and other global players, such as the U.S. and China⁴⁴. Therefore, since the beginning of the new millennium, various European legislators have sought to reform and modernize outdated laws governing private companies. Incorporation, financing and internal corporate governance structures of such companies (especially MSMSEs) were meant to be more attractive and flexible and – at the same time – less expensive and burdensome. The first effect was the widespread trend of a “superficial deregulation”, which involved i.a. reduction of the minimum share capital required for limited liability companies, as well as some minor changes in the process of their incorporation⁴⁵. Such company

Future,” 2019, <https://digital-strategy.ec.europa.eu/en/policies/startup-europe>; European Commission, “Start-up Nation Standards,” 2021, <https://startupnationsstandard.eu/>; Corporate Europe Observatory, “Social Dumping Disaster: The EU’s 28th Regime?” 2025, <https://www.corporateeurope.org/en/2025/09/social-dumping-disaster-eus-28th-regime> (critical analysis).

⁴³ See e.g.: Wolf-Georg Ringe, “Corporate Mobility in the European Union – A Flash in the Pan? An Empirical Study on the Success of Lawmaking and Regulatory Competition,” *European Company and Financial Law Review* 10, no. 2 (2013): 230–267. See also judgements of the European Court of Justice of: 9 March 1999, C-212/97 (*Centros Ltd. vs. Erhvervs- og Selskabsstyrelsen*); 5 November 2002, C-208/00 (*Überseering BV vs. Nordic Construction Company Baumanagement GmbH*); 30 September 2003, C-167/01 (*Kamer van Koophandel en Fabrieken voor Amsterdam vs. Inspire Art Ltd.*); 12 July 2012, C-378/10 (*VALE Építési kft.*); 25 October 2017, C-106/16 (*Polbud – Wykonawstwo sp. z o.o.*).

⁴⁴ See: Paolo Giudici, Peter Agstner, “Startups and Company Law,” 152.

⁴⁵ During over last 20 years such amendments were adopted, *inter alia*, in: Austria, Belgium, Croatia, Czech Republic, England, France, Germany, Greece, Latvia, Netherlands, Poland, Slovakia and – last but not least – Italy. See *inter alia*: France, Loi n° 2003-721 du 1 août 2003 pour l’initiative économique, <https://www.legifrance.gouv.fr/loda/id/LEGITEXT000005634924>; Italy, Decreto Legislativo 17 gennaio 2003, n. 6 – Riforma organica della disciplina delle società di capitali e società cooperative, <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2003-01-17;6>; Germany, Gesetz zur Modernisierung des GmbH-Rechts und zur Bekämpfung von Missbräuchen (MoMiG) vom 23. Oktober 2008, https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesgesetzblatt_BGBl&jumpTo=bgbl108s2026.pdf; Spain, Ley 7/2003, de 1 de abril, de la sociedad limitada Nueva Empresa, <https://www.boe.es/eli/es/l/2003/04/01/7>; Netherlands, Wet van 15 juni 2011 tot vereenvoudiging en flexibilisering van het bv-recht, <https://wetten.overheid.nl/BWBR0030482/>. In general: Alessio Bartolacelli, “Almost Capital-less Companies in Europe: Trends, Variations, Competition,” *European Company and Financial Law Review* 14, no. 1 (2017): 187–233, at 197 et seq.; Alessio Bartolacelli, “The

law “reforms” consisting of reduction (often radical) of the minimum share capital without changing the mechanisms for its coverage and asset distribution may be already at this point regarded as illusory or even contradictory⁴⁶. Therefore, currently there is a growing interest in more courageous and in-depth going reforms that would address the needs of modern commercial practice discussed above.

In Italy for example – which is obvious for participants of this event – the process of modernization of the law of *società a responsabilità limitata* (SRL), seeking to depart from the German model and called in literature reports as the “silent revolution”⁴⁷, took place in 2003 and 2012-2017⁴⁸. In Austria, similar motivation and results had so-called Flex-Co legislative package⁴⁹. In Greece new legal entity type for MSMSEs was introduced: so-called Private Company (*Idiotiki Kefalaouchiki Etairia*, IKE)⁵⁰. Similar to the latter, but quite unique approach presents the amendment⁵¹ of Polish

New Italian Almost Capital-less Private Companies: A Brand-New Tile in a Mosaic,” *European Company and Financial Law Review* 13 no. 4 (2016): 665–707; Andrzej Herbet, “Kapitał zakładowy i udziały,” in *System Prawa Prywatnego*, vol. 17A: *Prawo spółek kapitałowych*, ed. Stanisław Sołtysiński, 205–388 (Warsaw: C.H. Beck, 2015); Andrea Vicari and Alexander Schall, eds., *Company Laws of the EU: A Handbook* (Munich: C.H. Beck, 2020); Michał Żurek, *Reforma regulacji prawnej kapitału zakładowego spółki z ograniczoną odpowiedzialnością. Problematyka ochrony wierzycieli* (Warsaw: C.H. Beck, 2018), 49 et seq., 77 et seq.

⁴⁶ It seems evident that statutory (fixed) share capital can only fulfil its functions – including indirect protection of creditors against the company’s insolvency – if its amount is at considerable level, to some extent adequate to the total assets and liabilities and the scale of a company’s business. Legislative changes heading in the opposite direction essentially represent the capitulation of this normative concept to market demands and regulatory competition.

⁴⁷ See: Paolo Giudici, Peter Angster, “Startups and Company Law,” 2.

⁴⁸ See: Ministero dello Sviluppo Economico, *Restart, Italia! Perché è il momento di tornare a far crescere l’Italia*, report on the Italian startup ecosystem (Rome: Ministero dello Sviluppo Economico, 2012), <https://www.mimit.gov.it/images/stories/documenti/rapporto-startup-2012.pdf>, especially the legislative package Italy, Decree-Law No. 179 of 18 October 2012 (“Decreto Crescita”), converted into Law No. 221 of 17 December 2012; Decree-Law No. 3 of 24 January 2015 (“Investment Compact”), converted into Law No. 33 of 24 March 2015; and Decree-Law No. 50 of 24 April 2017, converted into Law No. 96 of 21 June 2017.

⁴⁹ See: Friedrich Ruffler, “Flexible Kapitalgesellschaft und GmbH-Novelle,” in *Reform des Gesellschaftsrechts*, eds. Susanne Kalss and Ulrich Torggler, 113–128 (Vienna: Manz, 2022); Holger Fleischer and Matthias Pendl, “Flexible Kapitalgesellschaft (FlexKapG),” in *Rechtsformneuschöpfungen im in- und ausländischen Gesellschaftsrecht*, ed. Holger Fleischer, 699–730 (Tübingen: Mohr Siebeck, 2024), at 699 and 721–722.

⁵⁰ See: Lazaros Grigoriadis, “A New Business Entity in Greek Company Law: The Private Company (PC),” *European Company Law* 10, no. 6, 2013: 213–215.

⁵¹ Act of 19 July 2019 on amendments to the Commercial Companies Code and other selected acts; Journal of Laws of 2019, item 1655 as amended (*ustawa z dnia 19 lipca 2019 r.*

Commercial Companies Code (*Kodeks spółek handlowych; CCC*)⁵² of 2019, which entered into force in 2021. Contrary to many European legislators who tried to reform their general regulations of the private limited company or introduced its subtypes targeted at particular needs⁵³, the Polish legislator refrained from experimenting on the living organism of limited liability company (*spółka z o.o.*), the Polish GmbH-counterpart. It was concerned that conservative approach of the doctrine and judiciary, as well as path dependence in legal reasoning could undermine the effects of the reform⁵⁴. Thus eventually there appeared a completely new type of closed (private) company⁵⁵ – simple joint-stock company (*prosta spółka akcyjna; PSA*).

4. Polish Simple Joint Stock Company: General Characteristics and Origins.

The PSA is conceived as a typical closed company, corresponding especially to the needs of startups, innovative businesses and venture financing, but fully fledged in terms of scope of its application. The general idea behind it was to create a legal form (entity) that would combine the classic "golden" rules of corporate law (legal personality, limited liability, ownership rights of investors, transferable shares and delegated

o zmianie ustawy – Kodeks spółek handlowych oraz niektórych innych ustaw; Dz. U. z 2019 r. poz. 1655 ze zm.).

⁵² Act of 15 September 2000 – Commercial Companies Code; Journal of Laws of 2024, item 18, as amended (*ustawa z dnia 15 września 2000 r. – Kodeks spółek handlowych; Dziennik Ustaw z 2024 r. poz. 18 ze zm.*).

⁵³ For example: in Spain in 2003 the *sociedad limitada nueva empresa* (SLNE); in Germany in 2008 the *Unternehmersgesellschaft* (UG); in Belgium in 2010 the *société privée à responsabilité limitée starter* (SPRL S), now abolished; in Italy in 2012 a simplified version of the *società a responsabilità limitata* (*s.r.l.s.*), changed by another law reform of 2012 related to „innovative startups”; in Denmark in 2014 the *ivaersaetterselskab* (IV). See: Paolo Giudici, Peter Angster, “Startups and Company Law,” 21-22; Paolo Giudici, Peter Angster, Antonio Capizzi, “The Corporate Design,” 792-793 and 796.

⁵⁴ In general, in this context: Joseph A. McCahery, Erik P.M. Vermeulen, Masato Hisatake, Jun Saito, “The New Company Law,” 5 and 7.

⁵⁵ Similar proposal has been put forward in European academia, including Italy. See: Joseph A. McCahery and Erik P.M. Vermeulen, “The Evolution of Closely Held Business Forms in Europe,” in *The Governance of Close Corporations and Partnerships: US and European Perspectives*, eds. J.A. McCahery, T. Raaijmakers, and E.P.M. Vermeulen, 191-239 (Oxford and New York: Oxford University Press, 2004), at 227-232; Paolo Giudici, Peter Angster, “Startups and Company Law”, 38.

management)⁵⁶ with greater flexibility in shaping the ownership and management structure, the possibility of making contributions that cannot be included in the balance sheet assets, and the simplicity of withdrawing capital and exiting the investment. As a result, the PSA is characterised by an extremely broad spectrum of the private ordering and statutory freedom, which enables free drafting of shareholders rights, providing deviations from the principle of proportionality (in form of preferred shares, individual rights or voting caps) and allocation of corporate powers as well as selecting the most appropriate management structure (one-tier or two-tier system)⁵⁷. Despite the lack of any separate provision, the regulation of the PSA is entirely pervaded by the rule that if a provision is not explicitly identified as mandatory, it must be treated as a default one, allowing the contracting parties to amend it as they wish⁵⁸. Another important feature of the PSA is the absence of a statutory (fixed) share capital and par-value shares resulting in flexible financial structure and enabling contribution of labour or services, a free valuation of contributions and uncomplicated withdrawals from the company's equity⁵⁹.

The adopted nomenclature could suggest that the basic patterns for the Polish legislator were French *Société par Actions Simplifiée*⁶⁰ or Slovak

⁵⁶ See *inter alia*: John Armour, Henry Hansmann, and Reinier Kraakman, "The Essential Elements of Corporate Law: What Is Corporate Law?," *Harvard Law School John M. Olin Center Discussion Paper* No. 643 (2009): 1-32, <https://dash.harvard.edu/server/api/core/bitstreams/7312037d-cdc2-6bd4-e053-0100007fdf3b/content>; Henry Hansmann and Reinier Kraakman, "The End of History for Corporate Law," *Harvard Law School John M. Olin Center Discussion Paper* No. 280 (2000): 1-38, <https://laweconcenter.law.harvard.edu/wp-content/uploads/2024/11/280.pdf>.

⁵⁷ Regarding to the relation between the flexibility of corporate law and requirements of innovative economy see *inter alia*: Joseph A. McCahery, Erik P.M. Vermeulen, Masato Hisatake, Jun Saito, "The New Company Law", 51-55.

⁵⁸ See *inter alia*: Wiktor Michałek, "Art. 300⁵", in *Prosta spółka akcyjna. Komentarz*, ed. Rafał Adamus, Przemysław Malinowski (Warsaw: Wolters Kluwer, 2021), 68; Luiza Modzelewska, "Art. 300⁵", in: *Kodeks spółek handlowych. Komentarz*, 5th ed., ed. Zbigniew Jara (Warsaw: C.H. Beck, 2024), margin nos. 19-23; Explanatory Memorandum to the Government Draft Act Amending the Commercial Companies Code and Certain Other Acts (Parliamentary Print No. 3236), Sejm of the Republic of Poland, 12 February 2019, 13-14, [https://orka.sejm.gov.pl/Druki8ka.nsf/0/5EA8D7DC70002162C12583A70034174A/\\$File/3236-uzas.docx](https://orka.sejm.gov.pl/Druki8ka.nsf/0/5EA8D7DC70002162C12583A70034174A/$File/3236-uzas.docx).

⁵⁹ See in general: Paweł Zdanikowski, "Simple Joint-Stock Company - a New Type of Polish Commercial Company Dedicated (Mostly) to New-Technology Entities", *Review of European and Comparative Law* 39, no. 4 (2019): 79-97.

⁶⁰ See: Articles L. 227-1 to L. 227-20 of the French Commercial Code (Code de commerce), https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000005634379/, and Michał

*Jednoduchá Spoločnosť na Akcie*⁶¹. In fact, their resemblance is mainly terminological. The Polish regulation was rather inspired by the common law legal systems, more general assessment of trends visible in a number of European countries' company laws⁶², results of the study work of company law experts' groups⁶³ and provisions of *European Model Company Act* (EMCA)⁶⁴.

5. Share Fund, Shares and Contributions.

As indicated, in the case of the PSA the century-old legal tradition and German-styled concept of the constant statutory share capital, applied also in EU company law, has been abandoned and replaced with a variable share fund (*kapitał akcyjny*) – a basic fund defined by accounting rules. It does not perform any of the roles (functions) assigned to the statutory share capital (legal / corporate, economic, protective / warranty)⁶⁵, and it is not a predetermined value that requires covering by shareholders. On the

Przychoda, "Francuska spółka akcyjna uproszczona (SAS)," *Przegląd Prawa Handlowego* no. 2 (2017): 58–62.

⁶¹ See: § 220h to 220 zl of the Slovakian Commercial Code (Obchodný Zakonník), <https://www.zakonypreludi.sk/zz/1991-513>, and Baker McKenzie, Marek Partners s.r.o., *Doing Business in Slovakia 2019*, <https://www.bakermckenzie.com/-/media/files/insight/publications/2019/03/pradocs639452v12019doingbusinessintheslovakrepublicpdf.pdf?la=en>

⁶² See above, section 3, footnotes 44 and 49-51 and Cécile Bervoets and Eva-Désirée Lembeck, "Die 'GmbH Light' – Ein Trend in Europa," *Steuer und Wirtschaft International* 7 (2004): 363–365.

⁶³ See for example proposals made by two research teams, directed accordingly by Prof. John Rickford (United Kingdom) and Prof. Marcus Lutter (Germany), within the project "Arbeitskreis Capital in Europa". For details: Andrzej Herbet, "Is this the End of Share Capital? Limited Company Law Reforms in Poland and other European Countries", *Teka Komisji Prawniczej PAN Oddział w Lublinie* 12, no. 2, 2019: 109-125, at 112.

⁶⁴ See *inter alia*: Theodor Baums and Paul Krüger Andersen, "The European Model Company Act", *ECGI Law Working Paper*, No. 97 (2018): 5-17; Paul Krüger Andersen and Jan Bertil Andersson, "European Model Companies Act," *Nordic & European Company Law Working Paper* No. 16–26, <https://ssrn.com/abstract=2929348>; Adam Opalski, "Refleksje na temat europeizacji prawa spółek i jej wpływu na prawo polskie" in *Wpływ europeizacji prawa na instytucje prawa handlowego*, ed. J. Kruczałak-Jankowska, 172-194 (Warsaw: LexisNexis, 2013), at 190; Marco Ventoruzzo, "The New European Model Company Act," *Harvard Law School Forum on Corporate Governance*, 14 October 2015, <https://corpgov.law.harvard.edu/2015/10/14/the-new-european-model-company-act/>.

⁶⁵ Andrzej Herbet, "Kapitał akcyjny prostej spółki akcyjnej i jego funkcje," in *Kodeks spółek handlowych po 20 latach obowiązywania*, eds. M. Leśniak, M. Skory, and B. Sołtys, 283–301. (Warsaw: Wolters Kluwer, 2022).

contrary, the amount of the share capital is equal to the sum of so-called capital (cash or typical in-kind) contributions and may increase in time as a result of further contributions or decrease either due to losses incurred or – since it can be returned to shareholders – due to corporate distributions financed from it. The law prescribes only “technical” minimum of the share fund in the amount of 1 PLN (Art. 300³ § 1 CCC) and its actual, current amount is disclosed in the company's financial statements. Unlike statutory share capital, neither its initial amount is subject to disclosure in the articles of association (it is disclosed only in company's accounting books and the relevant court register), nor does any subsequent change require an amendment of the articles.

Shares in the PSA have no par value and do not represent a fraction of the share fund (Art. 300² § 3 CCC); as a result, they are no-par-value shares in the full sense of the word. Share fund alterations (being results of losses or corporate distributions) do not affect the number of issued shares. The default rule stipulates that each share, regardless of the nature of the contribution made to subscribe for it, carries equal corporate rights: the right to dividend, to vote and to liquidation surplus (Art. 300¹⁵ § 3, Art. 300²³ § 1, Art. 300¹²¹ § 4 CCC). However, the articles of association can deviate from this rule by establishing different classes of shares with varying rights (Art. 300²⁵ § 1 CCC), including non-voting (“silent”) shares (Art. 300²⁷ CCC)⁶⁶, or provide for other corporate control enhancing mechanisms, such as shareholders' individual (“personal”) rights (Art. 300²⁸ § 1 CCC), which exceptionally may remain valid even after the loss of a shareholder status (Art. 300²⁸ § 2 CCC), or voting caps. From a comparative and market perspective noteworthy is the option of issuing preferred “founding shares”, which grant a given shareholder a specific proportion (ratio) of the total number of votes, regardless of the number and scale of subsequent share issuing processes (Art. 300²⁶ § 1 CCC)⁶⁷. In case of an issuance of new shares that could affect the ratio of votes “guaranteed” for the founding shares, the number of votes attributable to those shares shall be increased

⁶⁶ It's worth to note that in a startup financing practice non-voting shares are often granted to the company's initial shareholders (FFFs and business angels) in order to make an investment more attractive at later stages.

⁶⁷ The name should not mislead, as shares of this type may also be issued at later stages of the company's operation. In the context of the topic under discussion, founding shares may be therefore, for example, shares of a startup acquired by a VC fund, which guarantees its decisive influence on the company regardless of subsequent financing rounds.

accordingly. Therefore, the analysed class of shares is a functional equivalent to the complex antidilution clauses, applied in other types of companies and other jurisdictions, sometimes with considerable problems⁶⁸. Crucially, deviating from the one-share-one-vote principle is not restricted by specific Code provisions, but only by the general concept of the nature of the company, the principle of equal treatment of shareholders being in the same position and general restrictions on contractual freedom under Polish private law (mandatory law and good practices or *boni mores*; Art. 353¹ of the Civil Code⁶⁹)⁷⁰.

Since Polish regulations allow for simplified authorized share issuance by the board (Art. 300¹¹⁰-300¹¹³ CCC) or conditional share issuance (Art. 300¹¹⁴-300¹¹⁹ CCC), as well as convertible bonds issuance (Art. 300¹¹⁴ § 2 point 1 CCC), it is also possible to encompass into subsequent rounds of the company's financing more sophisticated hybrid convertible securities, modelled on SAFEs (Simple Agreement for Future Equity) or KISSes (Keep it Simple Securities)⁷¹. The permissibility of issuing different classes of shares also entails the possibility of converting them as a result of specific circumstances or upon the request of a shareholder⁷². Therefore, the adopted solutions enable, to a large extent, the "incorporation" of clauses typical for the US, including their three basic features: convertibility, antidilution and liquidation preferences into the company's relationship VC-contracting scheme.

Shares of the PSA may be subscribed for any type of contribution having monetary value (possible to evaluate). So-called "capital contributions" consisting of cash or typical in-kind contributions known and permitted under EU capital regime are allowed, as well as any other ("non-capital") in-kind contributions, including work and services. This

⁶⁸ Paolo Giudici, Peter Angster, and Antonio Capizzi, "The Corporate Design of Investments in Startups: A European Experience," *European Business Organization Law Review* 23 (2022): 804–806.

⁶⁹ Act of 23 April 1964 – Civil Code; consolidated text: Journal of Laws of 2025, item 1071 (*ustawa z dnia 23 kwietnia 1964 r. – Kodeks cywilny; t. jedn. Dz. U. z 2025 r. poz. 1071*).

⁷⁰ Adam Opalski, Krzysztof Oplustil, Tomasz Sójka, and Anne-Marie Weber, "The Simple Joint-Stock Company: Emergence of a New Close Company in Poland," *European Company and Financial Law Review* 21, nos. 5-6 (2024): 620–621.

⁷¹ For a general overview see: Paolo Giudici and Peter Agstner, "Startups and Company Law", 604.

⁷² Although there is no explicit reference to this scenario in the CCC provisions (except Art. 300²⁷ CCC *in fine*), such a conclusion follows from the presumptive dispositive nature of the new Polish regulation.

feature is of great importance for innovative businesses and enables the application of “work-for-equity” vesting schemes, known from the US practice and difficult or impossible to implement under the traditional capital regime⁷³. As indicated, capital contributions increase the amount of the share fund (Art. 300³ § 1 CCC). Non-capital contributions have no such effect, as they are not recognised as assets in the balance sheet of the company⁷⁴. Crucially, shareholders contributing work and services to the company enjoy the same status as shareholders contributing “capital” assets, including the statutory restrictions on the transfer of not fully paid-up shares (Art. 300⁴⁰ § 1 CCC). Moreover, shareholders enjoy a wide range of freedom in valuing contributions, which is left entirely to their discretion (since there is no external valuation). Only due to accounting rules (in external relations) the valuation of in-kind capital contributions should correspond their fair value⁷⁵. This feature is important primarily, but not exclusively, for non-cash contributions. Especially in the case of innovative businesses, not only the absolute value of the contribution is important for determining the number and the issuing price of shares (and, consequently, for allocation of power), but also the investment risk associated with the stage at which it takes place.

Shares in the PSA are dematerialized and should be registered in the shareholders’ register, provided externally by the authorized person (e.g. notary, bank or other investment firm). Nevertheless, despite being formally recognised as securities, they cannot be incorporated into typical financial instruments, or be the subject of mass trading, especially by going public (Art. 300³⁶ § 2 CCC)⁷⁶. Unless the law or the articles of association provide otherwise, shares may be freely and relatively easy transferred (only “documentary form” is necessary; Art. 300³⁶ § 4 CCC) provided that,

⁷³ See: Paolo Giudici, Peter Angster, Antonio Capizzi, “The Corporate Design”, 812-813, with further references. Therefore, there is no need to rely on the construct of IP rights, which can be difficult to apply, especially in the early stages of working on a certain idea (concept). On the other hand, the possibility of contributing work or services is not equal to the vesting scheme for employees, known *inter alia* to US law.

⁷⁴ Information on non-capital contributions is disclosed only in the articles of association and in the additional note to the financial statements.

⁷⁵ Adam Opalski, Krzysztof Oplustil, Tomasz Sójka and Anne-Marie Weber, “The Simple”, 616. The result of the significant overvaluation of such contributions is the obligation of the shareholder and members of the board to compensate the company for the shortfall (Art. 300¹⁰ CCC).

⁷⁶ See: Tomasz Sójka, „Obrót akcjami prostej spółki akcyjnej,” *Przegląd Prawa Handlowego* 2020 no. 1: 5-11, at 10-11.

as a rule, a constitutive entry in the register of shareholders is required (art. 300³⁷-300³⁸ CCC). Notwithstanding the general rule, in order to maintain the closed nature of the company, the articles of association may, and in practice usually do restrict the free transferability of shares (Art. 300³⁹ CCC). Apart from conditioning the transfer of shares on the consent of the company (Art. 300³⁹ § 2-5 CCC) or specific shareholder, establishing preemptive rights for other shareholders (Art. 300⁴² CCC) or excluding the transfer for a fixed period of time (“lock-up” clause), it is also possible to apply typical for startups and common in contemporary practice co-sale clauses (for example “tag-along” or “drag-along” clauses) or deadlock resolution clauses (for example “shotgun” or “shoot out” clause).

6. Corporate Distributions and Creditors Protection.

The dividend policy and related creditor protection mechanisms in the PSA are significantly different from those in the traditional capital regime. The distributions to shareholders (in the form of dividends, own shares buyout prices or redemption payments for shares being cancelled) are restricted by the modified balance sheet test and the solvency test (Art. 300¹⁵ § 4-6, Art. 300⁴⁴ § 4 and Art. 300⁴⁷ § 2-3 CCC)⁷⁷.

The modified balance sheet test assumes the admissibility of withdrawing funds contributed by shareholders, as a corporate distribution, without the need to face burdensome restrictions. In other words, shareholders can participate not only in the company’s profits but also in the share fund, if they decide so (Art. 300¹⁵ § 1 CCC). The Code provides for three important limitations of the shareholders’ discretion in this respect. Firstly – there is a mandatory write-off for future losses amounting 8% of the annual profit, made until the share fund reaches 5%

⁷⁷ See *inter alia*: Grzegorz Keler, “Art. 300¹⁵,” in *Prosta spółka akcyjna. Komentarz*, ed. Rafał Adamus, Przemysław Malinowski (Warsaw: Wolters Kluwer, 2021), 109-110; Marcin Mazgaj, “Art. 300¹⁵,” in: *Kodeks spółek handlowych. Komentarz*, ed. 5, ed. Zbigniew Jara (Warsaw: C.H. Beck, 2024), marginal nos. 25-42; Adam Opalski, “Prosta spółka akcyjna – nowy typ spółki handlowej (part I),” *Przeгляд Prawa Handlowego* 2019 no. 11: 5-15, at 10-12; Małgorzata Wawer, “Art. 300¹⁵,” in: Jacek Bieniak et al., *Kodeks spółek handlowych. Komentarz*, ed. 9, (Warsaw: C.H. Beck, 2024), art. 300¹⁵, marginal nos. 12-17; Wojciech Wyrzykowski, “Art. 300¹⁵,” in: *Kodeks spółek handlowych. Komentarz*, ed. Piotr Piniór, Janusz A. Strzępka (Warsaw: C.H. Beck, 2024) marginal nos. 12-17; Wojciech Wyrzykowski, “Art. 300⁴⁴,” in: *Kodeks spółek handlowych. Komentarz*, ed. Piotr Piniór, Janusz A. Strzępka (Warsaw: C.H. Beck, 2024) marginal nos. 4; Explanatory Memorandum, Print No. 3236, 31-41.

of the company's total liabilities, according to the approved financial statement for the last financial year (Art. 300¹⁹ CCC). Secondly - every payment made at the expense of the share fund requires prior registration of its decreasing by the registry court (Art. 300¹⁵ § 6 CCC). Thirdly - if a distribution would reduce the share fund to less than 5% of the company's total liabilities, rules on the reduction of a share capital in the joint-stock⁷⁸ company are applied (Art. 300¹⁵ § 4 and 6 CCC), including the obligation to satisfy or secure creditors exposed to risk. The modified balance sheet test launches creditors' protection mechanisms similar to that known in the capital regime, but only in the event of exceeding an adjustable reserve that correlates with the level of the company's debts. For companies with a favourable asset-liability ratio, this means a significant liberalization of a dividend policy and investment return opportunities. An additional, supplementary protective mechanism is an explicit prohibition of "hidden distributions" to shareholders (Art. 300²¹ CCC), based on the German archetype (*verdeckte Ausschüttung*), which requires an equilibrium between consideration provided by the company to shareholders or related parties, and the fair value of the consideration received by the company.

The solvency test, being brand new solution in Polish company law, is aimed directly at the protection of the company's liquidity. A distribution to shareholders must not result in the company losing, under normal circumstances, its ability to meet financial obligations within six months from the date of the distribution (Art. 300¹⁵ § 5 CCC). Comparison with other corporate law jurisdictions⁷⁹ indicates that Polish legislator decided to implement a very "modest" and liberal version of the test, referring to Sec. 7.02 (3) of the *European Model Company Act* (EMCA)⁸⁰: the timeframe for the solvency prediction is extremely limited, and there is no obligation of the management board (board of directors) to precede the distribution with

⁷⁸ Andrzej Herbet and Natalia Wielgat, "Solvency Test in Polish Simple Joint-Stock Company: A Review and Comparative Analysis," *Review of European and Comparative Law* 47 no. 4 (2021): 207-233.

⁷⁹ See *inter alia*: American Bar Association, Model Business Corporation Act, https://www.americanbar.org/groups/business_law/resources/model-business-corporation-act/, New Zealand, Companies Act 1993, Public Act No. 105 (28 September 1993), <https://www.legislation.govt.nz/act/public/1993/0105/latest/DLM319570.html>, United Kingdom, Companies Act 2006, <https://www.legislation.gov.uk/ukpga/2006/46/contents>.

⁸⁰ Regarding to the motives see: Adam Opalski, Krzysztof Oplustil, Tomasz Sójka, Anne-Marie Weber, „The Simple,” 619.

a formal resolution or a statement confirming no negative impact on the company's financial liquidity.

7. *Optional Management Structures.*

Another manifestation of the wide-ranging shareholder autonomy typical for the PSA is a possibility to choose between the traditional, German oriented two-tier governance model (consisting of obligatory management board and optional supervisory board) and the one-tier governance model (where management and supervisory powers are consolidated and entrusted to the board of directors, enhancing involvement of all directors in strategic decision-making process and ensuring better information flow)⁸¹. As a result, the governance system of the PSA can be described as “double optional”⁸² (Art. 300⁵² § 1 and 2 CCC); it can also change in time and “grow” alongside business development. According to the “think small first” principle, founders can choose a “one-tier” model with *de facto* no separation of ownership and control first and change it to the centralized management with a multi-member board of directors and board's advisors.

However, the flexibility in this regard extends further. Firstly, the scope of the management bodies' independence may be determined both: *ex ante* – in the articles of association requiring the need to obtain prior consent of shareholders for detailed actions, and *ad hoc* – in specific shareholders' resolutions expressing binding instructions for the board. Secondly, in the one-tire system two different categories of directors can be appointed: executive directors (who are entrusted with a task of running the company's business at the first place) and non-executive directors (who primarily exercise an on-going supervision)⁸³. The actual scope of these two categories' powers and duties, the list of matters that require a resolution of

⁸¹ See *inter alia*: Adam Opalski, “Prosta spółka akcyjna – nowy typ spółki handlowej (part II),” *Przegląd Prawa Handlowego* 2019 no. 12: 4-16, at 8-9; Krzysztof Oplustil, “Zarządzanie i nadzór w systemie monistycznym w prostej spółce akcyjnej”, *Przegląd Prawa Handlowego* 2023 no. 9: 46-58, at 46 and 56-57; Explanatory Memorandum, Print No. 3236, 70-73.

⁸² Adam Opalski, Krzysztof Oplustil, Tomasz Sójka, and Anne-Marie Weber, “The Simple Joint-Stock Company”, 626.

⁸³ Nevertheless, all board members, both executive and non-executive, retain the non-transferable power to represent the company with an unlimited scope of representation (Art. 300⁷⁷ CCC).

the entire board (in addition to those indicated in Art. 300⁷⁵ § 2 and 3 CCC⁸⁴), other factors determining the allocation of powers and a basis of appointing specific person as an executive or non-executive director may be determined by either the provisions of the company's articles of association, the board's bylaws or even *ad hoc* board's resolution (Art. 300⁷⁶ § 1 CCC)⁸⁵. This enables very smooth changes in the allocation of powers within the board of directors (i.e. defining the so-called "competence matrix" and changes in the functions of particular members), depending on its personal composition and circumstances.

8. *An Attempt of Evaluation: Paradise Promised or Paradise Lost?*

Initially the Polish simple joint-stock company encountered sharp criticism from conservative legal scholars who perceived it as a systemically inconsistent with the contemporary Polish corporate law⁸⁶. Nevertheless, the adopted regulatory model appears to be an interesting experiment, departing from some excessively rigid concepts and structures traditional limited liability companies' law⁸⁷. Flexible financial structure, possibility of contributing work, services and other favourable states of affairs, facilitating the process of issuing shares, including in company's crisis, but also the prospect of uncomplicated withdrawal from the investment, including the possibility of acquiring all of PSA's assets following its dissolution by a designated shareholder (Art. 300¹²² CCC), broad autonomy in determining the corporate governance framework and shaping shareholder rights – all these features can make PSA very attractive entity, especially for innovative businesses (where balancing the

⁸⁴ These include making decisions of strategic importance for the company, establishing business plans and the organisational structure of the enterprise, and appointing commercial proxies.

⁸⁵ Piotr Piniór, "Monistic System in the Simple Joint-Stock Company," *Przegląd Ustawodawstwa Gospodarczego* 2020 no. 2: 2–7.

⁸⁶ See inter alia: Aleksander Kappes, "Prosta spółka akcyjna – czy rzeczywiście prosta i czy potrzebna? Uwagi do projektu nowelizacji Kodeksu spółek handlowych, wprowadzającego prostą spółkę akcyjną (projektowane art. 300(1)–300(121) k.s.h.)," *Przegląd Prawa Handlowego* 2018 no. 5: 10–16; Joanna Kruczałak-Jankowska, "Prosta spółka akcyjna – polską superspółką?," *Przegląd Prawa Handlowego* 2018 no. 9: 27–28; Piotr M. Wiórek, "O braku potrzeby wprowadzenia prostej spółki akcyjnej (PSA) z perspektywy prawnoporównawczej," *Przegląd Prawa Handlowego* 2018 no. 5: 4–9.

⁸⁷ Adam Opalski, Krzysztof Oplustil, Tomasz Sójka, Anne-Marie Weber, „The Simple”, 634.

contributions of founders / inventors and financial investors is paramount), venture financing (where the ability to limit or exit the investment is a key feature) or foreign investors looking for solutions that are more consistent with patterns they are familiar with, especially from the common law culture. At the same time most of them refer to the issues raised in corporate law practice and doctrine critical of the traditional capital regime and corporate governance model. As regards the creditors' protection, despite the expressed concerns there is no justification to assume that restrictions on corporate distributions mentioned above, modelled on common law patterns, will prove less effective than those related to the construct of mandatory share capital. In fact, it's quite opposite⁸⁸. It is also worth to underline that these unique features, discussed above, are combined with other solutions enhancing shareholders' position and facilitating and encouraging the investment in the analysed legal form: possibility of incorporation of the company and adopting shareholders' and other bodies' resolutions online, shareholders' right to withdraw from the company ("exit" right), simplified winding-up procedure *etc.* Despite the already mentioned scepticism of the doctrine, this new legal form is becoming increasingly popular in practice: according to data for the end of 3Q 2025, approximately 3,500 simple joint-stock companies were registered, which is a significant increase compared to previous years (e.g., approximately 1,200 at the end of 2022 and 2,800 at the end of 3Q 2024)⁸⁹. As a result, PSA and limited liability company are currently the only companies in Poland showing an upward trend.

Therefore, one can ask whether this "product" is flawless and perfect piece of legislative work? Obviously not. Firstly, the simple joint-stock company is not as simple as its name may suggest. Its legal framework comprises 134 articles (plus many additional references to other types of limited companies). Thus, it is hardly surprising that there is a certain practical inertia in adapting to new regulations, as well as the fact that in the absence of additional (e.g. tax) incentives, the well-known form of a limited liability company is still often chosen. Secondly, due to the need to

⁸⁸ Andrzej Herbet, "Podstawowe elementy struktury kapitałowo-majątkowej prostej spółki akcyjnej," in *Non omne quod licet honestum est. Studia z prawa cywilnego i handlowego w 50-lecie pracy naukowej Profesora Wojciecha Jana Katnera*, eds. S. Byczko, A. Kappes, B. Kucharski, and U. Promińska, 294–309 (Lodz-Warsaw: Wolters Kluwer, 2022).

⁸⁹ See data prepared by MGBI on the basis of REGON register - <https://www.mgbi.pl/blog/jak-wygladala-aktywnosc-firm-w-iii-kwartale-2025-r/>.

balance the generally accepted regulatory objectives, such as security and certainty, with market actors' expectations, many solutions have not been implemented in their most ambitious form (the solvency test is a good example here). Thirdly, the shares of the PSA are not typical securities (financial instruments) and cannot be offered in a public (organised) trading, including IPO. Despite the possibility of issuance of the PSA shares through crowdfunding⁹⁰ (provided that this does not take place within the framework of mass trading system)⁹¹, the admissibility of offering securities convertible into shares *ad incertam personam* is also debatable – which significantly hinders venture capitalist from exiting their investments⁹². Fourthly, there should be no doubt that the PSA is a typical closed company not intended for small or non-professional investors, where the basic protection mechanism in internal relations is the *caveat emptor* rule⁹³. Therefore, flexibility comes at a price.

9. Conclusions.

As already indicated, the Polish simple joint-stock company seems to be an interesting experiment, well-suited to the ongoing discussion in European doctrine on the role of company law, methods of its regulation and the relationship between rigor and flexibility, paternalism and freedom. Despite the lack of direct references to startups and contractual instruments known from the VC financing practice, the flexibility of the new Polish regulation allows for their (or their equivalents) application in a very wide scope. As a result, the PSA regulation may create a valuable contribution to the discussion on the changing paradigm of the role of statutory and judicial company law aligned with the contractual theory of the firm⁹⁴, and also more systematic approach and clearly defined policy

⁹⁰ In practice see for example: <https://mambiznes.pl/news/reclimb-zdobywa-kolejny-szczyt-prosta-spolka-akcyjna-konczy-z-sukcesem-emisje-akcji-na-platformie-emiteo/>.

⁹¹ See: Tomasz Sójka, "Obrót akcjami," 10-11 and Art. 182¹ and Art. 257¹ CCC, which prohibit the submission and promotion of offers to purchase shares to an unspecified addressee only in relation to a Polish limited liability company (*spółka z ograniczoną odpowiedzialnością; sp. z o.o.*).

⁹² In fact, in order to launch an IPO or gain broader and more dispersed funding, the PSA would first have to transform itself into a typical joint-stock company (*spółka akcyjna; S.A.*).

⁹³ Andrzej Herbet, "Podstawowe elementy", 307-308.

⁹⁴ See: Joseph A. McCahery, Erik P.M. Vermeulen, Masato Hisatake, Jun Saito, "The New Company Law," 6: "Company law statutes act thus as a set of 'off-the-rack' terms upon which business participants can fall back when establishing the distribution and allocation

guidelines in the area of closed companies. The enactment of the PSA may exert pressure not only on the modernisation of other types of companies in Poland⁹⁵, but also may be a frame of reference for other jurisdictions and legislators, including European legislator within publicly declared the 28th Company Law Regime⁹⁶. Regardless of legislative initiatives taken at the national level, it seems that the European Union can respond effectively to global regulatory and economic pressure only as a whole (as a single body).

of powers and responsibilities for varying levels of control and commitment (Easterbrook and Fischel 1991)". Regarding to the theory itself see: Michael C. Jensen and William H. Meckling, "Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure," *Journal of Financial Economics* 3, no. 4 (1976): 305-360.

⁹⁵ Adam Opalski, Krzysztof Oplustil, Tomasz Sójka, Anne-Marie Weber, „The Simple”, 634.

⁹⁶ See: Anne Sanders, *The Scope of the 28th Regime*, 1-49.

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