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# The Issue of Defining a Transaction in the Light of the Related Party Transactions Regime: A Comparative Approach*

## *Problem definicji transakcji w świetle reżimu transakcji z podmiotami powiązanymi. Ujęcie prawnoporównawcze*

ABSTRACT

Related party transactions are an essential regulatory area influencing the shape of current corporate governance. The regime of supervision over these transactions in the Member States of the European Union is harmonised as a result of the transposition of European legislation into national law. However, the regime implemented by the Member States required the adoption of a definition of a material transaction delimiting the material scope of application of that regime. While the provisions implemented by the Member States contain guidelines on how to determine the materiality threshold (which does not generally cause interpretation problems), they regulate the term transaction differently (from no regulation to the adoption of detailed legal definitions of the term). This paper aims to conduct a brief comparative analysis of the rules governing the definition of a transaction in certain Member States and, based on this analysis, to formulate a *de lege ferenda* postulate that the current regime for related party transactions in Polish law is amended with regard to the introduction of a legal definition of a transaction.

**Keywords:** related party transactions; agreement; SRD II; directive; legal action; listed company

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## INTRODUCTION

The regime for related party transactions implemented by Member States results from the adoption of Directive 2017/828.[1] The introduction of adequate safeguards to protect the interests of companies' shareholders in entering into related party transactions is based on the assumption that such transactions can be harmful to companies and their shareholders, as they may provide an opportunity for a related party to appropriate assets belonging to the company (Recital 42 of Directive 2017/828).

The regime for related party transactions set out in the provisions of Directive 2017/828 (Article 9c) is mandatory, while the provisions concerning the institutions envisaged therein are essentially minimal and general. These provisions are mostly a legislative compromise.[2] At the same time, the regime of the Directive is not absolute, i.e., it applies to material transactions (transactions exceeding the materiality thresholds determined by Member States).

The provisions of Directive 2017/828 on the definition of a related party refer to the meaning of this term as defined in International Accounting Standards 24 (IAS).[3] While the provisions of Directive 2017/828 provide a framework for Member States to determine the materiality threshold, they are silent on the understanding of the term "transaction".[4] In this respect, it should be noted that Member States, under Article 9c(1) of Directive 2017/828, should independently adopt a definition of a transaction in their national legal systems. In the absence such a definition, it is concluded in the literature[5] that the definition of a transaction under the provisions of Directive 2017/828 should be understood in the light of the provisions of the IAS, which define related party transactions as a transfer of

[1] Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement (OJ L 132/1, 20.5.2017).

[2] See R. Skog, *Related Party Transactions – a Closer Look at the Emergence of the New EU Regime*, "European Company and Financial Law Review" 2021, vol. 18(5), pp. 697–713.

[3] International Accounting Standards applied on the basis of Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243/1, 11.9.2002); Commission Regulation (EU) 2023/1803 of 13 August 2023 adopting certain international accounting standards in accordance with Regulation (EC) No. 1606/2002 of the European Parliament and of the Council (OJ L 237/1, 26.9.2023).

[4] P.L. Davies, S. Emmenegger, G. Ferrarini, K.J. Hopt, A. Opalski, A. Pietrancosta, A.R. Castells, M. Roth, M.C. Schouten, R. Skog, M. Winner, E. Wymeersh, *Implementation of the SRD II Provisions on Related Party Transactions*, "ECGI Law Working Paper" 2020, no. 543, pp. 11–12.

[5] See P. Moskała, *Wyrażanie zgody na zawieranie transakcji wewnątrzgrupowych przez radę nadzorczą spółki giełdowej – uwagi do transpozycji nowelizacji dyrektywy 2007/36/WE*, "Przegląd Prawa Handlowego" 2020, no. 11, p. 14; idem, *Zatwierdzanie transakcji wewnątrzgrupowych w zmienionej dyrektywie 2007/36/WE – perspektywy implementacji*, "Przegląd Prawa Handlowego" 2018, no. 1, p. 23; A. Engert, T. Florstedt, *Which Related Party Transactions Should Be Subject to Ex Ante Review? Evidence from Germany*, "ECGI Law Working Paper" 2019, no. 440, p. 9.

resources, services or obligations between a reporting entity and a related party, regardless of whether a price is charged (Section 9 IAS). In addition, Section 21 IAS contains an open-ended list of such activities, which includes, among others, the purchase or sale of goods, the purchase or sale of real estate and other assets, transfers under financing arrangements, the provision of guarantees and collateral, and the settlement of liabilities on behalf of an entity or by an entity on behalf of a related party. The list of activities follows from a systemic interpretation of the provisions of the Directive, which make significant reference to the provisions of this accounting standard. At the same time, some authors point out that there is a need for a broad interpretation of the term. In addition to transactions of a legal nature, factual actions can also be treated as transactions. Furthermore, organisational measures (e.g., a capital increase with the exclusion of subscription rights for a minority) and cash pool payments within a corporate group are qualified as transactions within the meaning of Article 9c(1) of Directive 2017/828.[6]

The absence of an explicit and binding definition of the term of a transaction in Directive 2017/828, combined with the minimum and framework character of the regulatory model adopted therein, has resulted in a significant degree of discretion being left to the Member States as regards the determination of the material scope of the related party transactions regime. This legislative choice has led to the emergence of diverse national solutions and has made the interpretation of the term "transaction" a central issue for the practical application of Article 9c of the Directive and of the national provisions implementing it. Having regard to the above-outlined considerations, the article aims to analyse the definitions of transactions adopted in selected Member States for the purpose of determining the material scope of the related party transactions regime. It advances the research hypothesis that EU law does not establish a uniform understanding of the term of a transaction, which has led to the emergence of heterogeneous national approaches, ranging from autonomous statutory definitions, through explicit references to international accounting standards, to the absence of any legal definition. The article further seeks to demonstrate that the regulations adopted in Polish law, characterised by the lack of an explicit definition of a transaction, give rise to significant interpretative difficulties in determining the material scope of application of the related party transactions regime.

The research is conducted primarily using the legal-dogmatic method, consisting of an analysis of the relevant provisions of EU law and national legislation, as well as doctrinal views and case law. This method is complemented by a comparative analysis of selected legal systems, with particular emphasis on jurisdictions that have adopted an autonomous definition of a transaction, those referring explicitly

[6] J. Lieder, M. Bialluch, [in:] *European Corporate Law: Article-by-Article Commentary*, eds. P. Kindler, J. Lieder, Oxford 2021, p. 947 and the literature referenced therein.

to IAS, and those, such as Poland, that have refrained from defining this concept. The comparative perspective serves to assess how divergent approaches, adopted under EU law, to defining the term of a transaction influence the determination of the material scope of the related party transactions regime under Polish law.

## THE METHOD INTRODUCING AN AUTONOMOUS DEFINITION OF TRANSACTIONS

The German legislator has introduced an autonomous definition of a transaction. This term is defined as legal acts or means by which an object or other asset is put into use, either chargeable or free of charge, and which are concluded with a related party (Section 111a(1), first sentence, AktG)[7]. At the same time, instances in which a party refrains from acting are not qualified as transactions (Section 111a(1), third sentence, AktG).

Under German law, the term "legal act" covers all legal actions, including unilateral ones. The term should be understood in accordance with the general principles of civil law. In turn, "measures" should be understood as all acts which, without being of a legal nature, may affect the financial position or results of the company's operations.[8] The measures include, in particular, the assignment of assets, regardless of whether the transaction is charged or uncharged.[9] Within the category of measures, authors specifically mention factual activities such as production transfers, changes in production, shutdowns of parts of the business, and the coordination of purchases or sales, insofar as they lead to a transfer of assets.[10] In addition, it is pointed out that non-substantial changes in the terms and conditions of a transaction should not, however, constitute separate transactions with related parties within the meaning of Section 111a(1) AktG.[11]

Despite the introduction of the legal definition of a transaction, authors have indicated in the literature that the definition is vague, which may consequently lead to interpretative doubts regarding the recognition of individual transactions as falling under the regime of transactions with related parties. For this reason, some authors postulate that an expanded interpretation should be applied when

[7] Stock Corporation Act of 6 September 1965 (German Federal Law Gazette I, p. 1089, as amended), hereinafter: AktG.

[8] M. Habersack, [in:] *Münchener Kommentar zum Aktiengesetz*, vol. 2: *§§ 76–117*, eds. W. Goette, M. Habersack, München 2023, pp. 1749–1750.

[9] A. Seidel, [in:] *Kommentar zum Aktiengesetz*, eds. G. Spindler, E. Stilz, München 2023, Section 111a, margin no. 16.

[10] M. Habersack, *op. cit.*, p. 1750.

[11] N. Paschos, [in:] *Gesellschaftsrecht*, eds. M. Henssler, L. Strohn, München 2021, Section 111a, margin no. 12.

determining the qualification of a given legal act or measure as a transaction.[12] Consequently, the considered definition should include all potential transactions that may lead to an infringement of the interests of the company or shareholders not involved in the transaction.

Under Belgian law, the related party transaction regime applies to decisions and operations (transactions) implementing decisions made by the board of directors of a listed company (Article 7:97 § 1 of the Belgian Code of Companies and Associations[13]). The Belgian Code of Companies and Associations does not indicate which action results in "decisions" or "operations".[14] Furthermore, with respect to the application of the requirements for related party transactions, the "decisions" or "operations" implementing decisions made by the board of directors are taken into consideration only to the extent to which they fall within the category of matters that are under the remit of the board of directors of a listed company.[15]

The Czech legislator adopts a functional and relatively broad understanding of a transaction for the purposes of the related party transactions regime (§ 121s of the Capital Market Undertakings Act).[16] In particular, a transaction is construed as any agreement or arrangement that produces economic effects on the side of a company subject to the regime, notably by involving the transfer or acquisition of assets. Beyond asset-related operations, the definition also expressly extends to situations in which the company's financial position is affected through an increase in its indebtedness, including the assumption of contingent liabilities. As a result, the statutory concept captures not only classic bilateral contracts leading to a change in ownership, but also a wider range of legal and quasi-contractual arrangements that may alter the company's exposure to financial risk

Very similar regulations have been adopted by the Slovak legislator.[17] It defines a transaction as a contractual performance or the provision of a security under an agreement (§ 220ga(2) of the Slovak Commercial Code).[18] Furthermore, a transaction covers only the consideration or security a listed company provides to a person related to such a company.[19] The Slovak approach introduces this a more restrictive,

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[12] H.C. Grigoleit, [in:] *AktG. Aktiengesetz. Kommentar*, ed. H.C. Grigoleit, München 2020, Section 111a, margin no. 22; F. Ungener, *Prozedurale Regulierung und Transparenz von Related Party Transactions in börsennotierten Aktiengesellschaften*, Berlin 2019, p. 348.

[13] Code of Companies and Associations of 23 March 2019 (Belgian State Gazette of 4 April 2019).

[14] E. Wymeersch, *Related Party Transactions under the New Belgian Company Law*, "University Working Paper Series" 2020, no. 2, p. 5.

[15] *Ibidem*.

[16] Act No. 256/2004 Coll. on Capital Market Undertakings – Act of 14 April 2004, as amended.

[17] T. Florstedt, *Harmonising Shareholder Protection Laws for Related Party Transactions – Art. 9c of the Shareholder Rights Directive as the Nucleus of European Group Law*, "European Company and Financial Law Review" 2022, vol. 19(5), pp. 707–708.

[18] Act No. 513/1991 Coll. Commercial Code of 5 November 1991, as amended.

[19] M. Patakyová, *Obchodný zákonník. Komentár*, Bratislava 2022, p. 1059.

asymmetrical element, as the notion of a transaction is limited to performances or security provided by the listed company to a related party. Therefore, a consideration or a security provided by a person related to a listed company is not covered by the definition of a transaction under Slovak law. This indicates that, despite the apparent similarity to the Czech model, Slovak law narrows the scope of the regime by focusing exclusively on outflows of value or risk from the company, rather than capturing transactions in both directions.

The regime of related party transactions in force in Greece was implemented in the Act of 4548/2018,[20] which repealed the regime of related party transactions established within the framework of Article 23a of the Act of 2190/1920.[21] The provisions of the Act 4 of 548/2018 introduce a broad definition of a transaction, which includes contracts with related parties and the provision of securities and guarantees to third parties in favour of such a person. However, some authors have indicated that, in the context of Article 99 of the Act of 4548/2018, there is no reference in which the terms "transactions" and "contracts" are defined. Thus, in the context of a broad interpretation, it has been stated in the literature that any legal act or measure by which an object or an asset is transferred or delivered for use to a related party of a listed company should be considered a transaction subject to the related party transactions regime.[22]

The comparative analysis reveals a significant diversity of legislative approaches to the formulation of a legal definition of the notion of a transaction. While German law employs an autonomous, broad, yet imprecisely formulated definition encompassing both legal acts and factual measures, Belgian law adopts an institutional approach, linking the scope of the regime to the competences of the management body. By contrast, the Czech, Slovak, and Greek legal systems in general adopt a broadly framed, functionally oriented understanding of transactions, extending to a wide range of arrangements capable of affecting the company's economic position.

A comparison of these models indicates that, despite attempts at normative clarification undertaken at the national level, no uniform understanding of the notion of a transaction has emerged. Consequently, the material scope of the related party transactions regime remains to a considerable extent dependent on the underlying structural assumptions adopted within individual legal systems. Nevertheless, the convergence of these approaches at the functional level allows for a sufficient degree of legal certainty as regards the core understanding of the notion of a transaction.

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[20] Act of 4548/2018 (Official Government Gazette Bulletin A' 104, 13.6.2018, as amended).

[21] Codified Act of 2190/1920 on limited companies (Official Government Gazette Bulletin A' 37, as amended).

[22] N. Vervessos, *Related Party Transactions: Lessons from Regulation in Greece*, "European Company and Financial Law Review" 2022, vol. 19(3), p. 402.

## THE METHOD REFERRING TO THE DEFINITION OF A TRANSACTION SUBJECT TO THE IAS

The Italian legislature adopted a method referring to the IAS definition (Article 31(a) of Regulation 17221).[23] Consequently, transactions should be understood as activities in which resources, services, or obligations are transferred between related parties, regardless of whether a price is charged. The provisions of Regulation 17221 also explicitly indicate that transactions should include mergers, divisions by incorporation, or non-proportional demergers in the strictest sense, if carried out with related parties, and also decisions regarding the assignment of remunerations and financial benefits, in any form whatsoever, to the members of management and control bodies and to the key management personnel.

However, it is pointed out that the definition of a transaction subject to the IAS provisions remains vague and may give rise to further doubts about the material scope of application of the related party transaction regime. For the sake of clarity, writers indicate that transactions must be understood in particular as transactions of an economic or financial nature of various kinds, such as the acquisition or sale of shares in companies, mergers, demergers, capital increases, which can be influenced by those who have "influence" over the listed company.[24]

In summarising the above considerations, it should be noted that the model adopted by the Italian legislator, which refers to the definition contained in IAS, provides for a relatively broad and functionally oriented understanding of the notion of a transaction, encompassing various forms of transfer of resources, services, and obligations between related parties. The Italian approach, while offering such a broad conceptual framework, does not eliminate interpretative uncertainties, as the underlying concept remains inherently open-ended and context-dependent.

## THE LACK OF AN EXPLICIT DEFINITION OF A TRANSACTION

Several legislations, including the Polish one, do not include any definition of a transaction. In particular, the provisions of the Austrian Joint-Stock Corporation Act[25] refer to the term "transaction" but do not indicate how it should be understood (Article 95a of the Austrian Joint-Stock Corporation Act). It is pointed out in the

[23] Regulations containing provisions relating to transactions with related parties (adopted by Consob with Resolution no. 17221 of 12 March 2010, later amended by Resolutions no. 17389 of 23 June 2010, no. 19925 of 22 March 2017, no. 19974 of 24 April 2017, no. 21396 of 10 June 2020, and no. 21624 of 10 December 2020).

[24] F. Colavecchi, *La disciplina delle operazioni con parti correlate*, "Rivista elettronica di diritto, economia, management" 2012, no. 2, p. 40.

[25] Stock Corporation Act of 31 March 1965 (Austrian Federal Law Gazette no. 98/1965, as amended).

literature that the term should be understood in the light of the provisions of the IAS and, in doing so, should be understood broadly.[26] The definition of a transaction should therefore cover actions and measures that impact the company and could potentially have a detrimental effect on it.[27] Consequently, it may turn out that a transaction will not result in a direct transfer of assets belonging to the company.[28]

The provisions of the Spanish Companies' Act,[29] similarly to the provisions of Austrian law, do not expressly define the term "transaction" (Article 529(1) of the Spanish Companies' Act). However, based on the text of the preamble amending the Spanish Companies Act[30] and a systemic interpretation, it is conjectured that the Spanish legislator is referring to the definition of a transaction within the meaning of the IAS.

Despite Austrian and Spanish law, a number of other legal acts in other Member States, including provisions of the Swedish Companies Act,[31] the Portuguese Securities Market Code,[32] and the Luxembourg Act of 24 May 2011,[33] similarly abstain from providing an express statutory definition, relying instead on an implicit, interpretatively constructed understanding of the term within their respective related party transactions regimes. Taken together, these approaches demonstrate that the absence of a legal definition does not prevent the application of a broad and functionally oriented concept of a transaction; however, it also shifts the burden of its concretisation to interpretation, thereby increasing the potential for divergent applications in practice.

## THE TERM "TRANSACTION" UNDER POLISH LAW

The provisions of the Public Offering Act,[34] implementing the provisions of Directive 2017/828, do not provide a legal definition of the term "transaction",

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[26] S. Kalss, [in:] *Münchener Kommentar zum Aktiengesetz…*, Section 111a, margin no. 57.

[27] Eadem, [in:] *Aktiengesetz. Kommentar*, vol. 1: *§§ 1–136*, eds. P. Doralt, C. Nowotny, S. Kalss, Wien 2021, p. 1549.

[28] *Ibidem*.

[29] Legislative Royal Decree 1/2010 of 2 July 2010 approving the Revised Capital Companies Act (Official State Gazette BOE-A-2010-10544, as amended).

[30] Act of 5/2021 of 12 April 2021 amending the consolidated text of the Capital Companies Law, and approved by Royal Legislative Decree 1/2010 of 2 July 2010, and other financial legislation, with respect to fostering the long-term involvement of shareholders in listed companies (Official State Gazette BOE-A-2021-5773).

[31] Companies Act (Swedish Code of Statutes 2005:551).

[32] Securities Market Code (Decree-Law no. 486/99 of 13 November 1999, as amended).

[33] Act of 24 May 2011 on the exercise of certain rights of shareholders in general meetings of listed companies, implementing Directive 2007/36/EC on the exercise of certain rights of shareholders in listed companies (Mémorial Luxembourgeois A, no. 109, as amended).

[34] Act of 29 July 2005 on public offering and the conditions governing the introduction of financial instruments to the organised trading system and public companies (consolidated text, Journal

which is a significant legislative gap. This justifies interpreting the term in the light of the applicable legal provisions and court rulings to clarify the material scope of the related party transactions regime.

The considered regime is a private-law regime, which justifies the interpretation of the term on the basis of private-law provisions. The use of the term "transaction" in the provisions of the Commercial Companies Code[35] is becoming increasingly popular in the light of recent amendments to it. However, the provisions of this legal act do not contain a legal definition of the term. Under the Commercial Companies Code, the term "transaction" is included in the provisions of Articles 311, 380[1], and 384[1] CCC. The authors examining these provisions, particularly the provision of Article 384[1] CCC, argue that a transaction should be understood as any legal act leading to the acquisition of property by the company or the assumption of an obligation by the company. There can be both paid and gratuitous transactions.[36] Furthermore, authors have indicated that a transaction shall include bilateral and multilateral agreements and agreements relating to the establishment of entities.[37] Notably, the above agreements can be qualified as a transaction if they result in a performance made by a public company (e.g., making contributions to the share capital).

Similarly to the provisions of the Commercial Companies Code, the provisions of the Civil Code[38] also lack a legal definition of a transaction. It must be emphasised that the term remains unused in the provisions of the Civil Code. The conceptual framework of the provisions of the Civil Code is essentially based on the concepts of "legal action" or "agreement".[39]

The legal definition of "a transaction" is also not contained in the tax legislation.[40] When interpreting the term, administrative courts most frequently refer to a linguistic interpretation based on the lexical meaning of the term.[41]

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of Laws 2025, item 592, as amended).

[35] Act of 15 September 2000 – Commercial Companies Code (consolidated text, Journal of Laws 2024, item 18, as amended), hereinafter: CCC.

[36] K. Szymański, [in:] *Kodeks spółek handlowych. Komentarz do zmian (tzw. prawo holdingowe)*, eds. A. Szumański, R.L. Kwaśnicki, F. Ostrowski, Warszawa 2022, p. 513.

[37] R. Szyszko, *Grupa spółek. Zmiany towarzyszące (corporate governance, business judgement rule). Komentarz*, Warszawa 2023, p. 514.

[38] Act of 23 April 1964 – Civil Code (consolidated text, Journal of Laws 2025, item 1071, as amended).

[39] P. Moskała, *Wyrażanie zgody…*, p. 14.

[40] See judgment of the Voivodeship Administrative Court in Gdańsk of 20 January 2015, I SA/Gd 1234/14, LEX no. 1668120.

[41] See judgment of the Supreme Administrative Court of 2 March 2021, II FSK 2968/18, LEX no. 3209290; judgment of the Voivodeship Administrative Court in Bydgoszcz of 20 April 2022, I SA/Bd 122/22, LEX no. 3346602; judgment of the Voivodeship Administrative Court in Gdańsk of 20 January 2015, I SA/Gd 1234/14, LEX no. 1668120.

In my opinion, in order to determine the scope of the concept of a transaction, the definition contained in the IAS should be applied. It is justified to some extent by the directives of a pro-EU interpretation. Nevertheless, this definition should be applied accordingly. The view expressed in the literature is that, in order to adapt the terminology of the IAS to the conceptual categories of Polish private law, a transaction should be understood as any legal act (in particular, a contract) that leads to the creation of an obligation, including an obligation that consists of a single performance or multiple or periodic performances in the form of a transfer of goods or rights, a cash payment or the provision of services, whereby the performance of one or more services in fulfilling the obligation would not constitute a separate "transaction". Furthermore, it is necessary to lean towards the view that transactions do not constitute an omission or suppression of an action of a related party if they are not the subject of an obligation of the company.[42]

The definition of a transaction includes transactions by a listed company both outside and inside the corporate relationship. However, authors formulate other views on the issue. The first view is that the definition of a transaction does not include transactions within the corporate relationship in which all shareholders of the company participated on the same terms.[43] A more broadly presented view is that a transaction does not include any transactions inside the corporate relationship.[44] However, these views do not have a clear legal basis, which excludes the possibility of their acceptance. Under the rule *lege non distinguente nec nostrum est distinguere*, the regime of related party transactions applies regardless of whether a transaction is carried out within or outside the company relationship. In addition, there is no explicit exemption from the application of the related party transactions regime, as provided for in Article 90j of the Public Offering Act, in order to exclude the transactions in question from the application of the related party transactions regime.

At the same time, in view of the sanctions of nullity provided for in the event of a material transaction being carried out without the required approval granted by the supervisory board (Article 90i(3) of the Public Offering Act in conjunction with Article 17 § 1 CCC), an extended interpretation should be applied when defining the material scope of the term.

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[42] P. Moskała, [in:] *Prawo rynku kapitałowego*, vol. 2: *Komentarz*, eds. M. Wierzbowski, L. Sobolewski, P. Wajda, Warszawa 2023, pp. 381–382.

[43] *Ibidem*, p. 381.

[44] In this regard, in the light of the provisions of the Commercial Companies Code, see M. Baszczyk, *Wymóg uzyskania zgody rady nadzorczej na transakcje ze spółkami z grupy – uwagi na tle art. 384¹ k.s.h.*, "Przegląd Prawa Handlowego" 2024, no. 2, pp. 18–19.

## CONCLUSIONS

The absence of a binding and autonomous definition of the term "transaction" in Directive 2017/828 has left Member States a wide margin of discretion in shaping the material scope of the related party transactions regime. As the comparative analysis demonstrates, this legislative choice has resulted in the emergence of divergent national solutions, including the adoption of autonomous statutory definitions, the use of the term "transaction" without further conceptual clarification, as well as express or implicit references to the definition contained in IAS. In many of the examined legal systems, the term of a transaction therefore remains open-ended or only indirectly specified.

These observations are particularly relevant in the context of Polish law. The Polish legislator implemented the provisions of Directive 2017/828 in a largely literal manner, without clarifying whether the transposed terminology corresponds to the conceptual framework employed in domestic private law. As a consequence, the statutory framework remains silent as to the meaning of the term transaction, which gives rise to interpretative uncertainty and, in turn, to difficulties in precisely delineating its material scope. In view of the severity of the legal consequences attached to the conclusion of a transaction without the required approval, including, in the present context, the sanction of nullity under Article 17 § 1 CCC, such normative indeterminacy adversely affects legal certainty and the predictability of the application of the related party transactions regime. Accordingly, under the current legal framework, the term of a transaction should, for reasons of regulatory caution, be construed as broadly as possible, so as to ensure the effective application of the protective mechanisms envisaged by Polish law.

Given the various regulatory methods presented, the analysis supports the conclusion that the adoption of an autonomous statutory definition of a transaction constitutes the most effective legislative solution. Therefore, such an approach should be recommended for Polish law. As indicated above, neither the provisions of the Commercial Companies Code nor those of the Civil Code contain such a definition. In formulating an autonomous definition of the material scope of the notion of a transaction for the purposes of the related party transactions regime, it is submitted that the definition should encompass all legal acts and legal events, whether onerous or gratuitous, that result in a transfer of assets or economic value between a listed company and a related party.

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ABSTRAKT

Transakcje z podmiotami powiązanymi stanowią istotny obszar regulacyjny, kształtujący współczesny ład korporacyjny. Reżim nadzoru nad tymi transakcjami w państwach członkowskich Unii Europejskiej został zharmonizowany w wyniku transpozycji prawodawstwa unijnego do porządków krajowych. Wdrożenie tego reżimu przez państwa członkowskie wymagało jednak przyjęcia definicji transakcji istotnej, wyznaczającej zakres przedmiotowy jego zastosowania. O ile przepisy implementowane przez państwa członkowskie zawierają wytyczne dotyczące sposobu określania progu istotności (co zasadniczo nie nastręcza trudności interpretacyjnych), o tyle pojęcie transakcji regulują w sposób zróżnicowany: od braku jakiejkolwiek regulacji, po przyjęcie szczegółowych definicji legalnych tego pojęcia. Celem artykułu jest przeprowadzenie zwięzłej analizy prawnoporównawczej regulacji dotyczących definicji transakcji w wybranych państwach członkowskich oraz sformułowanie na jej podstawie postulatu *de lege ferenda* dotyczącego zmiany obowiązującego w prawie polskim reżimu transakcji z podmiotami powiązanymi poprzez wprowadzenie legalnej definicji transakcji.

**Słowa kluczowe:** transakcje z podmiotami powiązanymi; umowa; SRD II; dyrektywa; czynność prawna; spółka giełdowa