



Restructuring pitfalls

La Cluzas – 28 January 2017

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Distress and Restructuring – Corporates in the Emergency Room

Legal pitfalls in buying a distressed company

- Buying a company before insolvency petition is filed
- Acquisition after insolvency petition is filed
- Acquisition after opening insolvency proceedings

Strategies to take a company out of insolvency

- The role of the insolvency practitioner
- Convincing both the insolvency practitioner and the creditors

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**Stevens & Bolton LLP
United Kingdom**



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Competition law pitfalls

Merger Control

- The requirements to notify and risks associated with asset sales
- Exceptions: the failing firm defence and the public interest test

State Aid

- Restructuring as an unlawful state aid
- Hidden state aid risks arising from restructuring

Competition compliance

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**LETT Law Firm
Denmark**

LETT



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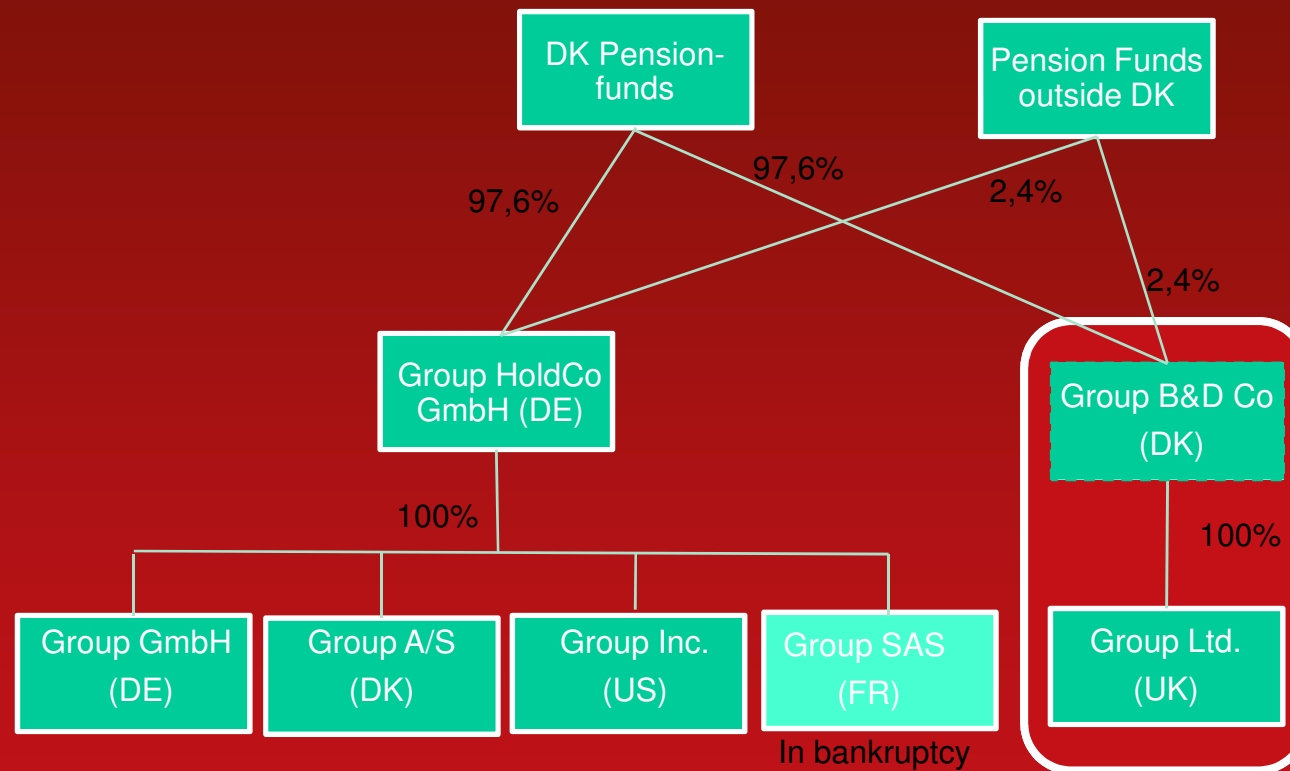
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Background

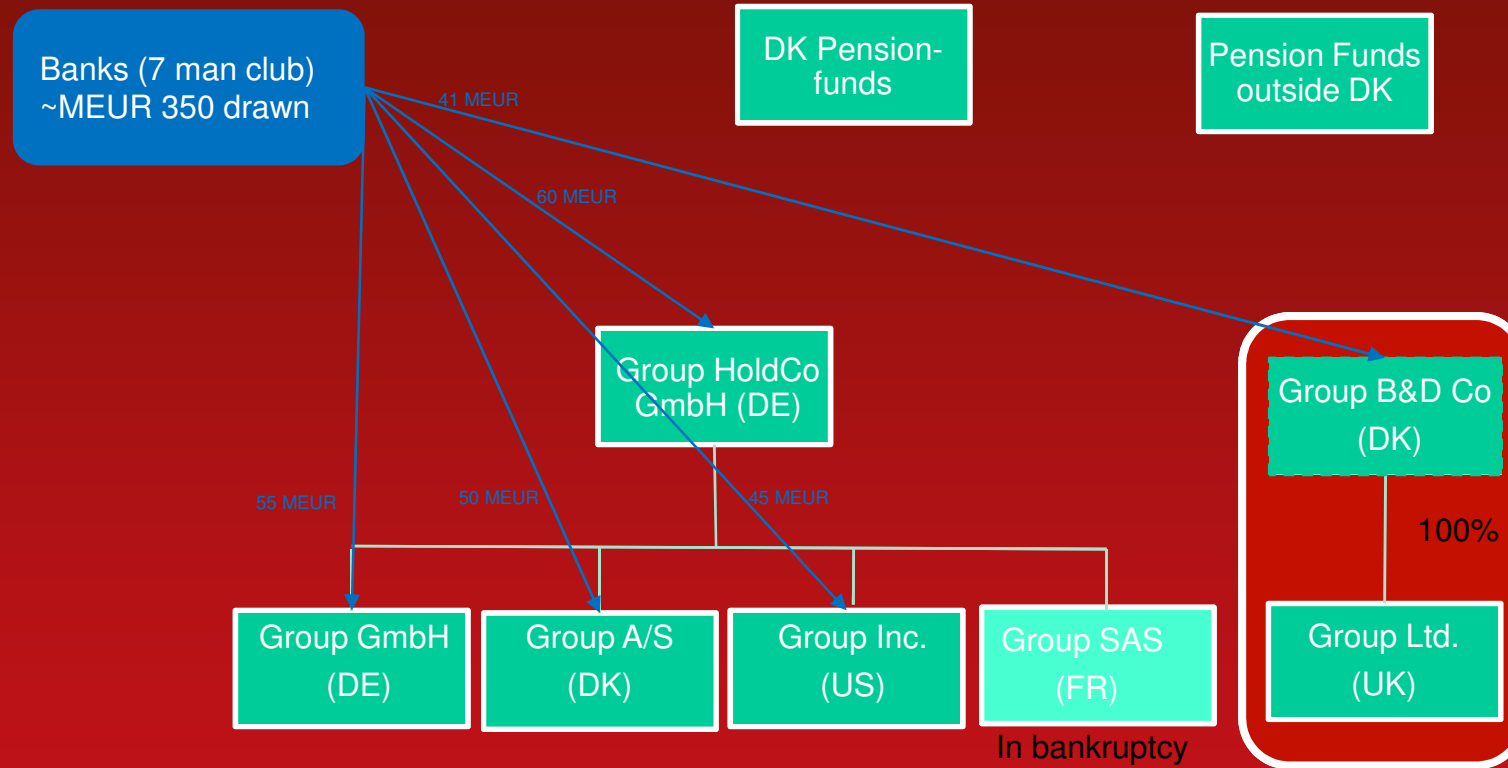
- Cross border group (manufacture-business)
- Strong owner
- Cash-pool
- Poor auditing
- EUR 80,000,000 "borrowed" by owner from cash-pool
- Whistleblower
- Auditors' investigations



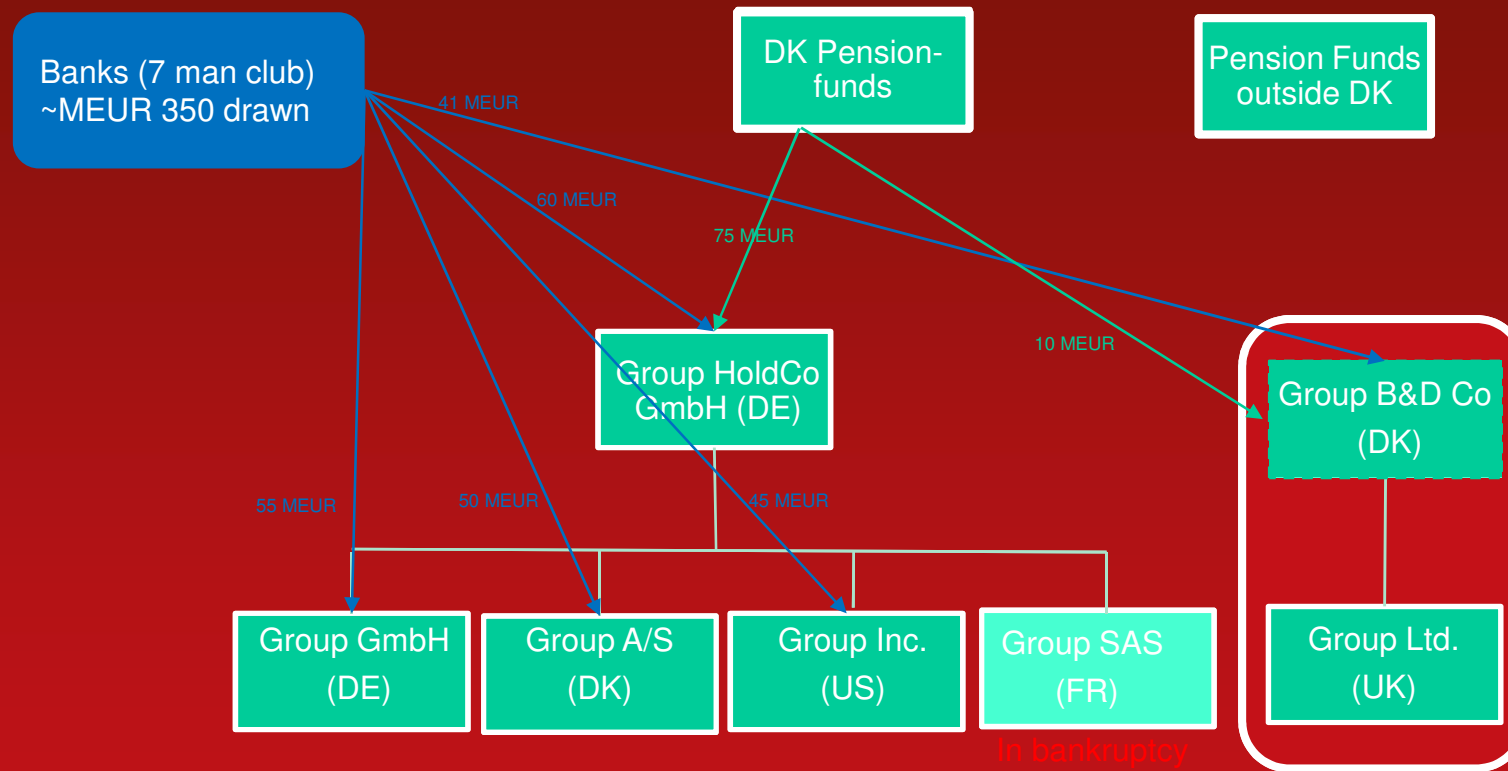
Group chart (post take-over, but pre cleanup)



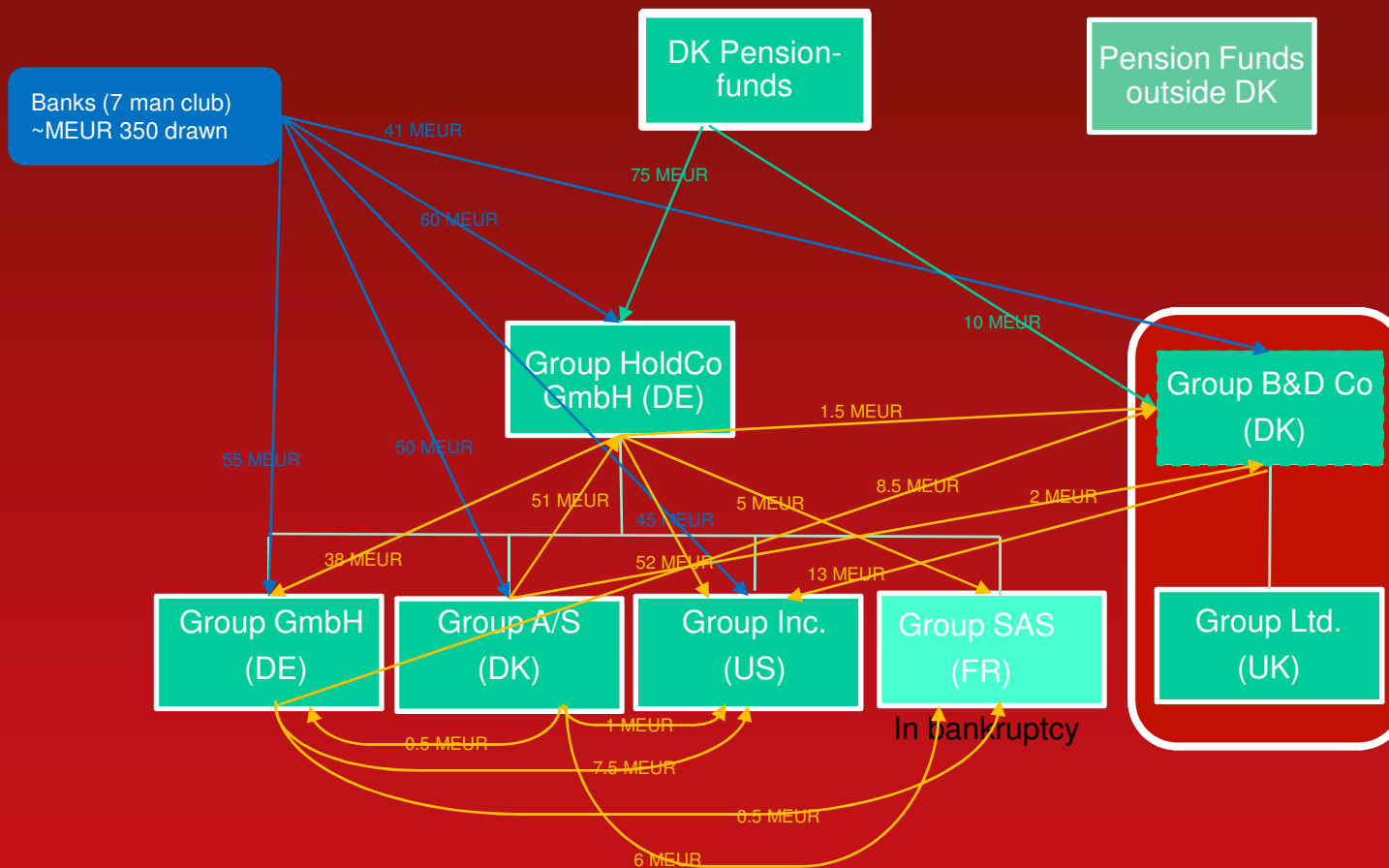
Bank Debt



Bank debt & shareholder debt



Bank debt & shareholder debt & intra-group debt



Major concerns of banks (and owners)

Leverage way too high (write off from banks and shareholders)

- Commercial aspect – debt service impossible

Leaning of corporate structure

- Tax and security/collateral issue. Banks wanting to be able to seize everything in one "take"

Cleanup of intra-group debt

- Bankruptcy risk (if one company bankrupts – trustee can pressure the group)
- Transparency (cross border group – consolidation not mandatory)

Solutions

Lowering of leverage-ratio

- Massive write-offs
- Contribution from owners and advisors

Leaning of corporate structure

- Intra-group sales / liquidations

Cleanup of intra-group debt

- Write-off (tax!)
- Assignment and write-off (tax!)
- Merger (tax!)

...but it worked (15 months later!)

ANNA WYRZYKOWSKA
advocate, counsel

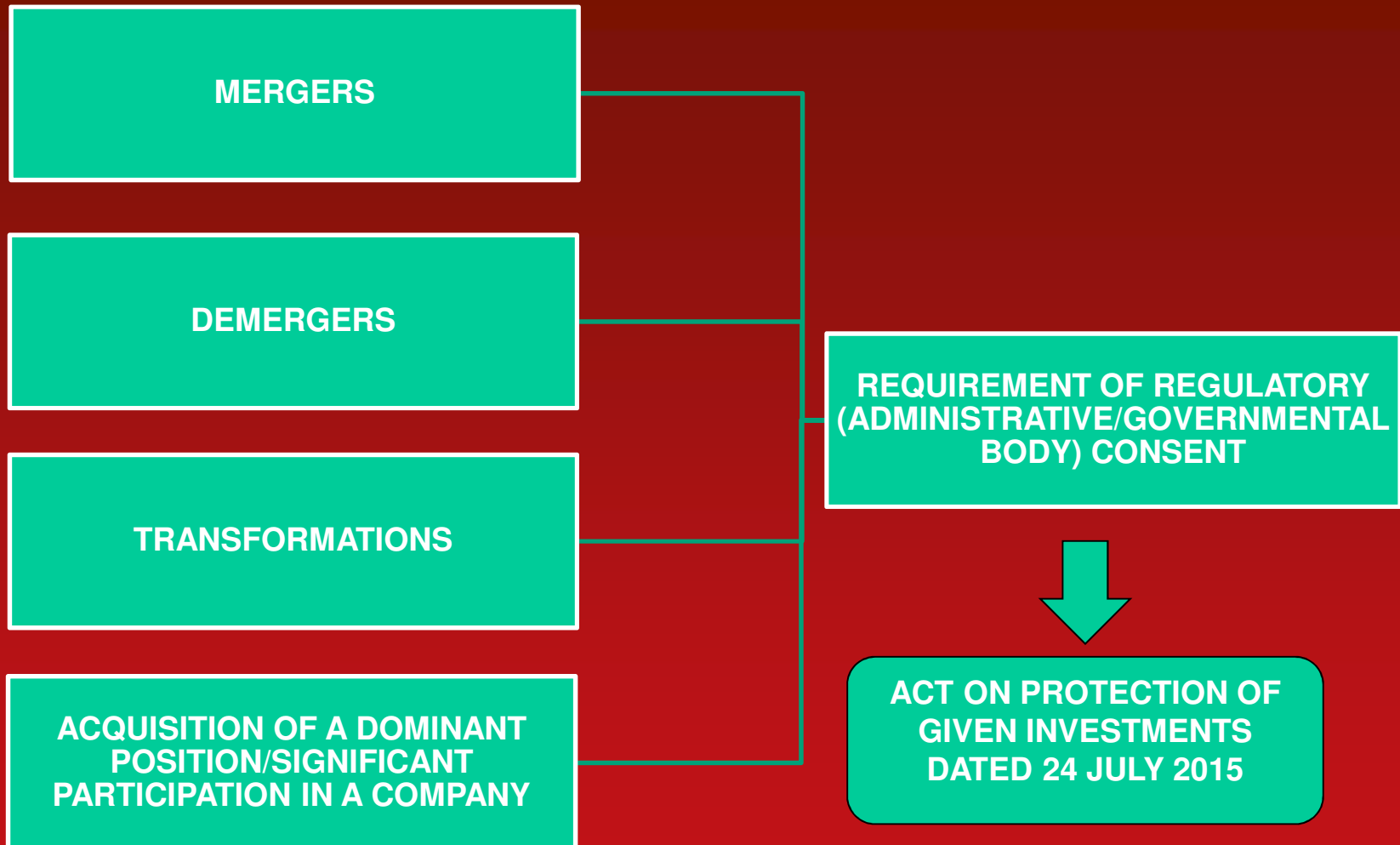
WKB Wierciński, Kwieciński, Baehr sp.k.



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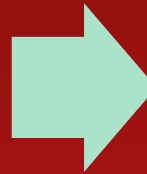
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Regulatory obstacles



Regulatory control - aim

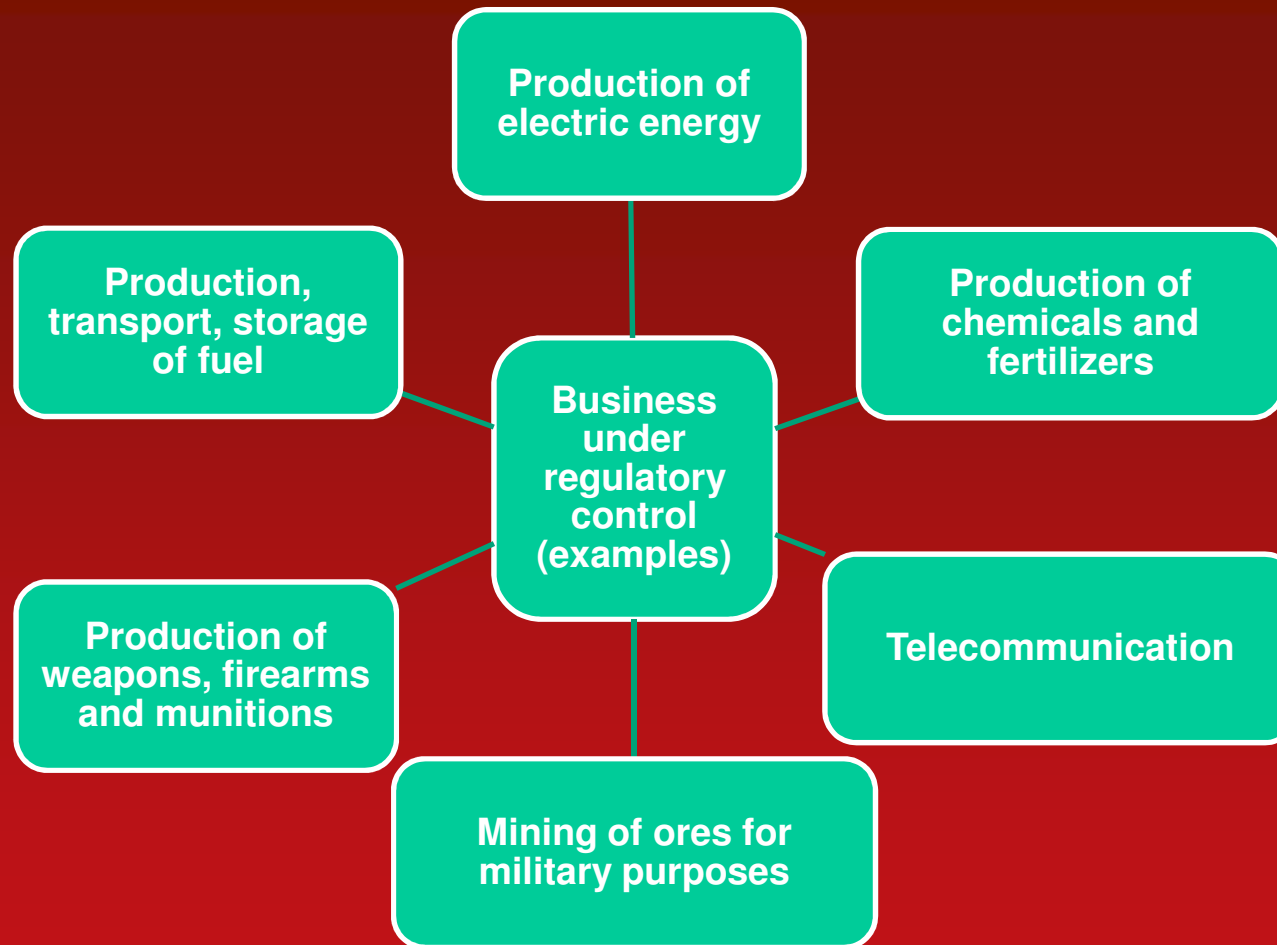
**AIM OF REGULATORY
CONTROL**



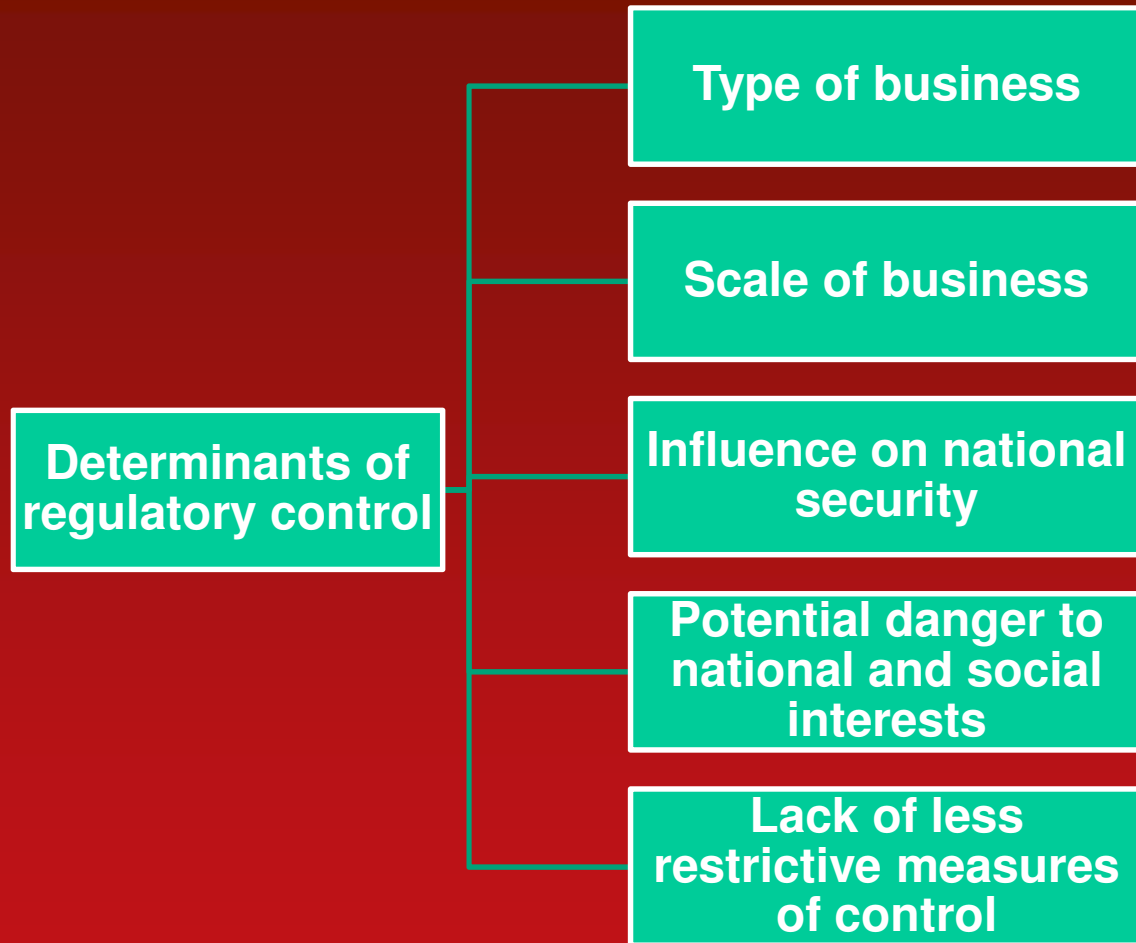
**PROTECTION OF PUBLIC
ORDER AND SAFETY**

(as defined in art. 52.1 i art. 65.1
of the EU Treaty)

Scope of businesses under regulatory control (examples)



Determinants of falling under regulatory control



Regulatory sanctions

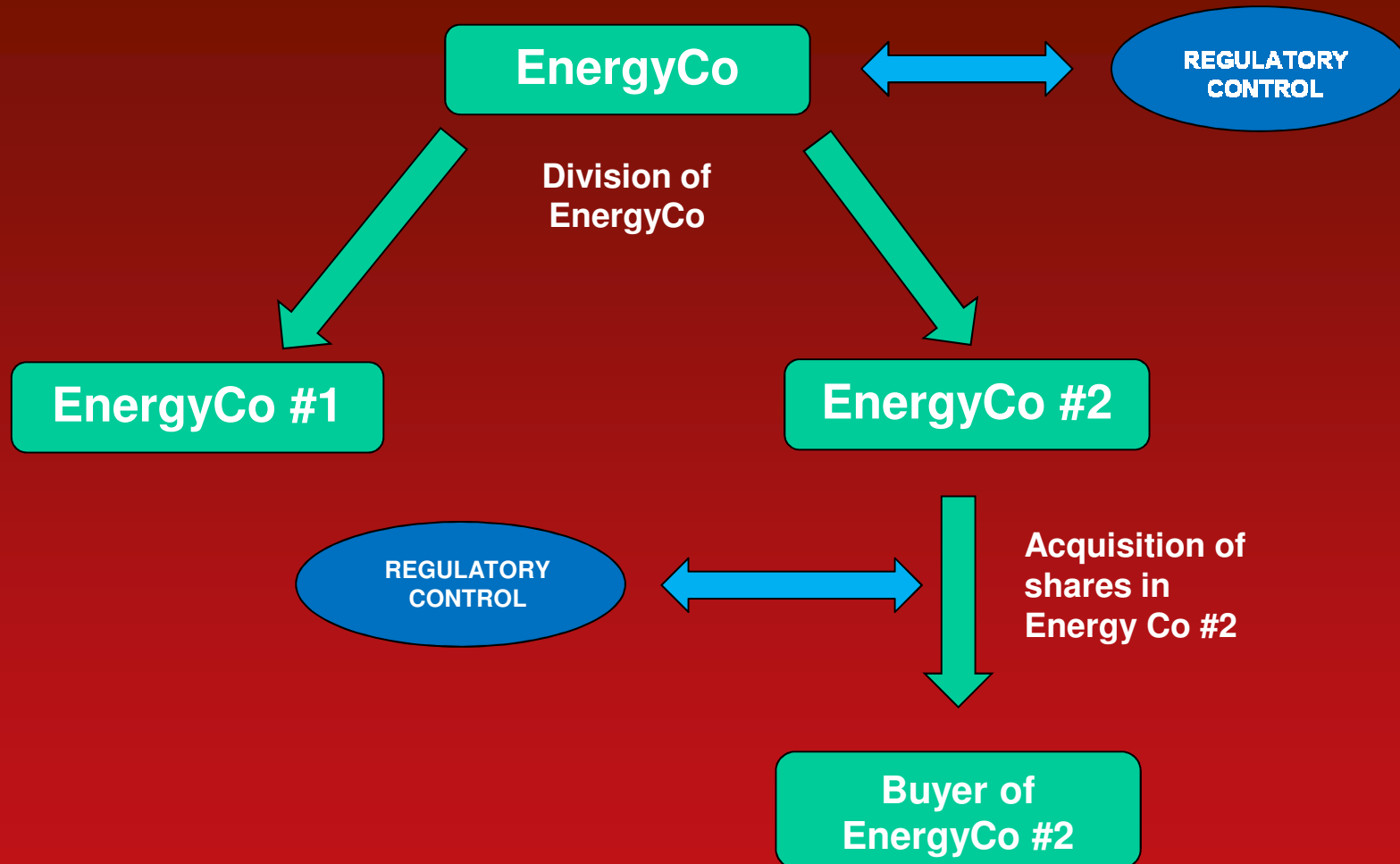
Direct acquisition of a dominant position/significant participation in a company without regulatory consent

- **Invalidity** (unless otherwise decided by the regulatory body)
- **Criminal financial penalty, imprisonment**

Indirect acquisition of a dominant position/significant participation in a company without regulatory consent

- **Incapability of voting and exercising rights from acquired shares/stock** (sale/disposal of such shares/stock is permitted)
- **Criminal financial penalty, imprisonment**

Regulatory control - example



Thank you for your attention

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Markus Vetter



Joachim Kundert Jensen



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