



# Restructuring pitfalls

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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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# 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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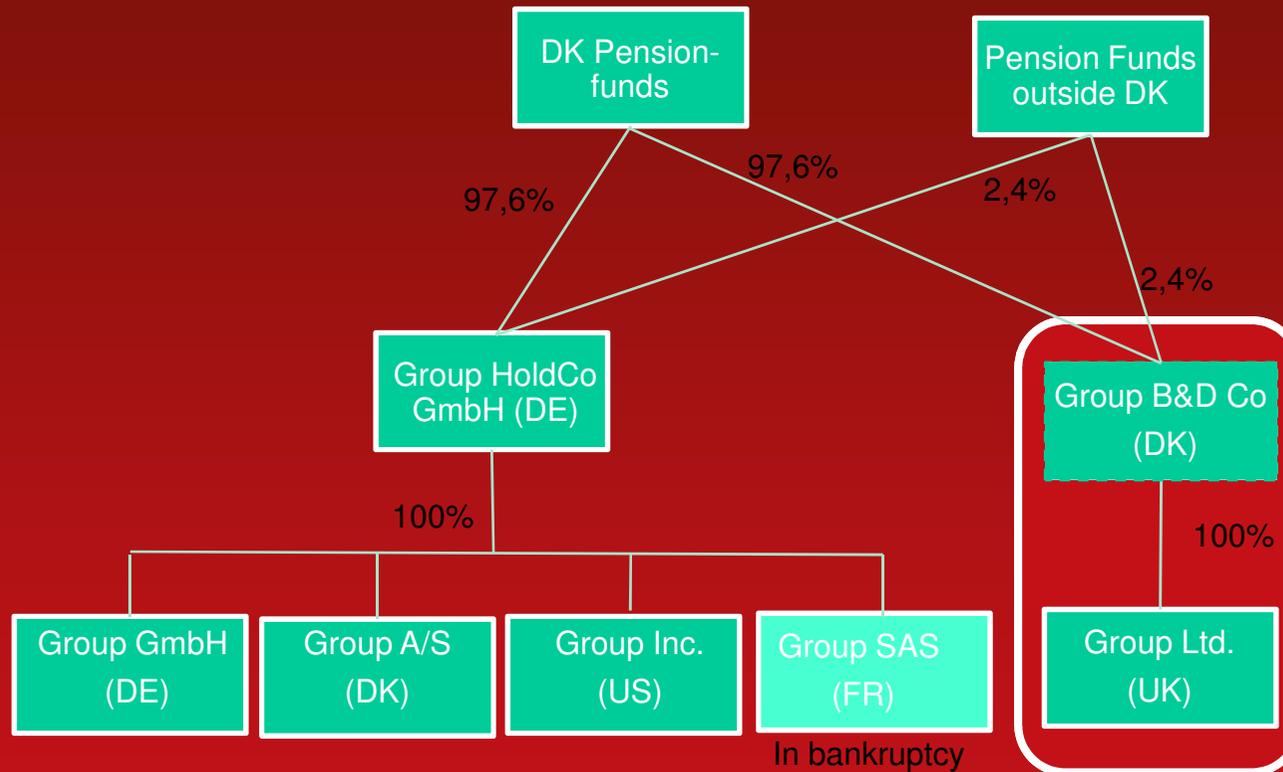
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# Background

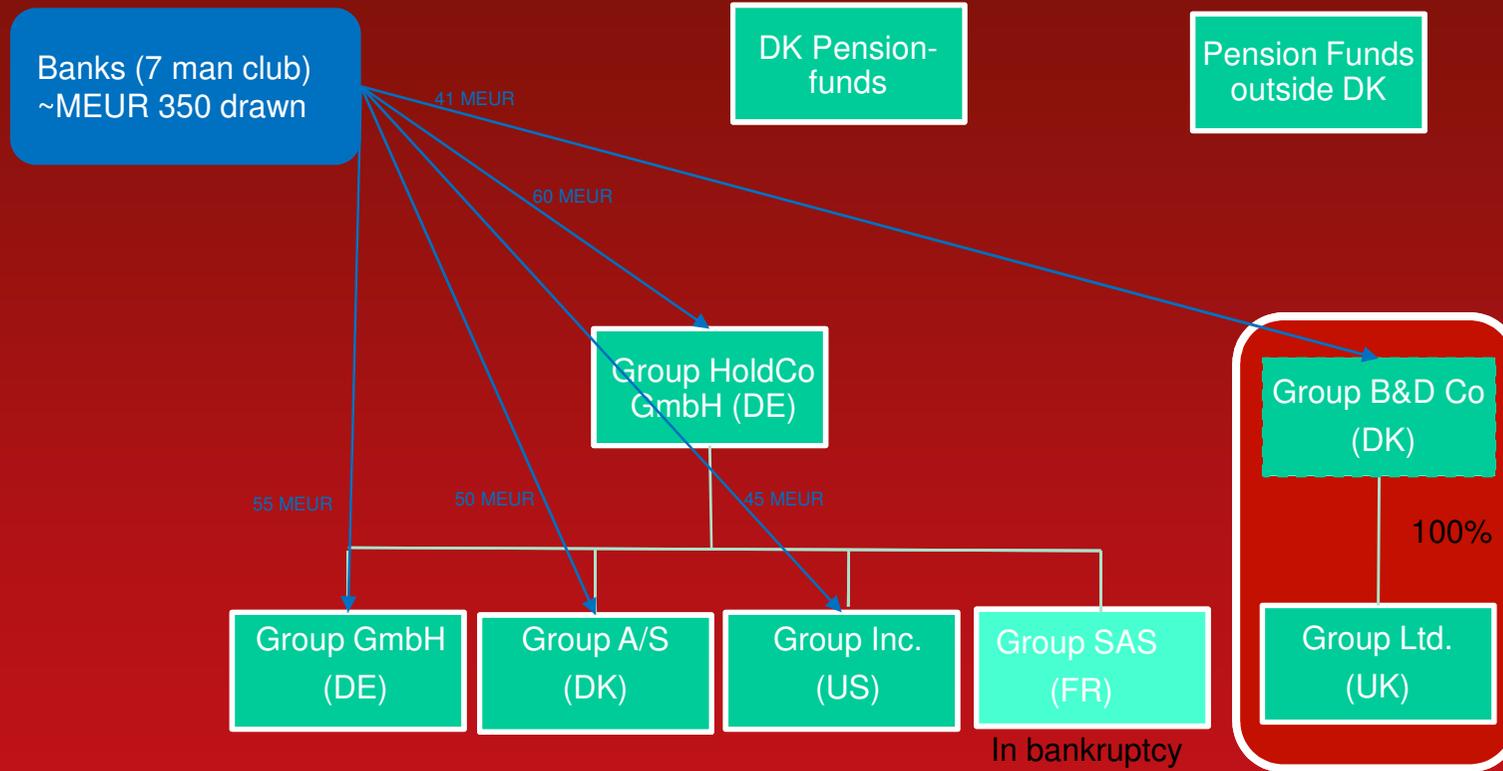
- Cross border group (manufacture-business)
- Strong owner
- Cash-pool
- Poor auditing
- EUR 80,000,000 "borrowed" by owner from cash-pool
- Whistleblower
- Auditors' investigations



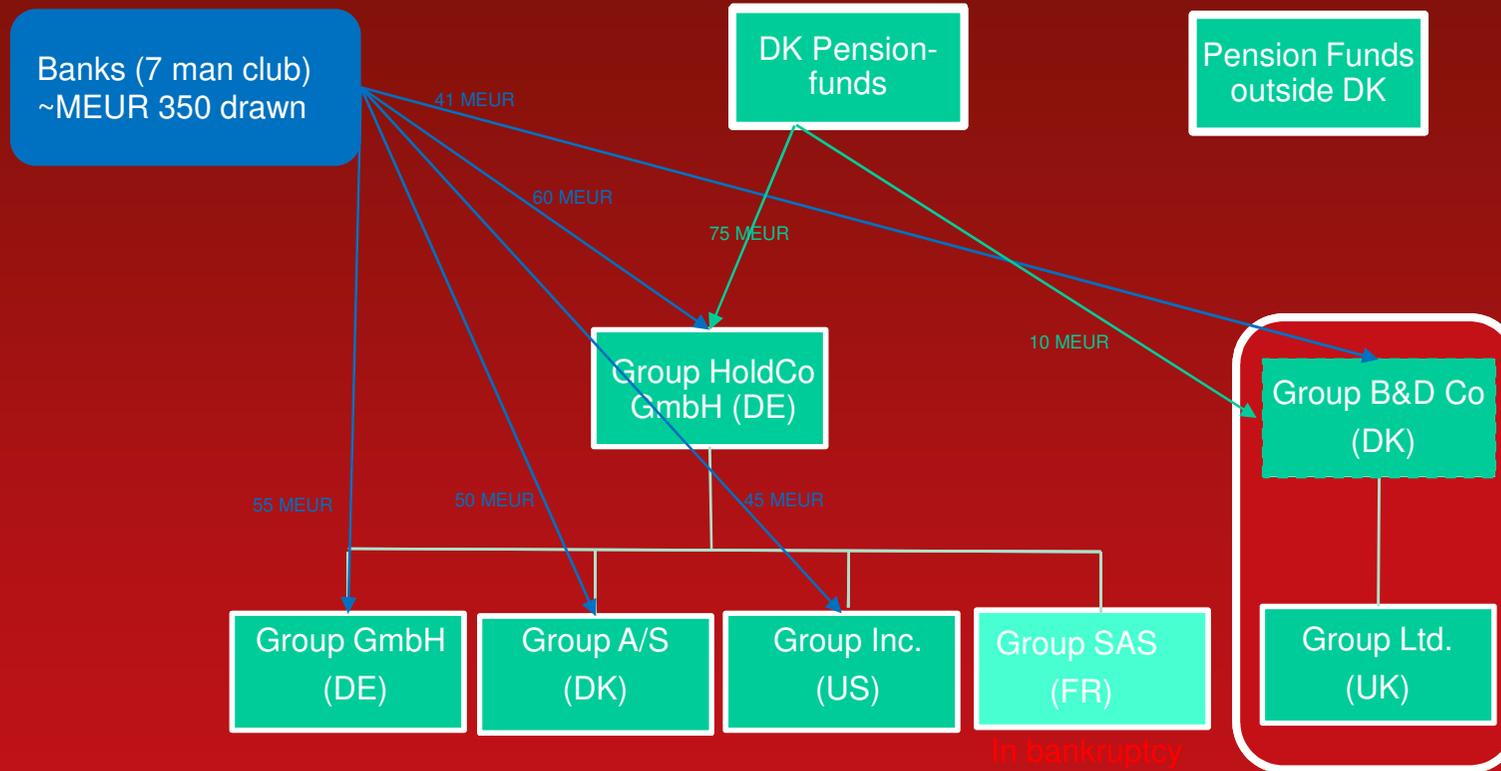
# Group chart (post take-over, but pre cleanup)



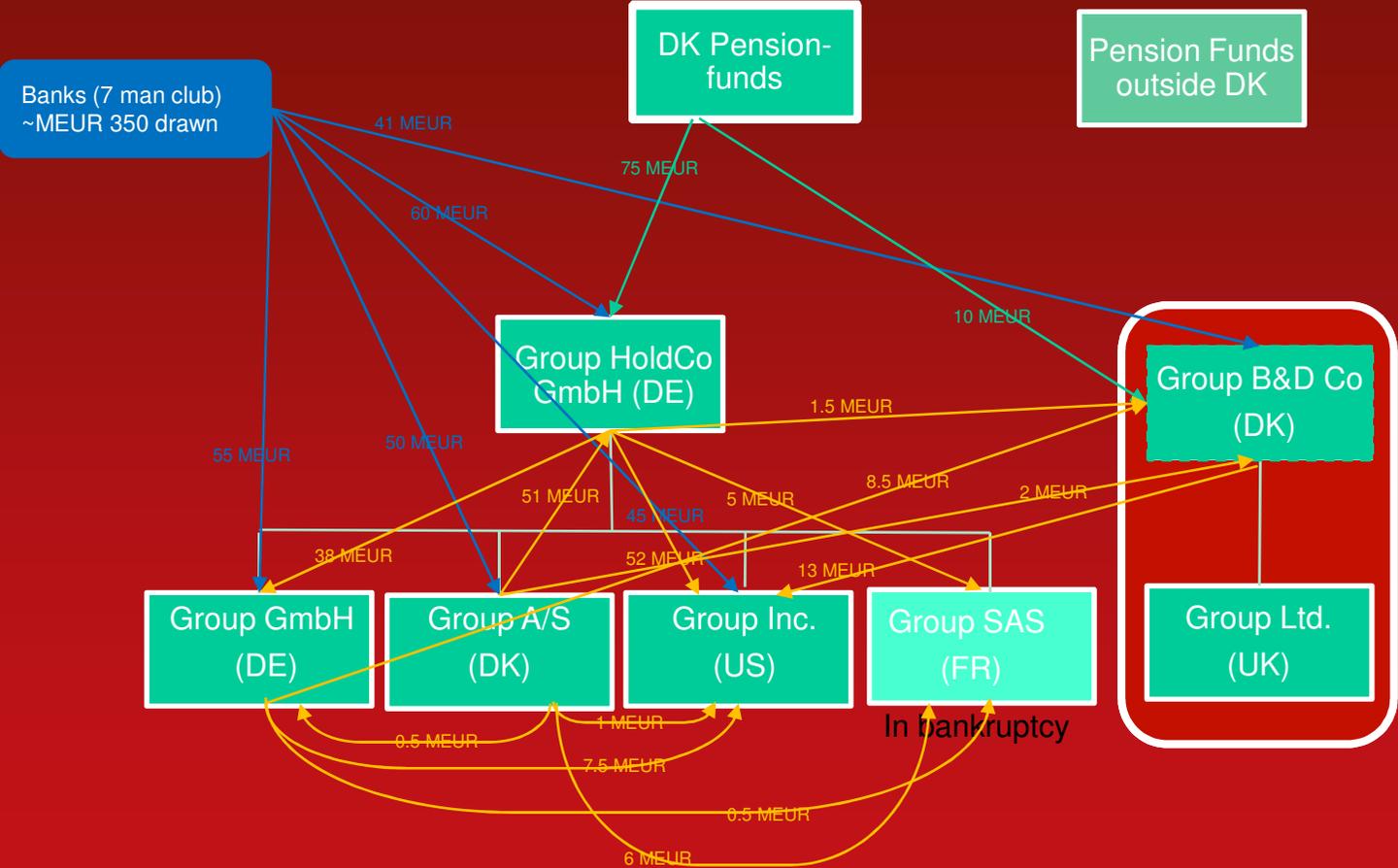
# Bank Debt



# 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!)



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**ANNA WYRZYKOWSKA**  
**advocate, counsel**

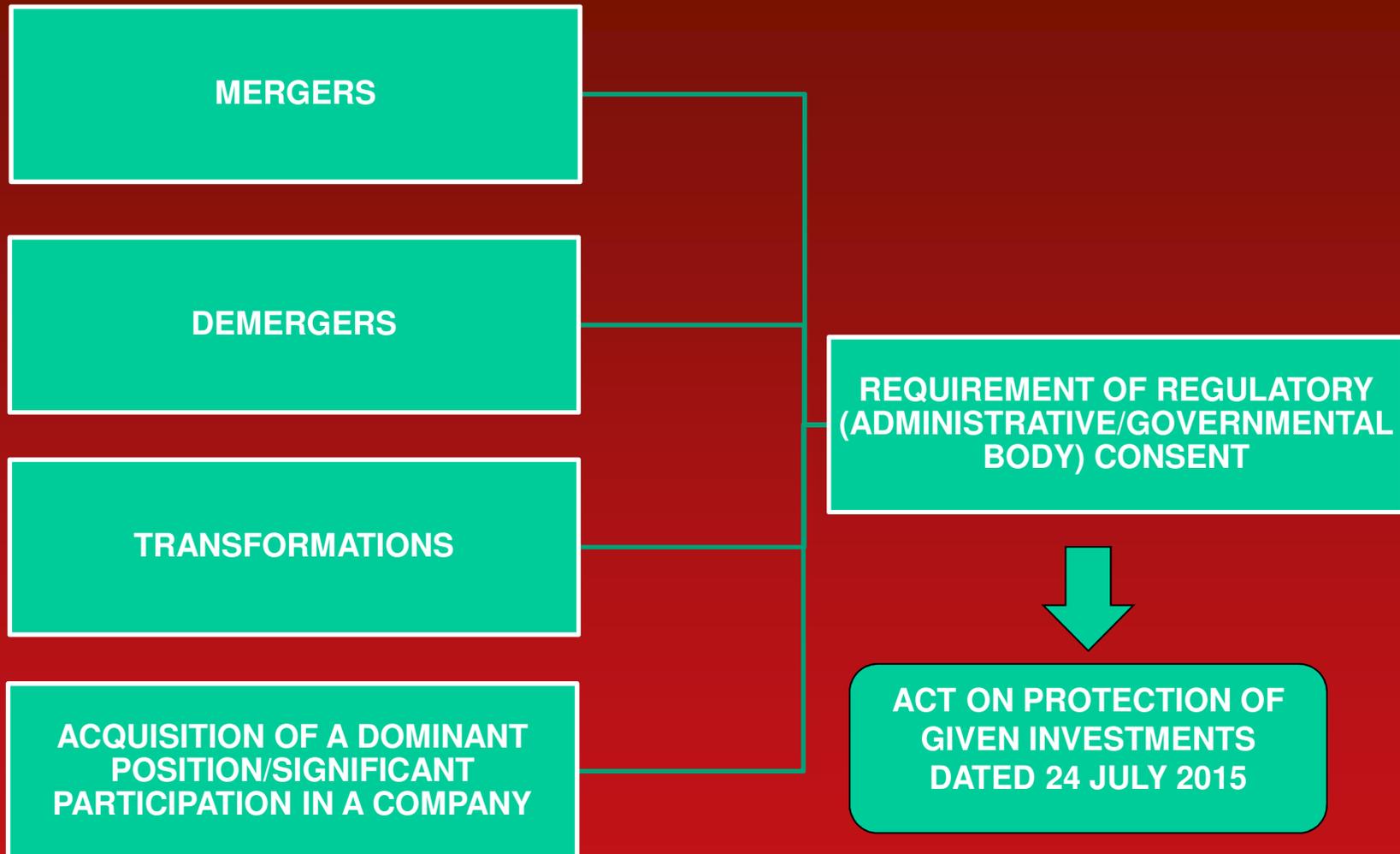
**WKB Wierciński, Kwieciński, Baehr sp.k.**



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# Regulatory obstacles



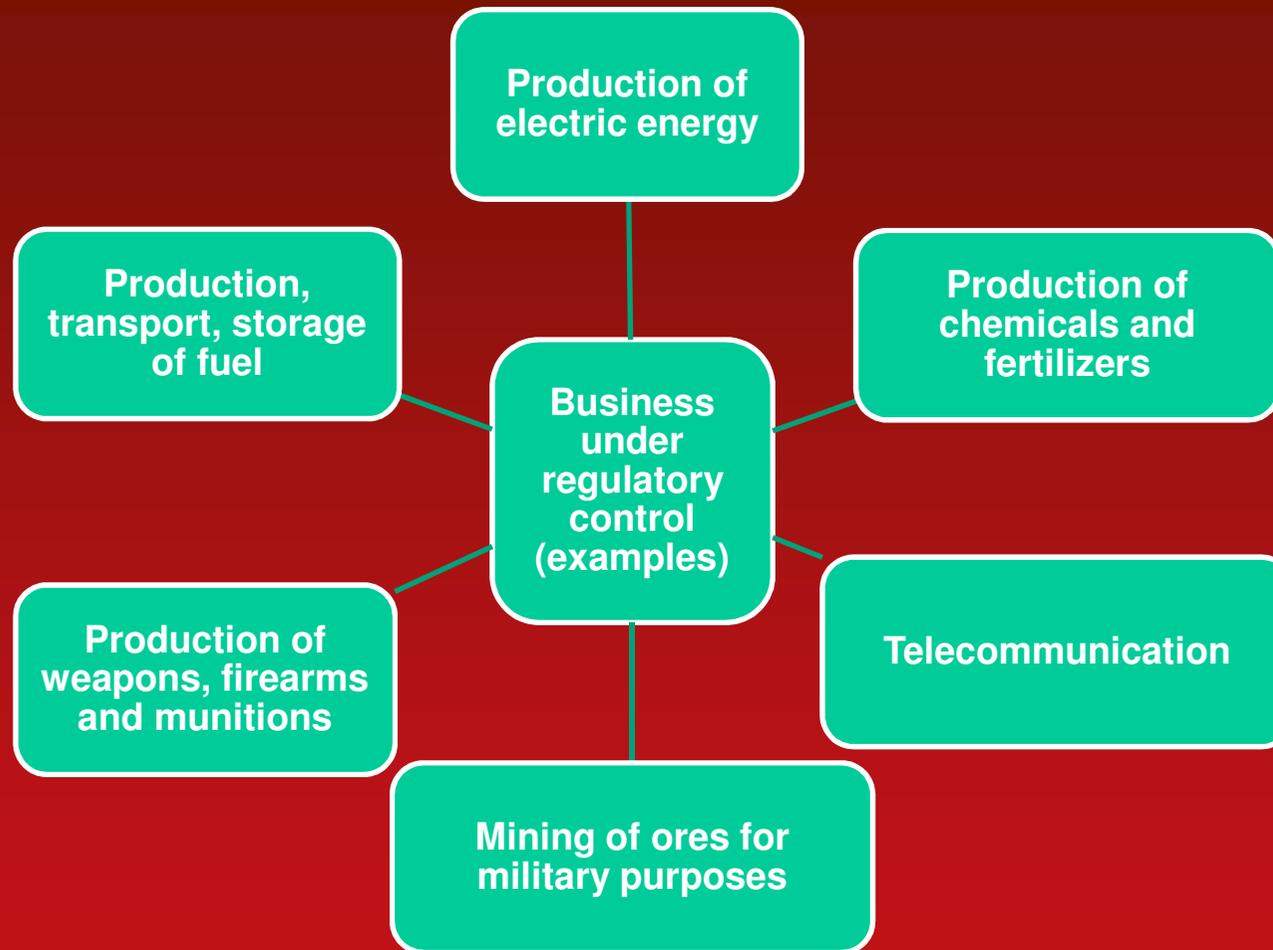
# Regulatory control - aim

**AIM OF REGULATORY  
CONTROL**

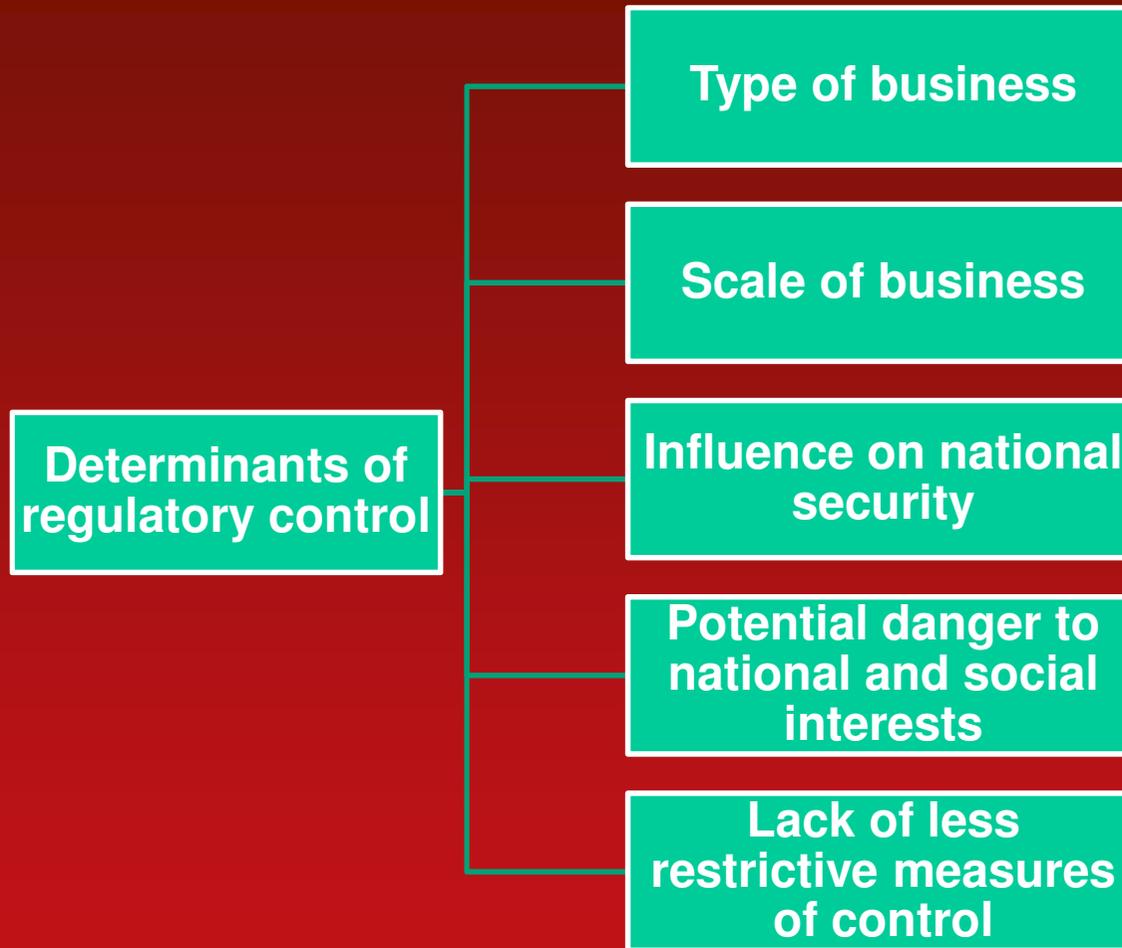


**PROTECTION OF PUBLIC  
ORDER AND SAFETY**  
(as defined in art. 52.1 i art. 65.1  
of the EU Treaty)

## Scope of businesses under regulatory control (examples)



# Determinants of falling under regulatory control



# Regulatory sanctions

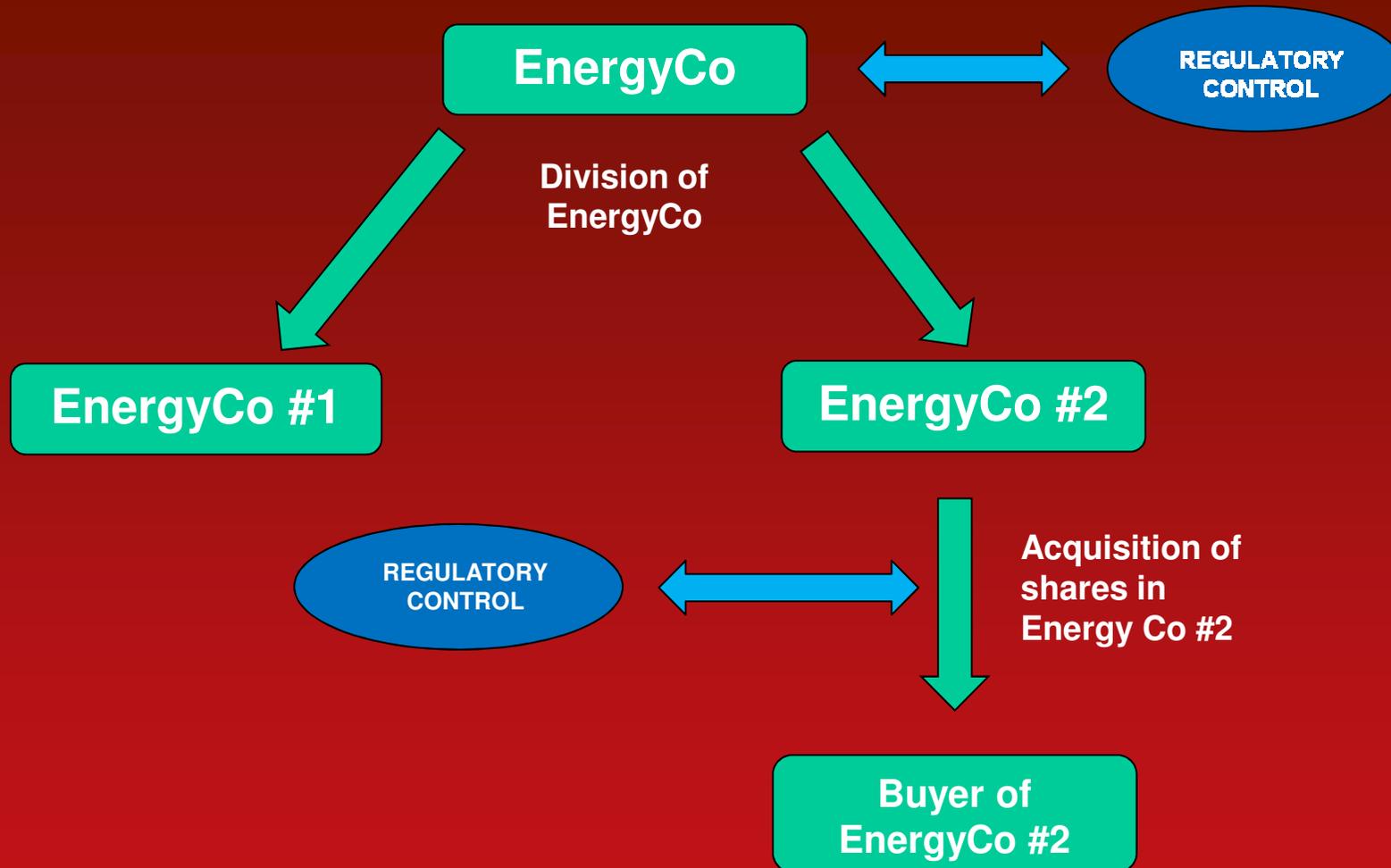
Direct acquisition of a dominant position/significant participation in a company without regulatory consent

- **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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**Joachim Kundert Jensen**



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