

## EU COMPANY LAW INTRODUCED NEW FORMS OF LEGAL ENTITIES WITHIN THE INTERNAL MARKET

### I. Introduction

European Union company law legislation has focused on two main objectives since the introduction of the Lisbon strategy [1] back in 2000. Firstly, the harmonization of national legislation among member states has been an ongoing process through the implementation of a number of EU directives. Such directives are those regarding the capital of the public limited liability companies (PLLC), the division of PLLC, the mergers of PLLC [2]. Secondly, some new types of legal entities are launched in the shape of tailored supranational company forms, thus completing the EU framework [3]. This is achieved by other legal instrument – regulations. Pursuant to Article 288 of the *Treaty on the Functioning of the European Union (the Treaty)*, a regulation shall be binding in its entirety and directly applicable in all Member States. So, once adopted, the measures provided for in regulations are imposed upon Member states, which would not need to go through any ratification procedures due to the direct effect of these legal mechanisms. The overall purpose is to create “a friendly environment for starting up and developing innovative businesses, especially SMEs” [4].

Currently, three active legal forms operate on a supranational basis, following EU regulations - *European economic interestgrouping (EEIG)*, *European company (SE)* and *European cooperative society (SCE)*. Although there was a strong wish among all stakeholders, the first Regulation to introduce such a supranational form was adopted in 1985 providing for the *EEIG*.

### II. The European economic interest grouping (EEIG)

The EEIG aims at facilitating the business of small- and medium-sized enterprises (SMEs) in Europe [5]. The Regulation (Council Regulation (EEC) No 2137/85) introduced a new legal entity, which as of 1985 was totally unknown to the Member states. Only France and Portugal had similar structures in their national legislation. The Regulation delineates the specific features of the EEIG. It is formed under a concluded contract between the negotiating parties and then, in order to be eligible to operate should be registered in the State of its official address at the national registry. Any legal persons may be members of the EEIG – natural persons and/or companies of firms within the meaning of Article 54 of the Treaty [6]. The lack of any severe restrictions to the possible founders is considered one of the main features that make the EEIG an attractive form of incorporation to do business within the EU.

However, the EEIG is a company that stays closely connected with its members. This is meant to generate better results than the members acting alone. Furthermore, it is not even contemplated that the grouping should make profits for itself, since they are to be allocated among the members and taxed accordingly. (Article 40 of the Regulation). Members of an EEIG shall have **unlimited joint and several liability** for its debts and other liabilities of whatever nature. (Article 24 of the Regulation).

Being the first supranational legal form manifested to the Internal EU market, the EEIG has faced certain difficulties that seriously impede its application. For its over thirty-year existence a number of about 2500 [7] groupings of this kind have been registered. The European Commission has found that optimum use is not yet being made of the EEIG by firms wishing to cooperate at transnational level, particularly where they hope to participate in public contracts and programmes financed by public funds. The rather unpopular legal features, the less harmonization of national legislation on partnerships, together with the unlimited liability of the members premise that the EEIG has not fulfilled its mission set out in the Regulation.

### III. The European company (Societas europaea – SE)

The European company (SE) marks a further development of the EU company law. It has been introduced with the adoption of Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE). An SE may be incorporated by a variety of companies, while **individuals** (natural persons) **are not allowed** to do so. Under certain prerequisites the public and private limited-liability companies listed in special Annexes, along with companies pursuant to Article 54 of the Treaty may form an SE by means of a **merger**, a **holding SE**, or a **subsidiary SE**. Also, a public limited-liability company may be transformed to an SE if it has had a subsidiary company for at least two years in another Member state. To further broaden the possibilities of incorporation the Regulation provides for a company the head office of which in not in the EU may participate in the formation of an SE on condition that this company has a real and continuous link with a Member State’s economy. All these opportunities for setting up an SE follow a complete intention of making the SE as attractive as possible.

The European company (SE) shall have legal personality and its subscribed capital may not be less than EUR 120,000. As a legal form of incorporation the SE is regarded as a public limited-liability company.

Pursuant to Article 38 of Council Regulation 2157/2001 an SE is governed either by a one-tier system (general meeting of shareholders plus an administrative organ) or a two-tier system (general meeting of shareholders plus a supervisory organ and a management organ). These special provisions are distinguished by much attractiveness for large businesses and strict measures inherent to corporate governance.

However, the implementation of Council Regulation 2157/2001 is severely hindered even in the short term. The Statute for an SE through the wide possibilities for incorporation allowed the cross-border merger between companies formed under the law of a Member state, with their registered offices and head offices within the Community. Such a possibility is now commonly spread as the Tenth Directive of cross-border mergers is transposed by all Member states. Moreover, the same effect is expected with the transnational transfer of the registered office of an SE due to the Fourteenth Company law Directive on the cross-border transfer of the registered office of limited companies. In addition, the lack of rules on shares

and to a lesser extent, on financing and legal capital, make the formation of an SE attractive to European companies currently regulated by less flexible company laws [8]. Some scholars find the **renvoi technique** a significant obstacle to the application of the SE Statute. Generally, the SE Statute and its practical implementation seems a failure [9].

#### **IV. The European Cooperative Society. (Societas cooperativa Europaea – SCE).**

The European Cooperative Society (hereinafter referred to as “SCE”) is another supranational legal entity operating on EU Internal market. It has been introduced by a Council Regulation (EC) No 1435/2003 of 22 July 2003. It has met the EU’s efforts to facilitate cooperatives wishing to engage in cross-border business, by taking account of their specific features. It allows the creation of new cooperative enterprises of natural or legal persons at European level. The capital of an SCE may not be less than EUR 30,000. The SCE is defined as a body with legal personality for which the capital subscribed by its members is divided into shares. Its registered office must be within the Community and must be in the same place as its central administration. The SCE is to have legal personality from the day of its registration in the State in which it has its registered office. An SCE shall have as its principal object the satisfaction of its members' needs and/or the development of their economic and social activities. The Statute for an SCE is quite similar to the Statute for an SE in terms of the rules on the transfer of registered office, the applicable law, the involvement of employees, etc. So, to some extent it faces the same difficulties. It is also considered that an SCE do not provide an adequate company form for SMEs.

#### **V. Conclusion**

It is obvious that the highly anticipated “fresh and ambitious impetus to the EU company law harmonization process” [10] and the desired positive effect on the functioning of the Internal market have been far from successful. The number of functioning entities such as EEIG, SE or SCE are so few, that nobody ever predicted. Having regard to this status quo, it is not surprising that the European commission has abandoned the legislative procedures to create other legal entities such as the European private company (Societas Privata Europaea – SPE) and the European foundation (Fundatio Europaea – FE).

#### **Literature:**

1. More on the Lisbon Strategy See: Lisbon European Council, Presidency conclusions, 23 and 24 March 2000; Available at: [http://www.consilium.europa.eu/bg/uedocs/cms\\_data/docs/pressdata/en/ec/00100-r1.en0.htm](http://www.consilium.europa.eu/bg/uedocs/cms_data/docs/pressdata/en/ec/00100-r1.en0.htm).
2. [http://ec.europa.eu/justice/civil/company-law/eu-company-law/index\\_en.htm](http://ec.europa.eu/justice/civil/company-law/eu-company-law/index_en.htm).
3. Braun S., The European Private Company: a supranational company form for small and medium-sized enterprises?, 5 German Law Journal No. 11 (1 Nov. 2004) - European & International Law.
4. Supra note 1.
5. Report of the high level group of company law experts on a modern regulatory framework for company law in Europe, Brussels, 4 November 2002. Available at: [http://ec.europa.eu/internal\\_market/company/docs/modern/report\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/modern/report_en.pdf), p. 113.
6. Article 54, par 2 of the Treaty: "Companies or firms" means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making.
7. The number of registered EEIG differs, as there is no official registry. Some sources claim that several thousand of EEIG exist – See: <http://en.wikipedia.org/wiki/EEIG>. Others share exact data – 512 registered EEIG as of 2001 – See the survey at: [http://www.ecrforum.org/member/Documentation/2005ECRF\\_surveyreport.pdf](http://www.ecrforum.org/member/Documentation/2005ECRF_surveyreport.pdf); Data by LIBERTAS – Europäisches Institut GmbH, Sindelfingen shows that as of October 2007 a total of 2,547 EEIG have been founded and another 419 have been dissolved – Available at: <http://www.libertas-institut.com/wp-content/uploads/2017/10/ewiv-statistik.pdf>.
8. Enriques, Luca, "Silence Is Golden: The European Company Statute as a Catalyst for Company Law Arbitrage" (March 2003). ECGI - Law Working Paper No. 07/2003 Available at SSRN: <http://ssrn.com/abstract=384801>.
9. The same idea is shared by Pandova, M., The European private company statute. SMEs vs big companies, p. 11. [http://www.europeanprivatecompany.eu/working\\_papers/download/SPE-Pandova.pdf](http://www.europeanprivatecompany.eu/working_papers/download/SPE-Pandova.pdf).
10. Dignam, Alan J., Andrew Hicks, Hicks & Goo's Cases and Materials on Company Law, OUP, 2011, p. 73.