

## **Societas Europaea as a New Legal Form of the Company - Next Stage or Dead End of the Entrepreneurial Environment's Development?**



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### **A B S T R A C T**

*This article takes a look in the situation concerning the European Company (SE) in the Czech Republic. As the European Legislature adopt the legal act in 2001 and put it into force since 2004, Czech Republic became the state with the highest amount of SE. Authors try to identify the conditions of founding SE in Czech region and whether SE are located there as a ordinary trade companies or not. Even the idea of SE was unique now there are 27 local law amendments which make the situation complicated related to aquis communautaire (legislation EU). Although it seems that SE are here rather as "empty shell SE" authors think that such legal form is the future in the European join market.*

### **Introduction**

European Company (also European Corporation, Societas Europaea or SE) is the new legal form of the company within the EU's entrepreneurial environment since the year of 2004 when entered into force Council Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statue for a European Company (SE) as well as Council Directive 2001/86/EC of 8 October 2001 supplementing the Statue of a European Company with regard to the involvement of employees. These legal acts were adopted in 2001 and national legal systems should be prepared for the force of it until October 2004. But only 6 countries were able to do such activities on time

– Belgium, Denmark, Finland, Island, Austria and Sweden. There was a delay in the other countries but the legal regulation was changed sooner or later in all of the EU members. In the Czech Republic the law enactment No. 627/2004 was valid since the December 2004 – so the delay was relatively minimal.

### **Definition of European Corporation**

The Act No. 2157/2001 (published in 8.10.2001) describes the Status of European Corporation. It declares that company which is providing business in several EU members' countries could register itself just only in one of these countries. The place where the actual headquarters is located will be the place of company's registration. Such company provides the business matters by European regulation instead of other companies which have to follow the local legal systems which are valid in the area of its interests.

The European Corporation could be found:

- as a transformation by two or more joint ventures from at least two different states
- as a holding of at least two limited companies or joint ventures from at least two different states
- as a subsidiary which belongs to two limited companies from at least two different states
- as a current company's subsidiary located in another EU member's country
- as a transformation of limited company which has at least two years its own subsidiary located in another EU member's country

Even the company which headquarter is not located within the EU could participate in founding the European Corporation. It is possible if such company could prove that it is founded according to the EU member's legal system and that it is providing a business matters with this economy.

European Corporation will use in its name the abbreviation SE. This abbreviation could be placed in front of the company's name as well as at the end.

A minimum of basic capital (basic stock) is settled on 120 000 Euro. This amount was settled as an appropriate so even the small companies could found the European Corporation (SE) by joining together.

Even that the registration is in one of the EU member's country the taxation will be provided in the places where the business matters are carried out. So far there are different taxation levels in several countries so the Committee is working on the Act which will unify the tax level within the EU. Such regulation will eliminate the "taxation competitiveness" factor.

The headquarters (Residence) of European Corporation could be moved very simply.

A role of trade union seems to be a little bit complicated in such companies. There is different position of it in each of the country. Some trade unions could be scared of restriction of its jurisdictions if the company will change its form into European one. The trade union authority is settled by its historical background and now it could be uniformed. Especially in countries where trade unions have really strong influence the protest against the European Corporation was defined. As a result the significant result was done. The Nice Summit announced that in European Corporation, which is found by joining of two different existing companies, the former agreements between the employers and employees will be guaranteed.

So far there are several points which are not unified in the EU yet. One of these points is the system of the retire matters. Superannuation is different in each country so it will must be solved upon which regulation this pensions will be paid to the employees who were working for European Corporation (as it is considered as one sole company). The Committee made a proposal of united pension fund for such employees from the all European Union countries. This is very significant fact. So far this point is one of the most difficult issues to be solved.

Also tax issues are quite difficult and could affect the owner's decision whether SE or other form of the company will be found. Here there are two areas to be discussed. The European Company's Residence (which affects the taxation) and the accounting standards provided by the European Company. As the joint-stock company can choose between the US-GAAP standard or IAS it depends on the decision of the owner, which one would be chosen. The Committee made a suggestion to use the IAS in the Financial Services Action Plan (FSAP) since 2005. But these

companies who wanted to be registered on stock-exchange markets in USA must use the US-GAAP standard as it required by the Securities Exchange Commission. So the FSAP probably will not be fulfilled, at all, or even the transformation of joint-stock companies into European Company would be not made. On the other hand under contemporary circumstances more and more companies will focus their point of interests within the world global economy excluded the US markets – this is the issue to be observed in following years.

### **Societas Europaeae in the Czech Republic**

Many of the legal rules were adjusted for settling the legislation conformable with *aquis communautaire* (legislation EU) which affected on it as a superior one. One of the most significant aspects is that SE must be considered within Czech Republic as a local company. It settles equal conditions for European Companies and local ones – on the other hand it makes the position of the local ones much tougher due to competition force coming from the outside of region.

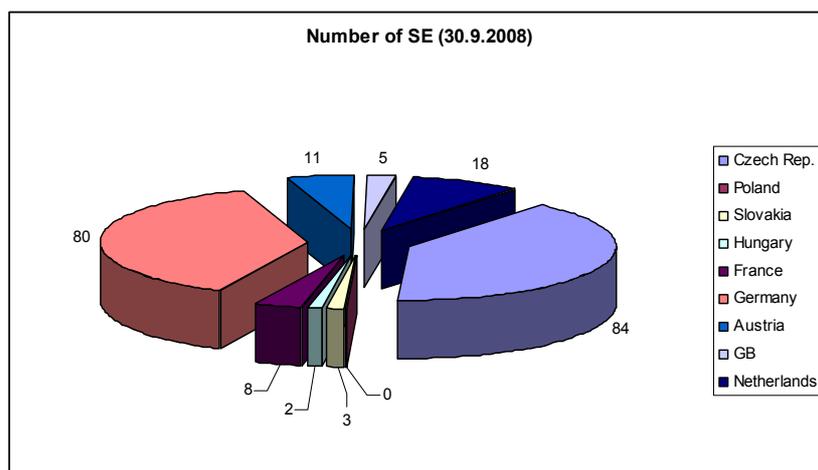
During several years a lot of SE was found in the Czech Republic. The number of them increased rapidly. As in June 2008-th year there were 62 of them, in September 2008 83 SE was found. These numbers were the highest within European Union – even in Germany (which market is enormously larger) were only 80 SE until 30.9.2008. Last data shows that in 2009 (16-th of July) there were 155 European Companies in the Czech Republic. So far such data can be explained as good utilization of new opportunities on the entrepreneurial environment. But there is another side of this situation. Up to 30.9.2008 most of SE's were so called "Shelf companies". Such type is created just to be sold as a ready-made company without any entrepreneurial activity for potential investor. As such company does not provide business; amount of its employees is 0. If we consider the information that company with 0-49 belongs to Small and Medium Enterprises we will figured out that 96% of them in 2008 were SME – such information causes deformation of the SME's data. Usually joint stock companies belong at least to medium or big companies. Thus situation moves the SE, which is joint stock company, too, into segment of SME even when they do not belongs there (80 out of 83 were ready-made company which are intended for sale).

*Table 1: Number of SE in selected countries*

	<b>SE total</b>	<b>SE real</b>
Czech Rep.	84	3
Poland	0	0
Slovakia	3	1
Hungary	2	0
France	8	3
Germany	80	26
Austria	11	7
GB	5	0
Netherlands	18	2

*Source:* European Company (SE) Factsheets (30.9.2008). Available from: <http://ecdb.worker-participation.eu/> published in: Štrauch, P. *Evropská společnost v praxi*. 2008.

As shown above it can be worth to be discussed why there is so many of SE in the Czech Republic. When you take a look in the comparable countries, there are just few of SE, there. For example in Netherlands there is only 18 of the SE. Even in Great Britain there are only 5 of these European Companies and in Germany still the number is smaller than in CZ where amount of SE comes to 80 of them!

*Figure 1: Number of SE in selected countries*

*Source:* European Company (SE) Factsheets (30.9.2008). Available from: <http://ecdb.worker-participation.eu/> published in: Štrauch, P. *Evropská společnost v praxi*. 2008.

When we focus on the fact that establishing of the SE is not too difficult due to law conditions but due to fact of term of doing business – it could be understandable why so huge part of all SE companies are ready-made. All of the conditions mentioned above require obligatory term of doing business within EU market for at least of 2 years. Only one possible option makes establishing of SE very easy: Existing SE can found its subsidiary. This is very important information which must be observed... It is subject of further analysis who and why is eager to invest so significant amount of money into ready-made companies and wait for potential buyer. Another question to be answered is whether it is really Czech approach to use the new opportunity made by EU's law or some foreign investors put their money into Czech market (and why Czech one within EU's region)? Answers to these questions could be given after the further investigation e. g. identifying of the SE owner, subject of its entrepreneurial activities, etc.

### **Typical SE in Czech Republic**

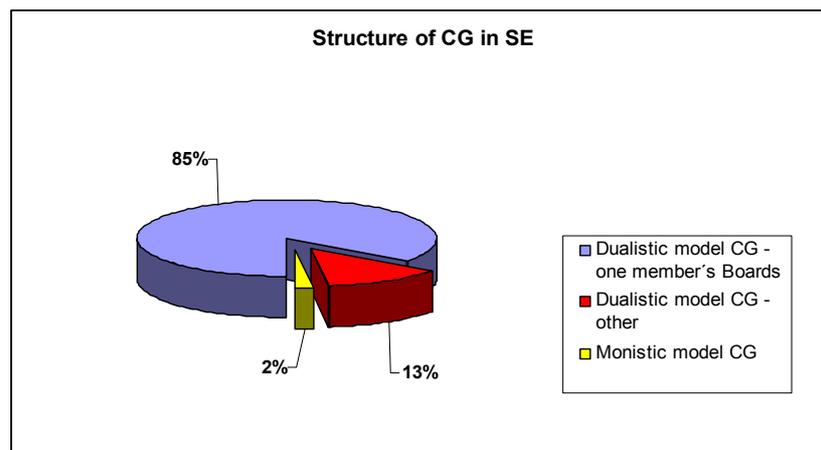
Typical shelf companies in the Czech Republic have very similar signs – most of these companies were found as SE subsidiary on dualistic principle with 0 employees, dealing business in real estate trade and maintenance with subscribed share capital of 120000 € (minimal amount) spread into relatively small amount of share (1 – 20 pieces). All these data could be identified in Ministry of Justice of Czech Republic ([www.justice.cz](http://www.justice.cz)).

### **Monistic as Well as Dualistic Principle Allowed?**

This fact is probably tough to settle equal conditions on the entrepreneurial environment. As other legal form of the company (and especially joint stock company) must have the dualistic principle of ruling (structure of the Corporate Governance, CG), in the European Company there could be just Board of Supervisors OR Board of Directors. Just imagine how huge money we can save NOT paying one of the Board's members. But in ordinary joint stock company there must be both of these Boards – it is just question of time until some of the entrepreneur will sue the state for unequal conditions on the same base legal form within the same business and entrepreneurial environment. In such simple aspect the

company could save really interesting money. Thus it is very interesting that most of the SE have dualistic model of Corporate Governance – but both Boards have only one member.

*Figure 2: Structure of CG*



Source: Own calculation based on [www.justice.cz](http://www.justice.cz)

## **Cooperation of the Employees on Corporate Governanace**

This aspect is the most issue to be discussed within the legal frame of the European Company. Based on the historical development it is completely different situation in the field of trade union cooperation with the CG. Formerly the idea was to establish the equal conditions even in this field but during the term of several decades finally 27 different legislative frames are settled in EU member each. This is not the best situation and it must be discussed and solved in the future.

## **SE as Trade Companies?**

In the Czech Republic most of the SE has no employees – which must bring definitely the right question: Is this company doing business here or just it is prepared for some hidden purpose? Authors of this article think that – with regard to this fact – this companies are prepared to cover and solve potential risks that might occur in the future in the region of this republic. We can name that as strategic approach of foreign investors –

when we consider that most of the SE is based on the activities connected with dealing the real estates and its maintenance. During last 2 decades there was the real estate business raised here, enormously.

After the Velvet Revolution the prices of the properties were much lower than now. Foreign investors were not allowed to buy the buildings and similar assets; huge money was invested in the Czech Republic. It is fact, that residency of SE could be moved very easy – it is guaranteed by Council Regulation and all other law's on the local scale. Thus probably the investors try to keep the eyes on their interests within this locality as a form of risk management strategy. If the prices will change rapidly, political stability changes (which is not so probable – but foreigners still do not trust this region as they count that as a “new EU member”), legislature act change or other circumstances influence on this area – the SE can move its residency very quickly abroad.

Authors of the article hope that within several years the entrepreneurs will trust more the local conditions and start to provide ordinary business by these SE. Primary having the SE as a legal form of company is intended for doing business even on larger scale than via classical joint stock company. We think that owners of SE located in Czech Republic just speculate within their own strategies and they will change their mind in the future.

Although the SE could be found firstly as a simplest and quickest way of establishing the company in Czech Republic (concerning to local law system, language difficulties, etc.) or just for speculation of the foreign capital – it raised up the interest of the investors so that Czech Republic became No. 1 in such type of entrepreneur activities. So we can say that it fulfil its purpose – within the EU probably the most, here. Such actions fulfil the idea of free movement within the EU area and it can display equal conditions of competition within its state members. The real idea of SE is to deepen and intensify the cooperation of entrepreneur structures in the EU. Such companies as Porsche Automobile Holding SE, Allianz SE, BASF SE and many others already figured it out and change their legal form to European Company. We hope that this form will be the perspective form for settling issues of business dealings under conditions of growing globalization.

## **Conclusion**

As mentioned above the European Corporation will handle the business matters in several countries at the same time while the registration of the headquarters just in one of these countries will be enough to do. Whole company will behave by unified rules and it is considered as a residential company in each country, where the branches are settled. Estimated savings (for lawyers, advisers, translators, fees etc.) could reach more than 30 billions of Euros each year. Relatively low amount of basic stock should create the conditions for founding such type of companies. It could improve the competitiveness of European companies as well as the whole European Union. In the Czech Republic there is a lot of questions appeared since this opportunity of founding European Corporation is possible. As significant of these companies have no employees, there are rather ready-made companies intended for being bought by another investor. The amount of European Companies found in EU is the highest in the Czech Republic. Searching for the reason why it is like that requires further research based on long-term observation and digging the information about these companies as they do not share the information about their business matters, mostly. Even it could be assumed that such type of company is not useful within Czech Republic and European Union, the European Corporation as a form of company seems to be the right decision for doing business in the 21<sup>st</sup> century.

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