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SPECIFIC LEGAL ENTITIES OF THE EUROPEAN UNION ON COMPANY LAW

CRINA MIHAELA VERGA
Alexandru Ioan Cuza University of Iasi
Iasi, România
crina_verga2000@yahoo.com

Abstract
In order for the European single market, based on freedom of establishment, to function as efficiently as possible, this paper first addresses the specific regulatory framework regarding uniform corporate entities of the Union, which allow commercial companies to operate in several Member States. Thus, the European Company (SE), the European Economic Interest Grouping (EEIG), the European Cooperative Society (SCE) are analyzed in detail. It also discusses the current legislative proposals regarding the European Private Company (SPE), with a view to simplifying existing European company forms. In order to best support the needs of the existing business environment in the Member States and to promote the fastest possible expansion of cross-border economic activities, proposals are made to amend the legal provisions in force in the Union. Then, the second part of the paper considers the case law of the Court of Justice on the matter, emphasizing the role of the Luxembourg court in interpreting the relevant European legislation. The paper is of particular importance for the most efficient development of the activities carried out by the already established corporate forms of the Union; the article is of real interest also for specialists in the field, but especially for the Member States of the Union, whose legislation must be harmonized with the European legislative framework corresponding to the field studied.
Keywords: *specific corporate entities; European Union; legislation, jurisprudence.*
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1. INTRODUCTION

Since the legal systems of the Member States of the European Union are very different in terms of the legal regulation of commercial companies, uniform corporate forms have been expressly established at Union level, in order to allow the carrying out of economic activities by a commercial company in several Member States. These European corporate forms, referred to in the paper, are the European Company (SE), the European Economic Interest Grouping (EEIG), the

European Cooperative Society (SCE), whose legal framework will be commented on in detail. Interesting observations will also be made regarding the legislative proposals regarding the European Private Company (SPE).

The most relevant part of the presentation considers the analysis of the judicial practice in the studied field, developed by the Court of Justice of the Union. The particular importance of the commented judicial decisions results, on the one hand, from the fact that they are binding on the Member States in terms of the interpretation of the provisions of the Treaties, being sources of law within the normative system of the European Union. On the other hand, these decisions create a single framework for the application and interpretation of the Union legislation in the matter, thus providing uniform directions of action for the European corporate forms in the Member States.

2. NORMATIVE FRAMEWORK ON THE UNIFORM CORPORATE ENTITIES OF THE UNION

The regulations that we will analyze in this section are directly and immediately applicable in the Member States, enjoying priority over their national legislation.

Unlike regulations, as a general rule, directives are not directly applicable, the States having the obligation to transpose them, within a precisely determined period, by appropriate measures, into national legislation.

The legal regulations that determine the legal framework for the establishment, organization and operation of the European Company (SE), the European Economic Interest Grouping (EEIG) and the European Cooperative Society (SCE) will be examined successively.

Reference will also be made to the legislative proposals aimed at the European Private Company.

2.1. European Company (SE)

The European Company (SE) represents a unique legal structure, which allows companies from the Member States of the Union to carry out activities on a community scale, by carrying out mergers, by creating a holding company or by forming joint subsidiaries, in compliance with the competition rules established by the former Treaty on the European Economic Community - the current Treaty on the Functioning of the European Union (European Union, TFEU, 2012).

The legal status of such a company was established by Council Regulation No 2157/2001 (The Council of the European Communities, Council Regulation No 2157, 2001), which was successively amended in: in 2004, as a result of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia; in 2006, by reason of the accession of Bulgaria and Romania; in 2013, as a consequence of the accession of the

Republic of Croatia. In the event of infringement of the provisions of this Regulation, each Member State is obliged to apply the sanctions applicable to joint-stock companies governed by the national law of the Member State concerned. The Regulation contains detailed legal rules determining the establishment, structure, operation of an SE, liquidation, dissolution, insolvency and cessation of payments. There are, however, a number of areas that do not fall under the scope of this regulatory act, such as taxation, competition, intellectual property or insolvency, which are regulated by the legislation of the state in which the SE has its registered office.

The Regulation establishes that an SE may be established within the Union in the form of a public limited liability company, with the Latin name of "Societas Europaea" (SE) and a minimum subscribed capital of EUR 120 000. The maintenance and changes of the capital, together with its shares, bonds and other similar securities shall be governed by the provisions which would apply to a public limited-liability company with a registered office in the Member State in which the SE is registered. An SE may also set up one or more subsidiaries in the form of SEs.

Until the above-mentioned Regulation, groups of companies from several Member States operated on the basis of their national laws, without a uniform legal framework, which created serious economic, legal and administrative obstacles in practice.

Through this legislative act analyzed, companies from at least two Member States may be established, in compliance with precisely determined conditions, as an SE, in several ways: merger; establishment of a holding company; creation of one or more subsidiaries with SE status; transformation into an SE. An SE shall be regarded as a public limited-liability company governed by the law of the Member State in which it has its registered office (art. 3). The registered office and central administration of an SE are located in the same Member State. The transfer of the registered office of an SE may be made to another Member State, in compliance with the established conditions, without this situation determining the dissolution of the SE or the creation of a new legal entity. Every SE shall be registered in the Member State in which it has its registered office in a register designated by the law of that Member State in accordance with Article 3 of the first Council Directive 68/151/EEC, repealed by Directive 2009/101/EC, repealed, in its turn, by Directive (EU) 2017/1132, currently in force (Directive 2017/1132, 2017).

Regarding the structure, an SE shall include: a general meeting of shareholders; either a supervisory body and a management body (two-tier system) or an administrative body (one-tier system) depending on the form adopted in the statutes.

It is also necessary to mention that the legal regime of an SE is established, mainly, by the legal provisions of the examined regulation, by those of the

Member State in which an SE has its registered office and, subsidiary, by the general regulations on commercial companies adopted at Union level and the national ones of the Member States, which transpose the directives in the field, such as: Directive 91/674/EEC (Directive 91/674/EEC), Directive 2009/38/EC (Directive 2009/38/EC, 2009), Directive 2009/102/EC (Directive 2009/102/EC, 2009), Directive 2013/36 (Directive 2013/36), Directive 2017/1132 (Directive 2017/1132).

The involvement of employees in an SE is governed by Council Directive 2001/86/EC (The Council of the European Communities, Council Directive No 86, 2001), which supplemented the SE statute, which cannot be dissociated from the above-mentioned regulation and which applies concurrently with it.

The directive in question aims to ensure the right of employees to benefit from: adequate protection in the event of dismissal or other sanctions; appropriate guarantees; to take part in all decision-making within an SE. Thus, in the case of the creation of an SE, the directive includes standard requirements, which ensure procedures for information, consultation and participation at transnational level. In this sense, "involvement of employees" is defined as "any mechanism, including information, consultation and participation, through which employees' representatives may exercise an influence on decisions to be taken within the company".

In order to achieve the objective of the directive, a representative body is created, composed of employees of the SE and its subsidiaries and establishments elected or appointed from their number by the employees' representatives or, in the absence thereof, by the entire body of employees. The competence of this representative body covers problems concerning the SE and any of its subsidiaries or units situated in another Member State or which go beyond the competence of the decision-making bodies of a single Member State. Also, after drawing up a project for the formation of an SE, the management or administrative organs of the participating companies shall take the necessary measures for starting negotiations with the representatives of the companies' employees, a special negotiating body representative of the employees being created.

The special negotiating body and the competent bodies of the participating companies shall determine, by written agreement, arrangements for the involvement of employees within the SE. Also, an SE may not be registered unless an agreement on arrangements for employee involvement pursuant to Article 4 of Directive 2001/86/EC has been concluded, or a decision pursuant to Article 3(6) of the Directive has been taken, or the period for negotiations pursuant to Article 5 of the Directive has expired without an agreement having been concluded. If the arrangements established under this directive conflict with the statute of an SE, the latter shall be amended accordingly.

2.2. European Economic Interest Grouping (EEIG)

The European Economic Interest Grouping (EEIG) is a distinct legal entity, set up to facilitate cooperation between companies, individuals or other legal entities from different Member States, and is governed by Regulation (EEC) No 2137/85 (Regulation No 2137/85).

The EEIG was created not to make a profit for itself, but to facilitate the economic activities of the entities that compose it. The latter must conclude a contract and register, in compliance with the conditions laid down in the aforementioned Regulation, as well as those laid down in the national legislation of the Member State in which registration takes place. Also, the group's activity must be related to the economic activity of its members and can only have an auxiliary character to this activity.

The GEIE is made up of: companies or firms within the meaning of the second paragraph of Article 58 of the Treaty and other legal bodies governed by public or private law, which have been formed in accordance with the law of a Member State and which have their registered or statutory office and central administration in the Community; natural persons who carry on any industrial, commercial, craft or agricultural activity or who provide professional or other services in the Community. Any Member State may, on grounds of that State's public interest, prohibit or restrict participation in groupings by certain classes of natural persons, companies, firms, or other legal bodies. The organs of a grouping shall be the members acting collectively and the manager or managers.

The members of a GEIE have joint and unlimited liability for all the obligations of the group, regardless of their nature. National law shall determine the consequences of such liability (Article 24 of the Regulation).

Only the manager or, where there are two or more, each of the managers shall represent a grouping in respect of dealings with third parties. The members of the group shall share the profits obtained by the EEIG and contribute to the payment of expenses in the proportions laid down in the contract for the formation of the grouping or, in the absence of any such provision, in equal shares. No grouping may invite investment by the public. The insolvency and cessation of payments of an EEIG shall be subject to specific domestic legislation. The competent national authority of a Member State may prohibit the EEIG from carrying out an activity which is contrary to the public interest of the Member State concerned.

Immediately after the entry into force of the Regulation, in order to ensure its effective application and to advise the European Commission, a Contact Committee has been set up under the auspices of the Commission. This committee is composed of representatives of the Member States and representatives of the Commission. The chairman is a representative of the Commission.

This corporate form thus aimed at the cooperation of its members, not at substituting their activities. Therefore, the establishment of an EEIG does not create an independent legal entity.

2.3. European Cooperative Society (SCE)

The European Cooperative Society (SCE) is governed by Regulation (EC) No 1435/2003 (Regulation No 1435/2003), being a legal structure set up with the aim of supporting cross-border cooperation of cooperatives within a single legal framework similar to that of an SE. A cooperative society may be set up within the Community in the form of a European cooperative society (SCE), having legal personality; the subscribed capital of an SCE is at least EUR 30 000, divided into shares. Unless otherwise provided in the SCE statute, no member shall be liable for more than the amount he/she has subscribed. An SCE shall have as its principal object the satisfaction of its members' needs and/or the development of their economic and social activities, in particular through the conclusion of agreements with them to supply goods or services or to execute work of the kind that the SCE carries out or commissions. An SCE may also have as its object the satisfaction of its members' needs by promoting, in the manner set forth above, their participation in economic activities, in one or more SCEs and/or national cooperatives.

Detailed rules are laid down concerning the statute, formation, capital of the SCE, its registered office and its transfer to another Member State of the Union, registration and disclosure requirements, notice in the Official Journal of the European Union, acquisition and loss of membership, financial entitlements of members in the event of resignation or expulsion, issue of securities other than shares and debentures conferring special advantages, allocation of profits, annual accounts and consolidated accounts, winding up, liquidation, insolvency and cessation of payments.

The legislation applicable to the SCE takes into account the commented regulation, Directive 2003/72/EC (Directive 2003/72/EC) on the involvement of workers in an SCE, the normative acts of the Member States concerning the application of the legal norms of the Union concerning the SCE or those which would apply to a cooperative formed in accordance with the law of the Member State in which the SCE has its registered office. According to the principle of non-discrimination, an SCE shall be treated in every Member State as if it were a cooperative, formed in accordance with the law of the Member State in which it has its registered office.

The ways in which an SCE can be created are: merger; conversion of an existing cooperative into an SCE; establishment of an SCE by natural or legal persons from at least two Member States.

As regards the structure of its organs, an SCE comprises: a general meeting; either a supervisory organ and a management organ (two-tier system) or an

administrative organ (one-tier system) depending on the form adopted in the statutes. The members of the organs of an SCE are liable for loss or damage sustained by the SCE following any breach on their part of the legal, statutory or other obligations inherent in their duties.

The advantages of this corporate form concern several aspects, such as: the existence of democratic control of its members; the distribution of profits according to participation, not capital; the promotion of cross-border cooperation; the encouragement of employee participation in decision-making.

The involvement of workers in an SCE is established by *Directive 2003/72/EC (The Council of the European Union, Council Directive 72, 2003).* Arrangements for the involvement of employees shall be established in every SCE in accordance with the negotiating procedure or according to the conditions determined by the directive in question. There are detailed provisions related to: participation in the general meeting or section or sectoral meeting; the negotiation procedure, which is applicable to: SCEs established by at least two legal entities or by transformation; SCEs established exclusively by natural persons or by a single legal entity and natural persons; reservation and confidentiality; operation of the representative body and procedure for the information and consultation of employees; protection of employees' representatives; misuse of procedures.

2.4. European Private Company (EPC)

In order to simplify and modernise existing European company forms, the European Commission proposed a European Private Company statute to allow SMEs to expand their business activities in the European Union at the lowest possible cost, including the provision of a minimum capital *(European Commission, COM/2008/0396, 2008)*.

This initiative was withdrawn in 2014, as it was considered inconsistent with protecting workers' participation rights.

3. JURISPRUDENCE OF THE COURT OF JUSTICE IN THE EXAMINED FIELD

The case law of the Court of Justice has had and continues to have an essential role in the interpretation and application of Union law in the field examined. Thus, the European court has provided, through its interpretations in various settled cases, rules that must be respected by the Member States in order to implement Union law on European company forms operating on their territory.

The case law on the SE has been extensive, including several cases of major importance in defining the freedom of establishment, such as Daily Mail, Centros, Überseering, Inspire Art, Cartesio. These have been examined in detail in another study (Verga, 2025, p. 11), and the present work captures only some essential aspects of these cases.

In the *Daily Mail Case (C-81/87),* the Court stated that, in the absence of uniform European legislation, a Member State has the right to determine that the transfer of a company's registered office to another Member State results in the loss of legal personality of that legal entity. The theory of the real seat was thus established.

Contrary to the previously mentioned case, *the Centros Case (C-212/97)* emphasised the theory of registration, according to which a company is governed by the law of the State of registration. In that case, a company registered in the United Kingdom (which did not establish a minimum share capital) attempted to set up a branch in Denmark. However, the competent Danish authorities refused to register it. The European Court ruled that the refusal to register a branch constitutes a restriction on the freedom of establishment, even in the case of a company that was created to carry out its activity, mainly, in another Member State of the Union, other than that of registration.

In the *Überseering Case (C-208/00*), the European Court ruled that a Member State (Germany) cannot refuse to recognise a company legally incorporated in another Member State (the Netherlands) on the grounds that its real seat is in Germany. Refusal to recognise the legal personality of a company was qualified as an unjustified restriction of the freedom of establishment.

The *Inspire Art Case (C-167/01)* is also relevant in the field studied. Thus, a Dutch company, a subsidiary of a British company, was obliged by the Dutch authorities to comply with Dutch legislation on minimum capital. The Luxembourg Court concluded that such an obligation infringes the freedom of establishment and cannot be upheld, despite the arguments that such a requirement was intended to protect creditors and avoid fraud. Therefore, if the parent company complies with the legislation of its state of registration, that legislation cannot be imposed on a branch of the parent company, which has been registered in another Member State.

In the *Cartesio Case (C-210/06),* the company Cartesio Oktató és Szolgáltató bt. had its registered office in Hungary and was registered in that State. This company form requested the change of its registered office to Italy, while maintaining its national legal status. In this case, Hungarian law provided for the dissolution of such a company in Hungary, except in cases expressly provided for by European law. In its answer to a preliminary question, the European Court of Justice established that Articles 49 and 54 TFEU guarantee the right of a company to change its real seat from one Member State to another. At the same time, the same legal provisions do not prohibit the Member State of origin (Hungary) from requiring the dissolution and liquidation of the company, if the latter has expressed its intention to change its registered office to another Member State.

The jurisprudence on GEIE is not complex, as in the case of SE, but much less.

In the *Case C-402/96 (C402, 1996),* on 23 December 1996, the Oberlandesgericht (Higher Regional Court), Frankfurt am Main, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Article 5(a) of Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG) (OJ 1985 L 199, p. 1, `the Regulation'). That question was raised in proceedings in which the Amtsgericht (Local Court), Frankfurt am Main, refused to enter European Information Technology Observatory, Europäische Wirtschaftliche Interessenvereinigung (`EITO'), an undertaking in the process of formation, with its official address in Frankfurt am Main, in Part A of the commercial register, on the ground that under German law the name of an Europäische Wirtschaftliche Interessenvereinigung, namely a European Economic Interest Grouping (`EEIG' or `grouping'), may be derived only from purely personal names or from personal names with further additions, but the EEIG may not be registered if its name is purely descriptive of the object of the undertaking. The Landgericht (Regional Court), Frankfurt am Main, upheld, by order of 21 June 1995, the Amtsgericht's refusal of that registration and EITO appealed to the Oberlandesgericht Frankfurt am Main. Before those courts, EITO claimed that the refusal to register it in the commercial register was contrary to Article 5(a) of the Regulation, according to which a contract for the formation of a grouping is to include either the words `European Economic Interest Grouping' or `EEIG', unless those words or initials already form part of the name. The Oberlandesgericht considered that EITO's appeal was not well founded and refer the following question to the Court of Justice for a preliminary ruling:`Is Article 5(a) of Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping to be interpreted as meaning that, apart from the additions of "European Economic Interest Grouping" or "EEIG", the name or business name of an EEIG may consist of a purely descriptive designation, even where internal law in principle precludes the use of such a name for the formation of a European Economic Interest Grouping?' The Court ruled that Article 5(a) of Council Regulation (EEC) No 2137/85 is to be interpreted as meaning that the business name of an EEIG must include the words `European Economic Interest Grouping' or the initials `EEIG', while the other elements to be included may be imposed by the provisions of internal law applicable in the Member State in which the grouping has its official address.

As regards the SCE, there are no significant decisions that have had an impact on the existing European legislation on the matter. We therefore consider that, in the absence of relevant case law, the rules established by the CJEU on freedom of establishment, which have been established in relation to other European company forms, previously examined, apply, subject to the legislation on the SCE.

4. CONCLUSIONS

The examination of European corporate forms is very important, as it allows knowledge of the mechanisms that favor cross-border mobility and the conduct of business in the community area.

By determining an appropriate legal framework, at the Union level, of several types of distinct legal structures, the aim was to facilitate economic cooperation between legal entities from the Member States of the Union, which carry out commercial activities, with a view to developing the internal market, which is based on the freedom of establishment, expressly enshrined in art. 49-54 TFEU.

According to the legislation examined above, an SE was created in order to enable companies from the Member States to undertake and reorganize their activities at the community level. The establishment of an SE does not determine the removal or diminution of existing practices regarding the involvement of workers, the latter aspect being detailed in Council Directive 2001/86/EC, to which I have referred.

A significant advantage of an SE is that the latter can transfer its registered office to another state, without its dissolution and re-establishment intervening, thus eliminating the obstacles to these latter procedures. However, in addition to this cross-border mobility, the dissolution, liquidation or insolvency of an SE are governed by the national law of the Member State in which the SE has its registered office.

In the same sense, the uniform EU legal framework on the SE aimed to simplify corporate governance and facilitate the conduct of cross-border commercial activities, thus strengthening the position of companies in the internal market.

The creation of the EEIG aimed to develop a harmonious internal market, through efficient cross-border cooperation between individuals, companies or other legal entities in the Member States. The aim was thus to eliminate legal, fiscal and psychological barriers, by establishing a uniform European legislation in the field. Such a corporate form aimed to develop the economic activities of its members, to support them, in order to achieve the highest possible profits.

The number of SCEs registered in the territory of the Member States is much lower compared to that of the existing SEs, which has led to the lack of relevant case law on SCEs.

We also believe that the establishment of the EPC would be very useful for the development of SMEs, given that their number is significant in the Union.

A unitary EU legal framework in this area thus ensures greater consistency in the conduct of commercial activities by specific European legal entities, thus removing legal, administrative or other barriers imposed by national legislation in the Member States.

In the same sense, the case law commented on above has contributed significantly to the efficiency of economic operations, being binding on the Member States of the Union. The latter must, at the same time, maintain much closer cooperation in order to respect and uniformly apply the legislation and case law created at Union level in the area under analysis, thus eliminating different interpretations that might exist at a given time.

The decisions on SEs briefly presented above are significant in this regard.

Also, in case C-402/96, the Court ruled that Member States may not lay down additional requirements or requirements which differ from those laid down in Regulation (EEC) No 2137/85 or which that Regulation leaves to the discretion of the Member States. Furthermore, by this decision, the scope of intervention by Member States is restricted to matters relating to registration or winding-up proceedings.

The case-law of the CJEU has therefore sought to ensure that specific European entities carrying out commercial activities are able to facilitate cross-border cooperation, with Member States being obliged not to create obstacles to this effect through national legislation.

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