

COMPANY LEGISLATION AND REFORMS IN EUROPE

Veronika SZIKORA*

ABSTRACT: *Company law is one of the fields of law which has been changing dynamically in the field of private law. The main reason for this change is the fact that it creates the legal and structural framework for enterprises and undertakings; therefore, it is an organic and influential part of the operation of economy as well. In the case of company law, comparative law is particularly significant, without meaning exclusively the harmonization and consolidation of European Law. The questions of national and international company law lead us again and again back to functional comparative law. Different forms and models were created for the legal regulations of companies in different Western-European national cultures. When we examine those member states in the European Union having the largest economy (France, Germany, Italy and the United Kingdom), there are different systems that can be found in them, with influence on the company law of other countries, and, in addition, the dominant national models can have influence on the company law of other nations and the European Union.*

As a starting point, the evaluation of the strongholds and weaknesses of the dominant national systems proves to be sufficient for analyzing the quality of changes of company law and company management. Every nation needs to take for granted its own historical and cultural traditions while considering adaptations to novel conditions. Thus, different European countries can apply reasonable solutions on other countries' systems.

KEYWORDS: *Company law; Comparative law; Company law reform; Harmonisation; Law modernising limited liability company; German and Austrian Company Law*

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1. REGULATORY MODELS OF COUNTRIES THAT ARE SIGNIFICANT FOR COMPANY LAW

1.1. The importance of comparative analysis of law

Company law is one of the fields of law which has been changing dynamically in the field of private law. The main reason for this change is the fact that it creates the legal and

* Associate professor, Dr. habil. of University of Debrecen, Faculty of Law (Department of Civil Law) HUNGARY.

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structural framework for enterprises and undertakings; therefore, it is an organic and influential part of the operation of economy as well.

In the case of company law, comparative law is particularly significant, without meaning exclusively the harmonization and consolidation of European Law. The questions of national and international company law lead us again and again back to functional comparative law. Companies are the engines of economic activities in the developed market economies. When we consider the regulation for the cooperation among active legal parties, such as management, clients, employees, creditors, or foreign investors, basically, the same question can be brought up in each and every system. However, these questions can be answered differently based on legal tradition, the history of economic development and willingness to the intervention of the state.

National company laws have enormous background, with the evaluation of their conclusions the development of company law can be made more successful. And we are forced to interpret the legal regulations of other countries by the changes of legal and economic environment, the trade beyond borders, and the worldwide opening of the capital markets. (Hueck, Windbichler, 2003, 12.)

Armin von Bogdandy calls our attention to the fact that the structures of other, existing legal orders of European countries is needed to be examined from the point of view of the evolving European legal surroundings with respect to their historical background and development, legal and scientific style. Bearing mind all, we can develop our own tradition. (Bogdandy, 2012, 251)

Different forms and models were created for the legal regulations of companies in different Western-European national cultures. When we examine those member states in the European Union having the largest economy (France, Germany, Italy and the United Kingdom), there are different systems can be found in them, with having influence on the company law of other countries, and, in addition the dominant national models can have influence on the company law of other nations and the European Union. In order to describe these characteristics, the following expressions are used by *Janice Dean*: “pyramid”, “machine”, “family”, and “market”. The German model is a fine tuned unit, the French is a vertical system with the organization of highly qualified managers while in the United Kingdom the emphasis is put on contracts and competition. In Italy a strong economy was built on primarily family enterprises. (Dean, 2012, 472.)

When we examine the strongholds of the economy of most significant continental European countries, it can be stated simply that it assumes a smoothly operating “family” unit model with a few players and strong traditions, which fits basically to strong Italian industrial sectors, such as, fashion and food. The picture of “machine” supposes a larger organization and impersonal atmosphere that is really a conformity considering German engineering traditional attitude. The French “pyramid” is assumed to have extended and strong systems, which can conform to strong infrastructural French traditions. These characteristics can be found in relations inside companies and their surroundings. (Dean, 2012, 465.; Schmidt, 2002, 145.)

1.2. Problems generated by globalization

It seems that every system has its weaknesses, aching for adaptations of certain solutions in the next couple of years. Each and every system has to find solutions for the challenges brought up by globalization in the field of commerce and finance.

Italy is under pressure because the possibility of correction is high and transparency is insufficient, and even out of the largest companies there are many of them being controlled by one family or a closed group of partners. It can be a challenge of Germany that it has to face an extra burden in connection with the legal requirements of its bureaucratic system, assuming the risk of not being beneficial in the short run. France needs to find solutions for the reduction of social expenses of companies, otherwise it can keep up with the recently opened European and global markets. In comparison to France, Germany, or the USA, the problem of the United Kingdom can be found in the failure of the productivity of employees. (Dean, 2012, 472.)

1.3. The chance of approach for European economic policies

The four countries examined, Germany, France, UK, and Italy, the annual GDP is over 1.5 billion Euro. The economic structure of these four nations is different, concerning the average sizes of companies, and the role of capital market, although the size of economies concerned is similar (with the dominance of Germany). The model of structure, regulation, and the control of companies also differs in these significant member states. National cultural background is also crucial concerning social activities and business life. One can pose a question: what can be the effect of these differences on the tighter coordination of company law on the level of the European Union. (Dean, 2012, 461.)

Applying the notion of free market capitalism, it is very unlikely to realize a reasonable approach of European economic policy. It can be traced back to many reasons, for example, the political and economic institutions of each country have their own limits, offering different possibilities for changes. Moreover, the view of market players is influenced and formed by the different historical and cultural background of the country, in order to find the right answer for the challenges provided by globalization and European integration.

As a starting point, the evaluation of the strongholds and weaknesses of the dominant national systems proves to be sufficient for analyzing the quality of changes of company law and company management. Every nation needs to take for granted its own historical and cultural traditions while considering adaptations to novel conditions. Thus, different European countries can apply reasonable solutions of other countries' systems. The detailed/accurate accountancy and the sustainable profitability both can find their way in the ways of thinking of German, French, or Italian managers, even more than ever. The roles of social engagement and environmental protection have never been so important in the United Kingdom. The European business cultures feel the need for changing and adaptation. (Dean, 2012, 476. and 482.)

The European national company laws have been characterized by intense changes. A legal reform was brought by every year, without regulations being calmed down, and changes became permanent. A regulatory competition was created by the countries, which, in turn, resulted in an investor friendly regulation.

The reaction for economic challenges of the national legislators needs to be up-to-date. In connection with this, *Gábor Gadó* calls our attention to relativity of the development of commercial law and of the pragmatic attitude of the legislative power. (Gadó, 2006, 322.)

1.4. French model

The prime elements of cooperation in the Napoleonic legislation are Code Civile of 1804 and Code Commerce of 1807. Their significance can be valued from the point of view of European development in law. (Nótári, 2011a, 588-590.)

In French law, on the one hand, company means the articles of partnership (defined in Code Civile), and the other hand a legal person and the institution of the company. But not all of them can be described like this, and not every company is a legal person. (for example, a civil law company does not have legal personality)

The French system of company law was incorporated separately into law and also modernized. It has been modified since then from 2000 this regulation was placed back to Code de Commerce. Practically, putting back this part of the company law into the Code de Commerce can show us the significance and the strengthening of the Code. This reform signifies the fact that France is willing to have the private law's dualist separation of civil law and commercial law, preserving its original status. The basic rules for legal regulation of company law can be still found in Code de Commerce. (Veress, 2017, 1-9.; Sándor, 2005, 203-213.; Menjucq, Fages and Vuidard EBOR 9. 2008)

The French company law is more theoretical than the German one. The state intervention is stronger in the case of companies, and the spreading of certain forms of companies is often encouraged by indirect economic instruments (for example, European Economic Grouping).

The sign of strong state intervention in public sector was in the form of administration in France, and after 1945 it applied a mixed form for public and commercial law: national company. The form of public utility corporation for large public limited companies was formed.

The French company law has had a significant impact on the company law of other countries as well, the Italian Codice di Commercio of 1865 and of 1982, the Belgian in 1807, the Netherland in 1809, and the Greek in 1827. (Sándor, 2000, 11-15.)

1.5. "The English model"

The stock code adopted in 1767 regulated the trading of shares in detail, and required a six-month continuous shareholding in order to prevent the exercise of the right of the temporary shareholders from exercise the voting rights. (Kelemen, 2006, 45-51.)

The Companies Registration Act, which was the key to the development of English company law, was adopted by the British Parliament in 1844. The statutory registration of companies not only did mandate the registration process but, firstly, authorize Parliament to authorize the formation of a company in a provided legal act. By signing up for registration, however, the issue of unlimited liability of members was not solved completely, until 1855 the adoption of the Limited Liability Act. For the first time in the case of companies, the law allowed the possibility of establishing a limited liability company with limited liability.¹

In 1862, Parliament established the first company law, the 1862 Company Act, which remained in force until the adoption of the 1985 Companies Act. The current rules of the companies can be found in the corporate law adopted in 2006.

¹ See: Limited Liability Act, 1855: https://www.legislation.gov.uk/ukpga/1855/133/pdfs/ukpga_18550133_en.pdf

Partnerships in English law have been subject to contractual terms from the beginning; the 1890 Partnership Act included the general rule of law governing the direct and unlimited liability of all members. This law, with many amendments, is still in force until today. The rule of limited partnership, which is a transitional transfer between partnerships and equity societies, but which is clearly recognized as a partnership in English law, is governed by the Limited Partnership Act, which is currently in force since 1907.² (Morse, 2010; Muir, Schipani, 2012; Sándor, 2005, 241-248.)

1.6. "The Italian model"

The Italian Code Civile of 1942, unlike the former codex system following the French model, also includes trade law, repealing the Commercial Code of 1882. Italy, from 1942, passed through the then adopted Code Civile to a monist concept. Thus, the Code created a monist system by regulating both civil and commercial law. (Hamza, 2012, 631.; Nótári 2011b, 15.; Nótári 2011c 32-33.; Sándor, 2005, 216.) There was a serious theoretical debate among Italian legislators, concerning the view that this was the privatization of commercial law or the commercialization of civil law. (Papp, 2010, 279.)

The Code Civile was modified significantly in the seventies, with a significant part of it "the first shock of Community origin". Almost reform-level changes resulted in the change of twenty to thirty articles, followed by modifications due to subsequent directives. The Italian legislature sought to transpose the directives to change the national rules in force only to the extent necessary. Attention was paid to fulfilling the objectives of Community legislation in substance, but avoided any redundant amendments deemed unnecessary. (Benacchio, 2003, 159. és 162.)

The Company Law reform process that Italy is currently carrying through began with 1998³, known as the Consolidated Law on Financial Intermediation, which has laid the foundations for a model of corporate governance of listed companies in line with the legislation of countries with the most highly developed financial systems.⁴ (Ulissi, 2000, 2.)

Italian company law can be regarded as mature in both theory and practice. Substantial substantive rules changed in 2001, four implementing decrees were adopted between 2002 and 2004. The Code resulted in a major change in the corporate governance model. Legislation allowed the choice of the Anglo-Saxon board system and the German model besides the traditional Italian model. (Gadó, 2006, 327.)

On 10 January 2003, a comprehensive company law reform was carried out by the Italians, which mainly affected the companies, Ltd-s and co-operatives. Amendments to Chapter V of the Italian Civil Code have been applied since 2004. (Sándor, 2011, 17.) Recently, a number of new details have been introduced in the field of company proceedings. As of 1 January 2004, company procedural law has been amended.

² Morse, Geoffrey: Partnership Law, Oxford University Press, Oxford (2010); Muir, Dana M. – Schipani, Cindy A.: New Standards of Director Loyalty and Care in the Post-Enron Era: Are some Shareholders more Equal than Others?, New York University Journal of Legislation and Public Policy, <http://ssrn.com/abstract=721045>, 32. (5.12.2012); Sándor I. (2005) 241-248.

³ Legislative Decree no.58 of 24 February 1998 (hereinafter 'the T.u.F.')

⁴ Ulissi, Roberto: Company Law Reform in Italy: An Overview Of Current Initiatives, Company Law Reform in OECD Countries. A Comparative Outlook of Current Trends, Stockholm, Sweden, 7-8 December 2000 (1-15.) 2. <https://www.oecd.org/daf/ca/corporategovernanceprinciples/1857507.pdf>

The change of legislation seeks to maximize the scope for alternative dispute resolution and allows corporate members to appoint an arbitral tribunal to settle their company disputes in the company contract. It has also become possible to establish one-man limited liability companies and joint-stock companies. The business register of companies is conducted by the competent court of registry, which is supplemented by the economic and official data file for certain economic operators, keeping economic, statistical and other data evident.

Italian company law gives the shareholders a great freedom for the management and control of the creation of the system. Based on the Vietti reform on the structure of internal control, from 2004, companies can choose from three solutions/options: the traditional model, the monistic and dualist systems. (Enriques, 2009, 477-513.; Carone, Nicola, 2014, 36.)

1.7. "The German model"

The normative history of German company law is complex and its relevance can be understood in concrete contexts. First of all, we need to make a fundamental statement: the significance of norm history is not limited to some of the questions of the historical and teleological interpretation of legal norms, but it extends to the foundations of all company law. The reason is as follows: there are some legal forms that have been regulated since 1861 (General German Commercial Code, ADHGB) but remained almost unchanged, but their image has changed (Sar., Bt. and quiet company). In contrast, there are legal forms that are just as old or slightly younger, but have been subject to repeated legislative reforms (Plc., co-operative). In the case of the first group, the application of the law must be adapted to the changed actual conditions, while in the second group, the legislator has a significant influence on the existing status of company law. Other forms were artificially created (Ltd.), or only uniformly regulated by BGB (associations, civil law company).

Although company law is developing dynamically, the evolution of individual institutions is quite different. It has become fragmented throughout history, and there is a lack of clear, outlined legislation covering the whole field of law. (Steding, 1997, 38.)

German company law is not codified (that is, there is no special "company code" covering all company forms) but is based on several laws (laws). The legal sources of German company law can be divided into three basic units: the German Civil Code (Bürgerliches Gesetzbuch, BGB)⁵, which contains the basic form of associations and the civil law company. The provisions concerning commercial partnerships are governed by the Company Code (Handelsgesetzbuch, HGB)⁶. In addition to them, there are laws specially designed for certain forms of companies and the laws that are applied to a particular branch of the economy. (Hohloch, 1997, 10., Kraft, Kreutz, 2000, 1.; Kübler, 1998, 2.; Szikora, 2006)

⁵ Bürgerliches Gesetzbuch vom 18. August 1896 (BGB).

⁶ Handelsgesetzbuch vom 10. Mai 1897 (HGB).

2. THE 2008 GERMAN COMPANY LAW REFORM (MOMIG)

2.1. History and international background

The objective of the German reform was to make it easier to set up a German limited liability company and to make the GmbH competitive on the international market of companies, in particular, against English Limited.

In Germany, before the pressure of international events, there was a need for initiating reform processes (it was triggered by the suppression of abuse of the forms of companies and of limited liability).

The need for a change in the law in force was declared by the European Court of Justice. In particular, according to the judgment of the Inspire Art of 30 September 2003 (Rs.C-167/01), the German GmbH was in competition with companies like Germany in the EU Member States which are free to operate in Germany under the right to opt-out of EU business. These companies were supposed to be recognized in Germany but the German companies did not have this option. The new regulations (MoMiG) also provide an opportunity in Germany for determining the place of residence outside of the headquarters or abroad. English Limited was able to compete with the German GmbH, not only for the capital base of GBP 1 to EUR 1, but because German law also allows for a presence outside Germany, whether it is a foreign branch realized to UK Limited.⁷

The strengthening of European economic competition in the regulations of several EU Member States created less requirements for the formalities of establishment and the minimum capital stock. The 2003 reform measures of Spanish and French company law have also prompted German legislators to move in order to ensure that GmbH as a company form can maintain its competitiveness. In Spain, in 2003, the Law on New Enterprises with Limited Liability was adopted, according to which SLNE (Sociedad Limitada Nueva Empresa) offers a faster, simpler, electronic formation (at least EUR 3,012, a maximum of EUR 120,202 with a capital requirement) with an entry within 48 hours. In France it was previously possible to establish a Ltd. of EUR 7500. The reform, which entered into force on 1 January 2004, also allowed SARL to be based on a simplified establishment, SARL could be set up by up to EUR 1 but the amount of subscribed capital should always be indicated on behalf of the company. (Verebics, 2008, 10-14.; Gadó, 2006, 321-341.; Sárközy, 2013a, 301-312.)

The impact of English company law was the biggest shock to the Germans, as the English Limited Company offered a number of advantages over German GmbH (for example, there is no minimum capital requirement in English law, Limited Company can be formed by an English pound, which is much more easier, cheaper and faster), which was applied by more people in Germany. These companies were established under English law with a British headquarters but their business activities are done in Germany through a local branch.

After the European Court of Justice released the way for the English company "Limited Company" to open a representative office in other Member States of the European Union and to transfer the limited liability company's headquarters there, in a number of years, in Germany, these companies established a large number of such representative offices. It is said that the Limited Company was significantly over

⁷ [Http://gesetzgebung.beck.de/node/182653](http://gesetzgebung.beck.de/node/182653) (10.12.2013)

appreciated. It should be noted that in 2004 more than twenty thousand Limited were established whose activities were done in Germany.

According to the decision of the European Court of Justice if a company is established in the territory of a Member State of the European Union and the company is effectively active in another EU Member State, it can not be prevented from doing so by that Member State. If one establishes an English Limited, it must be recognized in Germany, even if it pursues its business in Germany alone. This court decision triggered a real attack on the British Limited. On the Internet, would-be and willing entrepreneurs were lured by versatile promises, for example no founding capital, few bureaucracy, few taxes.⁸

As an effect of the Lisbon Strategy, The Member States of the European Union have strengthened the competitiveness of their company forms. In Hungary, as of July 1, 2008, amendments to the Companies Act and the Company Act were introduced, in Germany in November 2008, in the Netherlands in early 2009.

2.2. A comprehensive novel modification of the GmbH right in 2008 – MoMiG

A major reform of company law was carried out in Germany in 2008, which was preceded by long-term legislative preparatory work.⁹ The legislators did not conceal their intention to renew the 2008 obsolete GmbH regime to meet the ever-increasing European and domestic needs. In Germany, it had previously been a problem that the highly prestigious GmbH in Germany, which was otherwise very popular and in Germany, could only be founded very cautiously (by a time consuming and costly procedure).

The Law on Modernization and suppressing abuse adopted by the MoMiG (Gesetz zur Modernisierung des GmbH-Rechts und zur Bekämpfung von Missbräuchen)¹⁰, which was adopted on 23 October 2008, entered into force on 1 November 2008, earlier GmbH rules, created the formation of the GmbH significantly easier. MoMiG has been the largest reform of the GmbH right since 1980 (since GmbH-Novelle. (Baumbach, Hueck, 2006, 11.; Spindler, 2008, 79-94.; Verebics, 2008, 10-14., Sárközy, 2013a, 301-312.; Sárközy, 2013b, 75-88.)

The actuality of the reforms can be traced back to several reasons, perhaps the most important of all is to increase the competitiveness of GmbH (mainly against UK Limited). The main goals of MoMiG were the following: to facilitate formations, speed up the registration process, deregulation, the creation of a competitive GmbH in international terms, less prerequisites during the formation, and facilitate the division of the business.

2.3. The image and judgment of GmbH

In Germany, the GmbH has a prestigious role, this is the entrepreneurial form of the German middle class, and it can be characterized by the following expressions: the middle

⁸ Elke Holthausen-Dux, Johannes Lang: Die englische private limited company in Deutschland – riskanter als gedacht, <http://www.network.net/dav/D9039.pdf> (06.07.2008) and Englische Limited oder deutsche GmbH?, Rechtstipp von Rechtsanwalt Dr. Thomas Binder <http://www.rechtstipps.net/pub/356/englische-limited-gmbh.html>. 6. Januar 2006 (06.07.2008)

⁹ Gesetzentwurf der Bundesregierung - Entwurf eines Gesetzes zur Modernisierung des GmbH-Rechts und zur Bekämpfung von Missbräuchen (MoMiG) Stand: 23. Mai 2007 (1-141.); Bundesministeriums der Justiz - Schwerpunkte des Gesetzes zur Modernisierung des GmbH-Rechts und zur Bekämpfung von Missbräuchen (MoMiG) Berlin, 26. Juni 2008 (1-7.)

¹⁰ Bundesgesetzblatt (2008.10. 28.) (BGBl. 2008, Teil I Nr. 48, S. 2026.)

class (Mittelstand), liability and seriousness. Overwhelming liquidation procedures and abuses that often occurred in recent times could not hurt the general reputation of the GmbH.

During the reform process, the amount of GmbH's capital was constantly debated. For a long time, the abolishment of the minimum capital requirement was going to happen. However, it was realized that if the "image of GmbH" would be kept alive, it would be impossible to completely abolish mandatory minimum capital. As a golden mean, the idea of delivering the amount from the former 25,000 euros to 10,000 euros was announced. However, this plan was abandoned, leaving the minimum share capital of EUR 25,000 from 2008 onwards.

2.4. Introduction of the "haftungsbeschränkte Unternehmergesellschaft" (UG) form

In addition to facilitating the formation of the GmbH, MoMiG the so-called "The concept of "Unternehmergesellschaft haftungsbeschränkte" (UG) (GmbHG 5 / A §) was introduced. The introduction of UG was primarily to acknowledge the intention of the legislature, concerning the issue of the activities to be carried out by certain companies in certain areas without the necessity of prescribing an initial high capital requirement. (Verebics, 2008, 10-14.; Brehószki, 2009, 14.; Nochta, 2005; Sárközy 2013a, 75-88; Sándor, 2011, 11-18.

Unternehmergesellschaft is considered by some authors as a sub-type of GmbH while others are considering I as a new form. (Sárközy, 2013b, 82.)UGs, as variants of GmbH, are limited liability companies within the framework of the GmbH.

UG's capital does not have to meet the statutory minimum (EUR 25,000), and the minimum required capital is not required at law. The previous regulation was abolished by MoMiG, according to it, the membership fee was supposed to amount to at least EUR 100 and that the amount of ordinary futures was supposed to be divided into fifty. Thus, entrepreneurs were enabled to set up a limited liability company with minimal starting capital.¹¹ Accordingly, the founding members of the company become free to determine the size of the base bank (which was a minimum of one euro - hence the name UG used every day: 1-Euro-GmbH or "Mini-GmbH"). (Verebics, 2008, 10-14.)

The annual profits of UGs cannot be fully distributed among members, a statutory reserve shall be made out of it, and 25% of profits must be retained. This obligation ends only when the company's share capital reached 25,000 Euros. This can be achieved by either actual capital increase or through conversion of the qualified reserve.

3. COMPANY LAW REFORM IN AUSTRIA

3.1. The historical background of German-Austrian commercial law

The German Trade Law Reform of 1998 (Handelsrechtsreformgesetz - HrefG 1998) was a turning point in German company law, which had an indirect and direct effect on Austrian law.

German and European trade law reforms and changed economic requirements induced the process resulting from the Law of 2005 amending the Austrian Commercial Law

¹¹ MoMiG, Artikel 1 Änderung des Gesetzes betreffend die Gesellschaften mit beschränkter Haftung (5.)

(Handelsrechts-Änderungsgesetz 2005), which had reformed the Commercial Code in many areas.

3.2. HGB from UGB

The Austrian company (commercial law) lived in the shadow of German rules for decades, and the historical events had their effect even half a century later. In 2007, the introduction of the Unternehmensgesetzbuch in Austria was a huge step in the shift in the Austro-German relationship.

The German Commercial Code (HGB) was merely supplemented by the amendment of the commercial law, but the full re-codification of the company law was neglected, thus the UGB was not a re-codification, but rather a refurbishment of the HGB (even the original numbering of HGB sections). Even if it was not a separate codification (attempt), but "only" a novel change, it brought significant changes. As a result of UGB's entry into force, nearly thirty laws have been amended. Regulation on certain enterprises/companies can still be found in separate laws.

Austrian company law is very diverse, almost without leaving a single field of law, and its spectrum is extremely large. Similarly to German law, the law on company forms is not covered by a single "Codex", but by the Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch, ABGB), the Unternehmensgesetzbuch (UGB), which entered into force on 1 January 2007, and by other sources of legislation.

Since the introduction of HGB in 1939, the Austrian commercial law reform has resulted in the most comprehensive modification of the field of law. This significant act was the result of the Austrian pursuit of self-reliance on German law. Some authors call it the "austrification" of commercial law, and some it is considered to be the reform work of the century. (Schauer, 2007, 118-126.; Szikora, 2009b, 309-321.; Szikora, 2009a, 1-7.; Szikora, 2008, 3-7.)

Major points of the reform:

- Redefining the basics of the Commercial Code (HGB)
- Amendments to company law
- Changes related to partnerships

3.3. 2013-2014 amendments

The act amending the Austrian company law (GesRÄG 2013)¹² entered into force on 1 July 2013. According to GesRÄG, the GmbHG, in Article 6 (1), replaced the EUR 35,000 with EUR 10,000, thus, it could be formed with EUR 10,000 in Austria.

Under the terms of the formation of the new Austrian GmbH, therefore, it was possible to set up the company with EUR 10,000. The minimum tax on companies, notary and attorney fees were all reduced in order to strengthen the competitiveness of the Austrian GmbH. In addition to these, the obligation to be made it public in the Wiener Zeitung was also abolished.

In September 2013, two months after the launch of the new option, the news of the "new GmbH" was a success, according to which, in comparison with the statistics of the

¹² Bundesgesetz, mit dem das GmbH-Gesetz, die Insolvenzordnung, das Notariatstarifgesetz, das Rechtsanwaltsstarifgesetz und das Körperschaftsteuergesetz 1988 geändert werden (Gesellschaftsrechts-Änderungsgesetz 2013 – GesRÄG 2013)

previous year, in August 2013, 72% more GmbHs were established in Austria than in 2012 in August.

The regulation was changed again from March 1, 2014. On 24 February 2014, the Austrian Parliament adopted the Amendments to the Act on Contributions 2014 ("Abgabenänderungsgesetz")¹³, which also included amendments to the Act on the Companies Act and the Business Registers (Articles 24 and 27).

The following changes took effect on March 1, 2014: The lowest rate of share capital from March 2014 shall be 35,000 Euros again.

4. THE IMPACT OF EUROPEAN COMPANY LAW ON REFORMS

Examining the international dimension of company law is of primary importance. All can be reflected specifically how the creation of a common market based on free movement of goods and capital within the European Union has been significantly affected by company law.

European company law is one of the cornerstones of the internal market. EU company law has undergone significant progress over the last decades. Harmonization has covered several issues, and significant progress has been made in the forms of company law.

However, over the past period, legislative initiatives affecting European company law have become increasingly difficult, but the cross-border nature of economic activity has become much more pronounced/significant both for companies and consumers.

4.1. Objectives of legal harmonization of company law

One of the dominant phenomena of modern economic life is the internationalization of production processes, which, in accordance with the requirements of market competition, the cross-border activity of companies is not only permissible but is also pursuing the fundamental objectives of the European Union. Within the framework of European integration, the realization of a single market, an area without internal borders, is the aim of ensuring the free movement of legal persons. (Sándor, 1997, 3-9., Sándor, 2000, 11-15., Sárközy, 1998, 9-16.; Kisfaludi 2001, 99-248., Pajor-Bytomski, 2001, 249-299.)

During the harmonization of the companies, the emphasis is placed on some important organizational and operational features. The objective of integration is based on by approximating the law of the Member States in order to simplify the establishment or acquisition of a company in another Member State because of the possibility of relying on similar regulations. Some expenses of operating are equalized, the protection of creditors is based on similar solutions, the relationship between the members and their relationships with the company are similar concerning essential points and thus the single market is felt more beneficial for investors.

4.2. Initiating new EU forms of society

In addition to harmonization, EU company law defines specific EU forms of company law. These legal instruments are often referred to as "28. system "as it introduces new

¹³ Bundesgesetz, mit dem (...) das GmbH-Gesetz, das Notariatstarifgesetz, das Rechtsanwältstarifgesetz, das Firmenbuchgesetz sowie das Zahlungsdienstegesetz geändert werden und der Abschnitt VIII des Bundesgesetzes BGBl. Nr. 325/1986 aufgehoben wird (Abgabenänderungsgesetz 2014 – AbgÄG 2014)

types of legal forms that do not harmonize, modify or replace existing national forms of society, but complement alternative legal forms.¹⁴

In addition to the supranational forms of society, it has started to form a fourth form of company under the aegis of the European Union in order to provide the legal framework for small and medium-sized enterprises in the first place. The European private company (Societas Privata Europaea, SPE) is very similar to SE, but it lacks all the administrative, bureaucratic and costly features that can make it the most popular form of the European Union. The draft has been dealt with and discussed by the European Parliament, but for the time being, because of the resistance of several Member States, it has not been adopted. However, the Commission continues to believe that small and medium-sized enterprises in Europe need support at EU level, particularly in the current economic situation.¹⁵ (Eckardt, 2012, 1-46.; Armour, Ringe, 2011, 1-49.)

The European Parliament stated in its resolution of June 2012 that EU forms of association, which are complementary to existing forms of companies under national law, have significant potential, which needs to be further developed and promoted. The Commission was urged to make further efforts to adopt the SPE Statute, which would fully take into account the interests of all actors in order for Council consultations to move away from the deadlock.¹⁶

4.3. The European Model Company Act

Experts are still working on regulations concerning European Model Company Act, with the aim of providing an up-to-date and flexible model with respect to the latest development of the Member States, but it does not attempt to harmonize national company laws, rather it promotes the understanding the systems of other nations. The EMCA offers the Member States a harmonized company law. (Baums, Andersen, Krüger, 2008; Baums, 2008, 1-10.; Andersen, 2010)

The implementation of the project is coordinated by the European Model Companies Act Group (the EMCA Group), which was officially formed at a meeting at Aarhus University (Denmark) in September 2007. The members of the Group are recognized and experienced company law professors with extensive experience in drafting company regulations at national and EU levels.¹⁷

¹⁴ Consultation on the future of Europe (http://ec.europa.eu/internal_market/consultations/docs/2012/companylaw/questionnaire_en.pdf) (10.12.2013).

¹⁵ Sándor I., GJ, 2011/1. 18. A témában lásd még: Eckardt, Martina: The Societas Privata Europaea – Could it Promote the Internationalization of Small and Medium-Sized Enterprises? Andrassy Working Paper Series No. 27, 2012. (1-46.); Armour, John – Ringe, Wolf-Georg: European Company Law 1999-2010: Renaissance and Crisis (December 14, 2010) ECGI - Law Working Paper No. 175/2011. (January 2011) 1-49.; Consultation on the future of Europe (http://ec.europa.eu/internal_market/consultations/docs/2012/companylaw/questionnaire_en.pdf) (10.12.2013).

¹⁶ Future of European company law, 14 June 2012 – Strasbourg [2012/2669(RSP)] 2013/C 332 E/15 (2013.11.15., C 332 E/79.)

¹⁷ Information on the EMCA group and the EMCA project can be found here: <http://law.au.dk/en/research/projects/european-model-company-act-emca>

„The EMCA is designed to provide a source of inspiration for company law for European Member States and beyond.”¹⁸ (Andersen, Andersson et al., 2017, Abstract and 1.)

The project has been carried out over a total period of 5 years and concludes upon the development of the first EMCA. The first draft presented at an international Conference in autumn 2015 (on September 10 and 11, 2015, at the annual conference of the European Company and Financial Law Review at WU University in Vienna, the “European Model Company Act” made its debut to an audience of corporate law professors, practitioners and judges, introduced to society by its drafters.¹⁹

4.4. The Future of European Company Law

In June 2012, the European Parliament issued a resolution on the future of European company law. The document was published in the Official Journal of the European Union in November 2013 setting out a number of specific tasks, recalling and instructing the Commission to implement them.

The resolution states that according to the Commission's intelligent regulation agenda, the legislation shall be clearer and more accessible. The Commission shall codify EU law on company law in order to have user-friendly standards and to ensure coherence of EU legislation; and it recognizes the merits of a single Union legal instrument.²⁰

The Parliament has reiterated its previous request to the Commission that the Commission should analyze the problems of the implementation of existing legislation so that its findings can be taken into account when drafting new legislative proposals. Legislative proposals submitted by the Commission shall be based on an impact assessment with taking into account the interests of all actors, including investors, employers/owners, creditors and employees/workers, offering full compliance with the principles of subsidiarity and proportionality.²¹

The resolution lays down that Parliament welcomes the Commission's proposal to introduce a new Statute for European companies based on reciprocity.²²

REFERENCES

Andersen, Paul Krüger (2011) *The European Model Company Act (EMCA) – A New Way Forward*, in: *Company Law and Economic Protectionism*, Edited by Ulf Bernitz and Wolf-Georg Ringe. Published in print December 2010, Oxford University Press,

¹⁸ Nordic & European Company Law Working Paper No. 16-26. Posted: 20 Sep 2017. Available at SSRN: <https://ssrn.com/abstract=2929348> (1-429.) (Abstract) and 1.

¹⁹ Ventruruzzo, Marco: *The New European Model Company Act* (Posted by Marco Ventruruzzo) Bocconi University and Pennsylvania State University, on October 14, 2015, Harvard Law School Forum on Corporate Governance and Financial Regulation, <https://corpgov.law.harvard.edu/2015/10/14/the-new-european-model-company-act/>

See: *The European Model Company Act (EMCA) Draft 2015* (1-431.) 16.

<http://www.commerciallaw.com.ua/attachments/article/96/Final%20Draft%20EMCA%20Code.pdf>

²⁰ *Future of European company law*, 14 June 2012 – Strasbourg [2012/2669(RSP)] 2013/C 332 E/15 (2013.11.15., C 332 E/78-81.)

²¹ [2012/2669(RSP)] 2013/C 332 E/81.

²² [2012/2669(RSP)] 2013/C 332 E/79.

- Published online May 2011, DOI: <http://dx.doi.org/10.1093/acprof:oso/9780199591459.001.0001> and DOI:10.1093/acprof:oso/9780199591459.003.0014
- Andersen, Paul Krüger and Andersson et al., (2017), Andersen, Paul Krüger and Andersson, Jan Bertil and Bartkus, Gintautas and Baums, Theodor and Clarke, Blanaid J. and Conac, Pierre-Henri and Corbisier, Isabelle and Daskalov, Waltschin and Engrácia Antunes, José and Fuentes, Mónica and Giudici, Paolo and Hannigan, Brenda and Kalss, Susanne and Kisfaludi, Andras and de Kluiver, H. J. and Opalski, Adam and Patakyova, Maria and Perakis, Evangelhos Emm. and Porkona, Jarmila and Roest, Joti and Sillanpää, Matti J. and Soltysinski, Stanislaw and Teichmann, Christoph and Urbain-Parleani, Isabelle and Vutt, Andres and Sørensen, Karsten Engsig and Winner, Martin and De Wulf, Hans, *European Model Company Act (EMCA) (September 1, 2017). European Model Company Act (EMCA)*, First Edition, 2017; Nordic & European Company Law Working Paper No. 16-26. Posted: 20 Sep 2017. Available at SSRN: <https://ssrn.com/abstract=2929348>, pp. 1-429.
- Armin von Bogdandy (2012), *A nemzeti jogtudomány az európai jogi térségben – Kiáltvány*, Magyar Jog, 2012/4. p. 251.
- Armour, John – Ringe, Wolf-Georg (2011), *European Company Law 1999-2010: Renaissance and Crisis* (December 14, 2010) ECGI - Law Working Paper No. 175/2011. (January 2011) pp. 1-49.
- Auer Ádám – Papp Tekla (2016), Corporate governance in state-owned companies in Hungary, *Juridical Tribune*, (6):2, pp. 22-39.
- Auer Ádám – Papp Tekla (2017) Corporate governance in state-owned companies in Hungary, *Pro Publico Bono: Magyar közigazgatás*, (Spec ed. 1), pp. 26-50.
- Auer Ádám, Papp Tekla (eds) (2017), *Pro Publico Bono Public Administration: Corporate Governance in State-owned Enterprises in Central and Eastern Europe*, 125 p. Special Issue 1.
- Baumbach, Adolf – Hueck, Götz (2006), *GmbH-Gesetz*, 18. Aufl., München: Beck
- Baums, Theodor – Andersen, Paul Krüger (2008) *The European Model Company Law Act Project*, March 1, 2008, ECGI - Law Working Paper No. 97/2008,
- Baums, Theodor (2008): *Europäische Modellgesetze in Gesellschaftsrecht*, Institut for Law and Finance, Working paper series No. 75, 01/2008. 1-10.
- Benacchio, Giannantonio (2003), *Az európai közösség magánjoga, Polgári jog, Kereskedelmi jog*, Budapest: Osiris (2003)
- Binder, Thomas (2006) *Rechtstipp von Rechtsanwalt Dr. Thomas Binder* <http://www.rechtstipps.net/pub/356/englische-limited-gmbh.html>. 6. Januar 2006 (06.07.2008)
- Brehószki Márta (2009), *Mennyire korlátolt a jogi személy gazdasági társaságok tagjainak felelőssége? A felelősség-áttörés hazánkban és a „lepelátszúrás” doktrínája az Amerikai Egyesült Államokban*, Ph.D értekezés, Budapest
- Dean, Janice (2012), Ideal type organisations and company law in Europe, *European Business Law Review*, 2012/4. 472.
- Eckardt, Martina (2012), *The Societas Privata Europaea – Could it Promote the Internationalization of Small and Medium-Sized Enterprises?* Andrassy Working Paper Series No. 27, 2012. (1-46.);

- Enriques, L. (2009). Corporate Governance Reforms in Italy: What Has Been Done and What Is Left to Do. *European Business Organization Law Review*, 10(4), 477-513. doi:10.1017/S1566752909004777;
- Gadó, Gábor (2006), Társasági jogi reform Európában, *Magyar Jog*, 2006/6. 322.
- Hamza, Gábor (2012), A magánjog fejlődése és kodifikációja Olaszországban, *Magyar Jog*, 2012/10. 631.;
- Hohloch, Gerhard (1997) *EU-Handbuch Gesellschaftsrecht / Deutschland*, in: EU-Handbuch Gesellschaftsrecht, Hohloch, Gerhard (Hrsg.) – Herne; Berlin: Verl. für Rechts- und Anwaltspraxis (1997)
- Holthausen-Dux, Elke – Lang, Johannes: (2008), *Die englische private limited company in Deutschland – riskanter als gedacht*, <http://www.network.net/dav/D9039.pdf> (06.06.2008)
- Hueck, Götz – Windbichler, Christine (2003), *Gesellschaftsrecht*, 20. Aufl., München: Beck (2003)
- Kelemen Dániel (2006), Az angol társasági jog fejlődése, *Jura* 2006/1. 45-51.
- Kisfaludi András (2001), Jogharmozás a kereskedelmi társaságok jogában, in: *Európai közösségi jogi elemek a magán- és a kereskedelmi jogban*, Vékás Lajos (szerk.), KJK-KERSZÖV, Budapest (2001) 99-248.,
- Kraft – Kreutz (2004), Kraft, Alfonz: *Gesellschaftsrecht*, 12. Aufl – Neuwied: Wollters Kluwer Deutschland GmbH (2004)
- Kübler, Friedrich (1998), *Gesellschaftsrecht: die privatrechtlichen Ordnungsstrukturen und Regelungsprobleme von Verbänden und Unternehmen*, 5. Aufl., Heidelberg: Müller (1998)
- Marco Carone (2014), Alessandro De Nicola (2014), *Italian Company Law: Companies Limited by Shares*, Milano: Egea
- Marco Ventoruzzo (2015) *The New European Model Company Act* (Posted by Marco Ventoruzzo) Bocconi University and Pennsylvania State University, on October 14, 2015, Harvard Law School Forum on Corporate Governance and Financial Regulation, <https://corpgov.law.harvard.edu/2015/10/14/the-new-european-model-company-act/>
- Menjucq, Michel, Fages, Fabrice and Vuidard, Lionel (2008) The European Company under French Law: Main Features, *European Business Organization Law Review* 9: 137-154, 2008, T.M.C. ASSER PRESS, DOI 10.1017/S1566752908001377 [Menjucq, Fages and Vuidard EBOR 9 (2008)]
- Menyhárd Attila (2010) The Development of Legal Techniques and Legal Culture in the New Context of Europe, in: Mader Luzius, Schäffer Heinz (eds.), *Text and Context: The Development of Legal Techniques and Legal Culture in the New Context of Europe.*, Baden-Baden: Nomos, 2010. pp. 83-93.
- Morse, Geoffrey (2010), *Partnership Law*, Oxford University Press, Oxford (2010);
- Muir, Dana M. – Schipani, Cindy A. (2005) New Standards of Director Loyalty and Care in the Post-Enron Era: Are some Shareholders more Equal than Others?, *New York University Journal of Legislation and Public Policy*, <http://ssrn.com/abstract=721045>, Posted: 16 May 2005 (5.12.2012)
- Nochta, Tibor (2005), *A magánjogi felelősség útjai*, Budapest – Pécs: Dialóg Campus
- Nótári, Tamás (2011a), A társasági jog fejlődése Európában, in Papp Tekla (szerk.): *Társasági jog*, Szeged: Lectum Kiadó 2011, 588-590.

- Nótári, Tamás (2011b), A társasági jog kodifikációja az európai országokban, <http://jog.sapientia.ro/data/tudomanyos/Periodikak/scientia-iuris/2011-1/2-notari.pdf> 15. (21.08.2012);
- Nótári, Tamás (2011c): A társasági jog kodifikációja az európai országokban, *Scientia Iuris, Magyar – Román Jogtudományi Közlöny* 2011/1. 32-33.;
- Pajor-Bytomski Magdalena (2001), Jogharmonizáció a kereskedelmi jog néhány témakörében, in: Vékás (2001) 249-299.
- Papp Tekla (2016), *Law of Business Enterprises*, in: Sándor István (ed.), *Business Law in Hungary*, Budapest: Patrocinium, 2016. pp. 245-266.
- Papp, Tekla – Auer, Ádám (2016), *Group Interest in Hungary*, *Acta Universitatis Sapientiae* 5:(1) pp. 27-46.
- Papp, Tekla – Auer, Ádám (eds.) (2017), *Corporate governance of state-owned enterprises in Central and Eastern Europe*, Budapest: Dialóg Campus, 2017.
- Roberto Ulissi (2000), *Company Law Reform in Italy: An Overview Of Current Initiatives, Company Law Reform in OECD Countries. A Comparative Outlook of Current Trends*, Stockholm, Sweden, 7-8 December 2000 (1-15.) 2. <https://www.oecd.org/daf/ca/corporategovernanceprinciples/1857507.pdf>
- Sándor István (1997), Az európai társasági jog követelményei és a magyar társasági jog, *Gazdaság és Jog* 5:2. pp. 3-9.
- Sándor István (2000), Eltérések és hasonlóságok a társasági jog területén Nyugat-Európában, *Gazdaság és Jog* 8:9-10. 11-15.
- Sándor István (2005), *A társasági jog története Nyugat-Európában*, Budapest: KJK-KERSZÖV (2005)
- Sándor István (2011), Változási tendenciák a társasági jogban a 21. század elején, *Gazdaság és Jog*, 19:1. pp. 11-18.
- Sárközy, Szabolcs (2013a), A kft. intézménye a társasági formák nemzetközi versenyében, *Jogtudományi Közlöny*, 2013/6. 301-312.
- Sárközy, Szabolcs (2013b), A német és osztrák társasági jog alakulása, különös tekintettel a kft. szabályozására, *Pro Publico Bono: Magyar közgazdaság*, 2013/3. 75-88.;
- Sárközy, Tamás (1998), A gazdaság joga, mint az Európai Unióhoz való csatlakozás hajtóereje, *Gazdaság és Jog* 6:7-8. pp. 9-16.;
- Schauer, Martin (2007), Az osztrák kereskedelmi jog reformja, *Magyar Jog* 2007/2., 118-126.;
- Schmidt, Vivien (2002), *The Futures of European Capitalism*, Oxford University Press (2002) 145.
- Spindler, Gerald (2008), Reform des Gesellschaftsrechts in Europa und Deutschland – Amerikanisierung des Wirtschaftsrechts? In: Heun, Werner – Lipp, Volker (Hg.): *Europäisierung des Rechts, Deutsch-Ungarisches Kolloquium, Budapest 2007*, Universitätsverlag Göttingen, Göttingen (2008) 79-94.;
- Steding (1997) Steding, Rolf: *Gesellschaftsrecht: Grundzüge*, 1. Aufl., Baden-Baden: Nomos
- Szikora, Veronika (2006), *A német társasági jog alapjai*, Debrecen: University Press
- Szikora, Veronika (2008), Társasági jogi reform Ausztriában – vállalkozási törvény. *Gazdaság és Jog*, 16:12. pp. 3-7.
- Szikora, Veronika (2009), Az eingetragene Erwerbsgesellschaft (EEG) társasági forma megszűnése Ausztriában. *Debreceni Jogi Műhely*, 6:1., pp. 1-7.

-
- Szikora, Veronika (2009), Az osztrák kereskedelmi jog reformja: az Unternehmensgesetzbuch bevezetésének előzményei és következményei, in: Acta Coventus de Iure Civili Tomus X.: *Quo vadis ius societatis Hungaricum: Társasági jogunk múltja, jelene és jövője*, ed.: Papp Tekla, Szeged, Szeged: Lectum, pp. 309-321.
- Verebics János (2008), A korlátolt felelősségű társaságok német jogának változásai, *Gazdaság és Jog*, 16:11., pp. 10-14.
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-