

The System of Organization of the European Company

(Societas Europaea)

The purpose of my thesis is not to make a detailed analysis of the organization structure of the European Company because from this point of view it is possible to refer to increasing number of the specialized publications especially abroad. Regarding the actual broadness of this topic I decided to focus my attention rather on closer range of questions which consists in determination of the competence of the bodies of the European Company and their mutual interactions and in taking into account the supranationality of this legal form of the corporation. The reason for the closer definition of the topic is to enable a deeper insight into the matter and to take a think on the concrete questions, which arise in relation to the fact that the primary regulation is contained in the Council Regulation on the Statute for a European Company (hereinafter as a “Regulation”) that is a secondary rule of Law of the European Community. However the Regulation regulates only the basic framework of the European Company and the remaining regulation leans by virtue of specific hierarchy of the standards on the provisions of the national Company Law of the member states. This unique character fades into the whole legal regulation and shows itself immensely while determining the competence of the bodies of the company depending on the elected system of the management of the company.

The question of the competence of the bodies of the company and of the definition of their boarders already implicates considerable difficulties in the area of Czech Company Law. Therefore it is more likely that this problem will arise by the European Company which is also influenced by the national Company Law but in consequence of primary application of secondary rules of Law of the European Community.

The first part of the thesis shortly deals with the system of the organization of the European Company and it tries to characterize briefly both systems of the organization, the dualistic and the monistic system. The obligation of the member states of the European Community to accept the necessary regulation for the one from the both systems which is not adapted in their legal order is accented in this part as well.

The next part can be divided into two larger divisions. The first of them is focused on the dualistic structure of the European Company which is typical for the joint-stock

companies in the Czech Company Law. The mutual connection of the regulations enabled me to apply on the institute of the European Company not only the fundamentals of the European Law but also the fundamentals of domestic law and the related interpretation of the legal concepts issuing from judicial decisions of the Czech courts. Thereby I attempted to interpret the concept competence of the bodies and to define the internal and external competence of the Board of the directors of the European Company primarily and their mutual context. The fundamental for the whole thesis is especially the determination of the concept “managing SE” because on its definition the next interaction with the general assembly and the supervisory board depends.

The conclusions made in this part of the thesis are drawn in the second division that deals with the monistic structure of the European Company. The fact that the monistic company was not until this moment known to the Czech Company Law has a substantial influence. The monistic system of the European Company is then newly regulated in the special supplementary act that on the basis of subsidiary rules of interpretation again deviates back to the national company law. It is thus possible to come out of the fundamentals of the Czech law and from the characteristic of the basic concepts determined by the Czech legal theory and by the judicial decisions of the Czech courts but at the same time it is necessary to take the supranational nature of the European Company into account.

In fine it is possible to recommend to follow regularly the development of the judicial decisions of the European Court of Justice that refer to these issues because only their conclusions can be the base for the many disputative questions. The mechanism of the obligatory legislative revision which should come presently might be highly important as well.