Orde Gjorgjioski*

EUROPEAN COMPANY (SOCIETAS EUROPAEA) FOR ENTIRE INTEGRATION IN THE COMMUNITY MARKET

Abstract

By adopting the Regulative 2157/2001 for establishing the Statute of the European Company (Societas Europaea) and relating Council Directive 2001/86/ES of 8. October 2001 for supplementing this Regulative with regard to the involvement of employees in the European company, legal frame for establishing stock companies on the territory of EU has been made, i.e. it has been made possible for the companies to found a company on the basis of European law, with a unique set of rules and unified management, and information systems as well. Practically, the European company or "Societas Europaea" ("SE"), is a "big step forward" for the companies that have operations in several EU member countries. In this way, the differences existing among national legislations have been overcome, the problems with organizing at least one legal person for each operating country have been eliminated, and the costs and time needed for inter-boundaries business working, have been decreased. The most important advantages of SE are the following ones: simplifying business running within the EU, taxes complexity relief, providing effective management structures and easier inter-boundaries integrations. Additionally, the Directive 2001/86/EC settles the involvement of the employees in the company management, and their informing and consulting concerning the essential issues associated with working. Within the process of harmonizing the European legislative, R. N. Macedonia passed a Law for a European company, and in this way, it has joined the other European countries supporting this legislation. The European Commission presents the concept of Societas Europaea as an important mechanism towards achieving entire integration in the Community market.

Keywords: European, company, law, regulative, market, stock-holding, integration.

I. INTRODUCTION

After more than three decades of disagreements, The Council of Ministers of the EU had finally adopted the Council Regulation (EC) No. 2157/2001 of 8th October 2001 on the Statute for the European Company (SE)[1], and the associated Directive for amending this Regulation in terms of employees' involvement in the European company. The formal adoption of the Regulation with two amended texts is a result of the achieved political agreement in the Council of the EU at the Summit in Nice, France held in December 2000. This decision entered into force in 2004. The

* Orde Gjorgjioski, Orde Gjorgjioski, PhD in Legal Sciences in the field of Business Law PhD in Economics in the field of Management Director of Legal and general affairs in "Vitaminka" JSC Prilep, N. Macedonia

[1] See: Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE), *Official Journal L 294, 10/11/2001 P. 0001 – 0021.*

European company or "Societas Europaea" (SE) is a "big step forward" for companies that operate in several EU member states. So far, such companies had to establish a whole network of subsidiaries in the territories where they operate. Due to the differences between the national legislation and the need for organizing at least one legal entity for every country, the cross-border operation proved to be quite costly and took a lot of time for the companies. According to the new Regulation for "Societas Europaea", companies will be able to establish one company based on the European law with a sole set of rules and unified management, as well as reporting systems[2]. The greatest advantages of SE are considered the following: **simplifying the doing business within the EU, relieving the complexity of taxes, providing efficient management structures, and relieving the cross-border mergers.**

The European Commission considers the European Company legislation as a deciding step towards achieving full integration on the Community's market. By the SE provisions, the mechanism for forming joint-stock companies on the EU territory has opened, which form is more characteristic for large companies.[3] In addition to the European Company Statute, in 2003 the European Cooperative Society – Council Regulation No 1435/2003.was adopted. [4]

The SE Regulation provides establishing and managing companies with a "European dimension", free from obstacles arising from the disparity and limited territorial implementation of national laws on trade companies. Still, such a conclusion remains to be seen in practice.

II. HISTORICAL ASPECTS

It can be said that the idea for transnational operation, without large obstacles and higher flexibility, originates from the beginning of the twentieth century. After World War Two, European countries by agreement have established some companies as international. So, the company Eurofima, in charge of financing railway materials, was formed in 1955 by fourteen European countries. Still, these companies were formed on a case-by-case basis mainly by the intervention of the countries and were characterized by the different nature of every company. On the contrary, the basic concept of the European company is represented by the principles of uniform status and exclusion of the country's intervention.

Some preliminary activities were initiated to create a pan-European and uniform statute (act) by the Council of Europe in 1952. The creation of EEC that followed in 1957 had immediately generated various proposals regarding the concept of "the European company". Paradoxically, initiations were not made by the business community but by experts and academics. In June 1960 a congress in Paris was held on the subject: "Creating European commercial companies". On the 15th of March 1965, the French government suggested starting negotiations between member-states towards concluding a Convention for establishing a European Commercial Company.[5]

The most significant step was taken in 1966 by a direct intervention of the European Commission. Namely, on the 29th of April 1966, the Commission presented the "Memorandum for establishing

[2] Karol Linmondin, The European Company (Societas Europaea) – A Successful Harmonisation of Corporate Governance in the European Union? " Bond Law Review: Vol. 15: Iss. 1, Article 8, 2003, pg.2

[3] Goran Koevski, The European Private Company (EPK), New European national form for running an enterprise in the European Union, Lawyer no. 199, 2008 (2-7).

[4] See: European Cooperative Society – Council Regulation No 1435/2003 of 22 July 2003 O.J. (L207).

[5] Karol Linmondin, The European Company (Societas Europaea) – A Successful Harmonisation of Corporate Governance in the European Union? " Bond Law Review: Vol. 15: Iss. 1, Article 8, 2003, pg.4

European trade companies"[6]. Also, the Commission formed an expert group presided by professor Sanders[7], to analyze the possibility of creating such a corporate driver and to review potential advantages of a company to be managed based on the uniform legal regime of all member-states. The second group of experts had finalized the proposal in 1967. The suggested statute faced numerous obstacles and objections since its conceptualization. Still, the Commission submitted the proposed regulation to the Economic-Social Committee of the Community, which adopted the text in 1972. In 1974, the European Parliament, after adopting some amendments in terms of often mentioned participation of workers, expresses a positive opinion. The revised proposal was prepared in 1975 and it was an effort to prepare a comprehensive scheme of company's law.[8]

In the following period, the idea was "on the waiting list" because a consensus could not be achieved in multiple areas. Some revival of the idea was noticed in July 1988 when the Commission forwarded a memorandum calling for comments on the proposal. This memorandum of the Commission emphasized obstacles for cross-border mergers, forcing the enterprises to resort to other methods of merging, like mutual investments and acquisitions. Other obstacles for cross-border collaboration are the diversity of the taxation systems implemented in different member-states; the complexity of managing groups of companies as a single economic unit, instead of managing the interest of every individual company making up the chain, as well as the administrative procedures in terms of establishing trade companies in another member-state. Another important issue brought forward by the Commission was the participation of the workers in issues and decisions that influence the existence and operation of their European company. Namely, the Commission rightly indicated that involvement, the inclusion of employees in the existence and operation of the company, cannot be considered solely as some social right but as an instrument for promoting a smooth functioning and achieving success of the company.

Based on the previously said, the majority of member-states assessed that it is worth preparing a new draft proposal in this area. This initiative was still not supported by Great Britain mostly because of their understanding of employees' involvement. The following year, more precisely on the 25th of August 1989, the Commission submitted the proposal to the Council. Still, to revive the proposal, the Commission decided to transfer the employees' involvement issue from regulation to an optional employee's involvement system stipulated in the complementary directive.

Based on the modifications made, the Commission submitted the so-called revised proposal in February 1992. The revised proposal included an option to choose between two management systems: single-stage and two-stage[9]. In April 1996 a draft regulation was prepared, but at the expense of constant disagreements between member-states regarding the cross-border mergers, registration, and disclosing various information related to the operation, taxation, revision, accounting treatment, and insolvency, the regulation text was significantly revised and a lot of

[6] Memorandum by the Commission of the European Economic Community on the Establishment of European Companies (submitted by the Commission to the Council on 22 April 1966). SEC (66) 1250 final, 22 April 1966. Bulletin of the European Economic Community, Supplement 9/10, 1966.

[7] As was highlighted by prof. Sanders, the idea was to constitute a company that will not be a subject of national company law of the country involved but will be a subject of uniform European company law directly applicable in all member-states together with the national company law.

[8] Maria Chetcuti Cauchi, The European Company Statute: The Societas Europaea (European Company) as a New Corporate Vehicle, May 2001
< http://www.cc-advocates.com/publications/articles/european-company-statute-1.htm>

[9] For example, the German decision stipulates a two-stage system consisting of a supervisory board that chose the management board.

areas were left to be transferred in the national law domain. Despite the compromise made by the draft regulation, due to the sensitivity of the issue for the involvement of employees, it could still mean not reaching an agreement. Due to this reason, in the following period, the Commission formed an experts group with a basic responsibility to find a solution to the imposed issue. The working group suggested that the management and the employees participating in the establishment of the European company (SE) should strive to reach an agreement by negotiations. The group also suggested that one-fifth of the supervisory or management board should consist of representatives of the employees. After the debate which continued in the Council, a general agreement was reached for a separate negotiating board that was supposed to consist of representatives of both the management and the employees.
The agreement on the directive on the involvement of the employees could not be reached until the Summit in Nice, in December 2000. The reached agreement took into consideration the various forms of work relations existing in the member-states. It was concluded that a chance should be given to the member states to implement the directive for the involvement of employees in the case of European companies established for a merger. Directive 2001/86/EC - supplementing the Statute for a European company concerning the involvement of employees was adopted by the Council on 8th of October 2001[10].
On the 8th of October 2001, the EU Council adopted the Council Regulation (EC) No 2157/2001 on the Statute for a European company (SE)[11]. Starting from 1st of October 2004, companies are authorized to incorporate the legal form of Societas Europaea (SE the European company).[12]

III. SOCIETAS EUROPAEA

i. Concept

Societas Europaea (SE) is a European joint-stock company formed according to Regulation (EC) No 2157/2001 on the Statute for a European company (SE), the statutory instrument 21 of 2007[13], and the Directive 2001/86/EC - supplementing the Statute for a European company concerning the involvement of employees. SE can be formed by **merging**, as a **holding company** or a **subsidiary**, or by **conversion from a joint-stock company** (Public Limited Company) in SE. So, firstly the SE can be formed by merging at least two joint-stock companies registered and two different member-states.
Also, SE can be formed as a holding company established from at least two joint-stock companies or public limited companies that have registered their headquarters in different member-states or have a subsidiary or branches in other member-states, different from the state where their headquarter is.
Under the same conditions, SE can be organized as a joint subsidiary. This option is available for all companies or firms organized based on the civil or trade law of the member-state, including various forms of companies, as well as various forms of partnerships.

[10] Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees, Official Journal of the European Communities, L 294/22.
[11] Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE), *Official Journal L 294, 10/11/2001 P. 0001 – 0021.*
[12] Udo C Braendle, The Societas Europaea – A Step Towards Convergence of Corporate Governance Systems?, Universität Wien, pg.2
<http://bwl.univie.ac.at/fileadmin/user_upload/lehrstuhl_ind_en_uw/lehre/ws1213/Corporate_Governance_1/201213_SE.pdf>

[13] S.I. No. 21/2007 — European Communities (European Public Limited Liability Company) Regulations 2007.

Finally, a public limited-liability company, formed under the law of a Member State, which has its registered office and head office within the Community may be transformed into an SE if for at least two years it has had a subsidiary company governed by the law of another Member State.[14] Exactly the possibility for merging of trade companies from various EU member-states, for forming holding companies, or to form a mutual subsidiary, promotes the principle of freedom of action as one of the most important for the functioning of the EU internal market.

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.[15]. SE registration can be conditioned by reaching an agreement for employees' involvement in the management, by deciding for involving employees in management or by the expiration of a certain period for negotiating the employees' involvement in the company. The note on registration or deletion of SE, for informing purpose, must be published in the Official Journal of the European Communities after publication in a manner established by the member states law where the SE has registered its office.

Articles 3 and 10 of the Regulation require that the member-states should treat SE as joint-stock companies formed according to the law of the member-state where the company has a headquarter, i.e. to give them a national treatment[16]. After the registration, the SE obtains the status of a legal entity. The registered headquarter and the main office of the SE must be in the same member-state[17]. Societas Europaea has a share capital and the shareholder corresponds to the amount of their stake i.e. shareholders are not liable for the obligations of the company. The share capital must be indicated in euro. According to article 4 of the Regulation of the Council no. 2157/2001 of the European Company Statute, the nominal capital cannot be lower than 120.000 euros. For areas where the functioning of the European company (SE) does not require equal rules of the Community, a reference can be made to the law to which the trade companies in the member-state are subjected where the registered headquarter of the SE is. [18]

One of the most significant advantages of the SE is the possibility to transfer the headquarter of the company to another member-state, without specific formalities and without the company's liquidation or forming a new company. Thus, the management or the administrative body must prepare a proposal for such transfer and publish it following the Regulation, without burdening with any additional forms of publishing present in the member-state. The management or the administrative body will have an obligation to also prepare a report in which they will explain the transfer implications on the shareholders, the creditors, and the employees. Thus, the SE shareholders and creditors are given the opportunity, a month before the General Assembly on which they will decide on the transfer, to examine the SE the transfer proposal in the registration office and the report as well as to obtain free copies of the documents. SE may not transfer its registered office if proceedings for winding up, liquidation, insolvency, or suspension of payments, or other similar proceedings have been brought against it.[19]

An SE shall be governed[20]:

(a) by the Regulation 2157/2001,

[14] *SE Regulation*, art 2.4.

[15] Art. 12.

[16] It is the so-called principle of non-discrimination.

[17] In some reports, this obligation is emphasized as a practical obstacle for establishing the company.

[18] In the Republic of North Macedonia, it is the Law on trade companies. The Law on securities, the Law on the one-stop-shop system for running a trade register and the register of other legal entities and the Law on Bankruptcy.

[19] Art. 8

[20] Art. 9

(b) where expressly authorized by this Regulation, by the provisions of its statutes
or
(c) in the case of matters not regulated by this Regulation or, where matters are partly regulated by it, of those aspects not covered by it, by:
(i) the provisions of laws adopted by the Member States in implementation of Community measures relating specifically to SEs;
(ii) the provisions of Member States' laws which would apply to a public limited-liability company formed in accordance with the law of the Member State in which the SE has its registered office;
(iii) the provisions of its statutes, in the same way as for a public limited-liability company formed in accordance with the law of the Member State in which the SE has its registered office.

The name of an SE shall be preceded or followed by the abbreviation SE.[21]

Exactly the supranational nature of the European company is considered a potential advantage during cross-border mergers or structural changes in a certain group (for example conversion of separate firms in different countries in branches of the parent company).

The set-up costs, time-consuming and complex procedures, and legal uncertainty together with the lack of hindsight and practical experience of the advisors and competent public authorities are reported as the most important negative drivers when establishing an SE. Well-known examples of the high cost of formation of an SE include Allianz SE and BASF SE, whose costs for reincorporation as an SE amounted to €95 million and €5 million respectively. Leaving these cases aside, the average set-up costs for the SEs interviewed in the external study were approximately €784,000 (including the tax and legal advisory costs, translation costs, and registration costs). The overall set-up costs range from approximately €100,000 up to figures of between €2 and 4 million.[22]

It can be said that to establish the European companies, the availability of information and consultations in that sense is very important. The case of non-existence of an active campaign for promoting the advantages of the new European company, lead to a lower number of formed European companies in Italy and Spain compared to other countries. Additionally, it was noted that in certain countries where the one-stage management system is implemented, the number of newly-formed European companies was higher due to the offered possibility for a two-stage management system, from countries where two management systems exist[23].

ii. The size of Societas Europaea, number of established companies, and motifs for establishment

When discussing that the European Company is a joint-stock company, one would normally imagine that it is a large subject. But, research[24] showed that the European company as a form is more often used by small and medium-sized enterprises. Based on the definition of the German

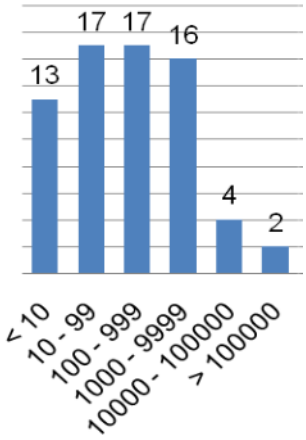
[21] Art. 11.

[22] REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL, The application of Council Regulation 2157/2001 of 8 October 2001 on the Statute for a European Company (SE), Brussels, 17.11.2010, pg.4.

[23] REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL, The application of Council Regulation 2157/2001 of 8 October 2001 on the Statute for a European Company (SE), Brussels, 17.11.2010, pg.5.

[24] Horst Eidenmüller, Andreas Engert, Lars Hornuf, Incorporating Under European Law: The Societas Europaea as a Vehicle for Legal Arbitrage, December 15, 2008, pg.21
Available at SSRN: http://ssrn.com/abstract=1316430

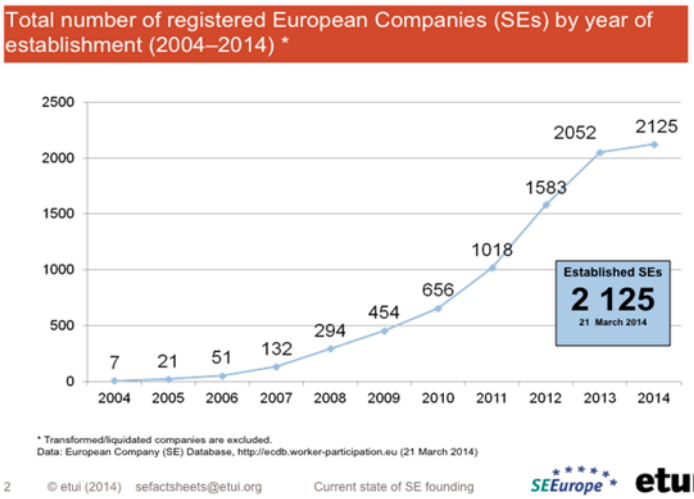
institute for research of small and medium-sized enterprises, 13 of 69 SE according to the number of employees are small companies and 29 are medium-sized, meaning that almost two-thirds of them are small and medium-sized enterprises. Only 6 SE have more than 10 000 employees in the group and even 4 of these SE are German companies as such: Allianz SE, BASF SE, Fresenius SE, and Porsche Automobil Holding SE. The remaining are Strabag Bauholding SE from Austria and Luxembourgian Elcoteq SE of Luxemburg.



SE chart according to number of employees

In terms of entered capital, 111 of 176 companies included in the research had an entered capital of 120.000 euro, equal to the minimum amount for establishing a SE according to the Regulation. Only three SE had a higher capital of 1 billion euros. These companies are Allianz SE and BASF SE and the French insurance company Scor SE. Namely, according to this research, the majority of established SE was found in Germany, the Czech Republic, Holland, and Austria[25]. According to the European classification, most SE was established in the area of insurance and financial activities, then production, information, and communications, professional, scientific, and technical activities, in the area of matters related to real estate, etc.. According to the report of the European Commission[26] for implementation of Regulation no. 2157/2001, until 25th of June 2010 in the EU member states, 595 European companies were registered. Their number had quite increased between 2004 and 2008 but in 2010 the trend of increasing of the number of newly-established companies had continued. European companies are registered in 21 of 30 EU member states and the most (around 70%) are in the Czech Republic and Germany. In the southern EU member-states, except Cyprus, a very low number of European companies were registered. The trend of growth of the newly-established SE companies continues, which is shown in the below chart:

[25] Germany 74, The Czech Republic 62, Holland 19, Austria 10, Belgium 9, France 7, Luxemburg 7, Sweden 5 etc... Most transfers of registered offices happened in Germany and Holland and mostly in Great Britain and Luxembourg.
[26] REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL, The application of Council Regulation 2157/2001 of 8 October 2001 on the Statute for a European Company (SE), Brussels, 17.11.2010, pg.3.



Source: *http://www.worker-participation.eu/European-Company-SE/Facts-Figures/Archive-of-SE-facts-figures2/Total-number-of-registered-European-Companies-SEs*

Due to the high popularity of SE, in the Czech Republic, among others, research was made[27] about the motifs for establishing this type of company. Thus, the basic motif was the SE image (i.e. the European identity of the company) and then the following: simplifying the company's structure, the company's mobility, cross-border mergers as well as employees' involvement in the management. The European Commission reports emphasize that: SE as a form of company is especially attractive for enterprises willing to highlight their European character, to use the European legal form which is well known compared to national forms, or to enter the other member states markets, without needing to create foreign subsidiaries. Still, the importance of the European identity varies. It is considered a particular advantage for enterprises from small countries, Eastern Europe, Belgium, and export-oriented countries as Germany. On the other hand, in some member-states and specific areas, from a market view, the national identity is considered more valuable than the European.

iii. Structure of SE management

The structure of SE management is represented by:

a. a general meeting of shareholders and

b. 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.[28]

- **Shareholders**

The shareholders realize their rights in the European company at the assembly. The first general assembly of the SE shareholders must be held within 18 months from the company establishment. Then, the general assembly must be held at least once in every calendar year within 6 months from the end of the financial year of the company.

General assemblies can be convened anytime by the administrative bodies, management, or supervisory bodies. Shareholders possessing at least 10% of the entered capital of the SE (or some with a lower percentage, if that is determined in the statutes) can ask the SE to convene an assembly

[27] Horst Eidenmüller, Jan Lasák, The Czech Societas Europaea Puzzle, Working Paper N°.183/2011, ECGI, December 2011, pg.6.

[28] Art. 38.

by stating the points of the agenda in the request. Shareholders possessing at least 5% of the entered share capital of the SE can ask for additional points to be put on the agenda of the general assembly[29].

- **Single-stage system**

A single administrative body manages the SE. The administrative body must hold meetings at least once every three months. The president of the body must be appointed from among the members. The number of members of the administrative body or the rules for determining the number of members must be included in the SE statute. Anyway, SE must have at least two members (except if the involvement of the employees is regulated following the Directive 2001/86/EC, which stipulates a minimum number of three). The upper limit for the number of members is not determined.

SWOT analysis of single-stage management system[30]

Advantages - Clearly defined management body - Rapid decision-making - Managers have direct access to information	*Weaknesses* - Depending on the Chief Executive Officer - The Chief Executive Office ruling the Board
Possibilities - Members of the Board get acquainted with the businesses daily	*Threats* - Presenting the shareholders' interests is not guaranteed

- Two-stage system

A governing body manages the SE, and a separate supervisory body controls the work of the governing body. The members of the governing body are chosen by the supervisory body. The supervisory body cannot have authorization on the part of SE management. No person can at the same time be a member of the management body and the supervisory body except in case of a vacancy in the management body. In that case, the functions of these people in the supervisory body will stop. The members of the supervisory body are appointed by the shareholders at the general assembly. A member, or the members of the management body, or the rules for an appointment can be stipulated by the SE Statute.

The supervisory body can appoint a president from among its members. The management body must submit a report to the supervisory body at least every three months. The number of members of each body or the rules for appointing must be stipulated by the company's statute. Still, the management body and the supervisory body should consist of at least two members each[31].

[29] This is also stipulated in articles 385 and 390 of our Law on trade companies.

[30] Udo C Braendle, The Societas Europaea – A Step Towards Convergence of Corporate Governance Systems?, Universität Wien, pg.4
<http://bwl.univie.ac.at/fileadmin/user_upload/lehrstuhl_ind_en_uw/lehre/ws1213/Corporate_Governance_1/20121 3_SE.pdf>

[31] Societas Europaea (SE), Information Leaflet No.19/June 2007, Companies Registration Office (CRO), pg.1

SWOT analyses for a two-stage management system[32]

Advantages - Division of management and control - The supervisory body may exempt the shareholders at the GA -	Weaknesses - Little inclusion in business activities - SB is dependent on the MB information -
Possibilities - The supervisory body can be a strong agent of the shareholders	Threats - Initiatives to present the shareholders' interest are suspicious - Management and control can coincide

What is common for both management systems is that the members of the company's bodies are chosen for a period stated in the statute that cannot be longer than six years, having a right of re-election.[33]An SE's statutes may permit a company or other legal entity to be a member of one of its organs, provided that the law applicable to public limited-liability companies in the Member State in which the SE's registered office is situated does not provide otherwise. That company or other legal entity shall designate a natural person to exercise its functions on the organ in question.[34] Members of an SE's management, supervisory and administrative organs shall be liable, following the provisions applicable to public limited-liability companies in the Member State in which the SE's registered office is situated, for loss or damage sustained by the SE following any breach on their part of the legal, statutory or other obligations inherent in their duties.[35]

- The general assembly

The general assembly is authorized to decide on issues it is in charge of according to Regulation no. 2157/2001 or the law of the member-state where SE has a registered headquarter which law accepts the implementation of the Directive 2001/86/EC regarding employees' involvement. The organization and conduct of general meetings together with voting procedures shall be governed by the law applicable to public limited-liability companies in the Member State in which the SE's registered office is situated.[36] The general assembly must be held at least once every calendar year within six months after the end of the financial year. The general assembly can be convened anytime by the management body, the administrative body, the supervisory body or any other body or other authority according to the national law applicable in the joint-stock companies in the member-state where the SE has a registered headquarter. One or more shareholders who together hold at least 10 % of an SE's subscribed capital may request that one or more additional items be put on the agenda of any general meeting. [37]. If upon shareholders' request, the General assembly is not convened within a reasonable time, a competent court or another administrative body in the member-state where the SE registered headquarter is located, can give an order to convene a

[32] Udo C Braendle, The Societas Europaea – A Step Towards Convergence of Corporate Governance Systems?, Universität Wien, pg.5 <http://bwl.univie.ac.at/fileadmin/user_upload/lehrstuhl_ind_en_uw/lehre/ws1213/Corporate_Governance_1/20121 3_SE.pdf>

[33] Art. 46.

[34] Art. 47.

[35] Art. 51

[36] Art. 53

[37] Art. 56.

General assembly within a certain period or can authorize shareholders or their representatives to convene the assembly. If a higher majority is not stipulated, the Assembly's decisions are adopted by the majority of the eligible voters.

IV. DIRECTIVE 2001/86/EC FOR EMPLOYEES' INVOLVEMENT IN THE EUROPEAN COMPANY (SE)

Due to the disagreements among the member-states in terms of the issue of employees' involvement in the company's management, it was decided to regulate this area by a directive. Directives are binding for the member-states in terms of the achievable purpose, but they leave it to the national authorities to decide on the way the agreed purpose of the Community will be incorporated in their domestic legal systems. The consideration about this form of legislation is that it provides a milder form of intervention in the domestic economic and legal structures. More specifically, the member-states can take into consideration the separate domestic circumstances when enforcing the regulations of the Community.[38]
Several ways of employees' involvement are stipulated such as:

- a model in which employees are part of the supervisory or management board
- a model in which employees are represented by a separate body and
- other models agreed between the management or the administrative bodies of the founding companies and the employees in those companies.

The assembly cannot approve the establishment of SE until one of the models of employees' involvement had been chosen stipulated by the Directive.[39]
According to the Directive 2001/86/EC[40] *'involvement of employees'* means any mechanism, about the identity of the participating companies, concerned including information, consultation and participation, subsidiaries or establishments, and the number of their through which employees' representatives may exercise employees, to start negotiations with the representatives of the influence on decisions to be taken within the company.
'information' means the informing of the body representative of the employees and/or employees' representatives by the competent organ of the SE on questions which concern the SE itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State at a time, in a manner and with a content which allows the employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the competent organ of the SE.
Parallel to the previously said *'consultation'* means the establishment of dialogue and exchange of views between the body representative of the employees and/or the employees' representatives and the competent organ of the SE, at a time, in a manner and with a content which allows the employees' representatives, based on information provided, to express an opinion on measures envisaged by the competent organ which may be taken into account in the decision-making process within the SE.
'Participation' means the influence of the body representative of the employees and/or the employees' representatives in the affairs of a company by way of

[38] Klaus-Diter Borshart, *ABV of the law of the European Union*, Office for publications of the European Union, Luxembourg, 2010, 90.
[39] <http://www.corporate-law.eu/en/slovenia/societas%20europaea/#heading-7>
[40] COUNCIL DIRECTIVE 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees, Official Journal of the European Communities, L 294/22, art. 2.

— the right to elect or appoint some of the members of the company's supervisory or administrative organ, or

— the right to recommend and/or oppose the appointment of some or all of the members of the company's supervisory or administrative organ.[41]

This area of employees' involvement in the operation is usually regulated by the company's statute. So, for example, the well-known French re-insurance company SCOR SE included the following provisions[42] in its Statute[4343].

"If the report of the management presented by the Board of directors at the assembly of the regular shareholders shows that shares that are owned by the employees in the company, as well as employees from other related companies, are more than 3% of the total share capital of the company, a single member of the Board of Directors will be chosen at the assembly of ordinary shareholders based on a suggestion of the employed shareholders.

At the initiative of the President of the Board of Directors, the choice of the candidate on the position - a member of the Board of Directors as representative of the employed shareholders, is done based on a simple majority of votes from those possessing shares in the company.

A candidate can be chosen from among all employed shareholders.

The member of the Board of directors nominated based on a suggestion by the employed shareholders has the same status, same authorizations, and same obligations as the other members of the Board of Directors. Still, his of hers appointment can be terminated based on a violation, from any reason to their employment agreement."

The involvement of the employees in the supervisory boards is stipulated in various ways in many European companies, although the rules in Germany are the strictest in this aspect. In Germany, half of the seats on the supervisory board in large companies must be assigned to the employees[44]. In Sweden for example, companies with more than 25 employees, must assign seats to the workers in their boards.[45]

The Directive stipulates[46] the creation of a special negotiating body. Namely, it is stated that even by the preparation of the plan for establishing SE in any of the existing ways, as well as taking the other necessary steps in that direction, the negotiating process with the representatives of employees of the companies' founders in terms of arrangements for including the employees in SE operation. This builds on the conclusion previously stated that the employees' involvement in the company is usually by the statute of the company since it is a legal act whose content is determined before the official registration of the company. Thereby, the rules are set about how to choose the negotiating body and its function.

The negotiating process is actually between the competent bodies of the companies that are the founders of the company and the special negotiating body. The process itself should be realized in the spirit of mutual collaboration and finish by agreeing to involve the employees in the operation and management of the company. The parties should essentially agree on the scope of the agreement, i.e. what it includes, the composition, the number of members, and the allocations of

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[41] Art.2 of the Directive.

[42] Art. 10.

[43] SCOR SE, A European Company (*Societas Europaea*) with a registered share capital of EUR 1,457,885,613.93, Registered Office: 1 Avenue du Général de Gaulle, 92800 Puteaux, Nanterre Trade and Companies Register No. 562 033 357, Certified copy as at 2 March 2010 Denis Kessler Chairman & Chief Executive Officer, pg.4.

[44] Jodie A. Kirshner, A THIRD WAY: REGIONAL RESTRUCTURING AND THE *SOCIETAS EUROPAEA*, Centre for Business Research, University of Cambridge, Working Paper No. 385, June 2009, pg.16.

[45] Ibid 20.

[46] Art.3 of the Directive.

the seats in the negotiating body which will be a partner in the discussions with the party of the competent body of the company and by which the obligations for informing and consulting with employees in the company and their representatives will be met, then the function and procedures of informing and consulting by the representative body, the frequency of the meetings of the representative body, the financial and other material resources of the body, the date of entering into force of the agreement and other issues.
To achieve the purpose of adopting the Directive, the member-states should establish standard principles for employees' involvement and those rules should correspond to the provisions of the Annex to the subjected Directive. If both parties do not reach a satisfactory agreement, the set of standard principles stipulated in the Annex of the Directive becomes applicable. The Annex elaborates provisions for the composition and work of the representative body of the employees, the rules for informing and consulting, and the standard rules for employees' involvement. In terms of the European company formed by the merger, the standard principles referring to employees' involvement will be applied if before the merger at least 25% of the employees had the right to be involved in decision-making.
Anyway, the competent organ of the SE and the representative body shall work together in a spirit of cooperation with due regard for their reciprocal rights and obligations.[47] Thereby, the representatives of employees enjoy all the rights that the member-state acknowledges to this category of workers by the national law.[48] The member-state should take measures, following the Community's law, to protect the employees from possible abuse of their rights in the company. Still, it should be taken into consideration that the Directive will complement the national rules of the member-state which stipulate the involvement of employees in the company's operation.

V. THE EUROPEAN COMPANY IN THE LEGISLATION OF THE REPUBLIC OF NORTH MACEDONIA

By the Stabilization and Association Agreement[49], the R.N.Macedonia took an obligation to adjust the national legislation to the European acquis, among other things also in terms of the law on trade companies. Starting from 2004 until today, numerous steps have been taken for harmonization of the legislation of the Republic of Macedonia in area no. 6 - Law on Trade Companies. From entering into force of the valid Law on Trade companies until today, the domestic legislation is adjusted with the First Directive for trade companies of the EU 68/151/EEC with all its amendments by the Directive 2003/58/EEC, by the Second Directive for trade companies 77/91/EC and its amendments later on (except those of the Directive 2006/68/EC), by the Third Directive for trade companies 78/855/EEC, the Fourth Directive 78/660/EC, the Sixth Directive 82/891/EEC, the Tenth Directive 2005/56/EEC, the Eleventh Directive 89/666/EEC, the Twelfth Directive 89/667/EEC. By the Law on taking over joint-stock companies a harmonization with the Thirteenth Directive 2004/25/EC was also made.
Since the Regulation of the Council regarding the Statute of the European company 2157/2001 was adopted, as well as the Directive of the EU regarding employees' involvement in the European

[47] Art.9.
[48] For example, the Macedonian legislation provides specific protection to the union representatives, and the employees' representatives as a term of the subject Directive are nothing but the same as the union representatives in our country, which means that the European company as a form of the company goes a step forward, so involvement of the representatives in the company's body is stipulated.
[49] Law on ratification of the Stabilization and Association Agreement between the Republic of Macedonia and the European community and its member-states, Off. Gazette of RM no. 28/2001.

company, next was the Republic of N. Macedonia to adopt the Law on the European Company[50] , and its application is being postponed until the moment of the accession of the Republic of N. Macedonia in the European Union. In this way, the Republic of N. Macedonia, as a future member-state of the EU (at the moment before the official start of EU negotiations) provides establishing and acting of the new form of trade company which already exists in the EU - the European Company or Societas Europaea. The purpose is that the accession to the EU will remove all obstacles for smooth trade within the internal EU market and provide the Macedonian trade companies easier adjustment to those new operation terms, i.e. to provide smooth cross-border operation on the EU market. In this way, Macedonian companies will be able to participate in establishing European companies headquartered in the Republic of N. Macedonia or another EU member-state and will be able to transfer the main office from and to the Republic of N. Macedonia. Of course, that an important benefit in this part is the system for employees' involvement in the company's operation.

According to the provisions of this law, a trade company incorporated following the Law on Trade Companies and entered in the trade register, with head office, i.e. central administration out of the territory of the European Union can participate in the incorporation of the European company in case if the same maintains a real and constant connection to the economy in the Republic of Macedonia.[51]

The Law on the European company confirms that the European companies and trade companies entered in the trade register and participating in the establishing of a European company, implement the provisions of the Law on trade companies[52], the provisions for a one-stop-shop system, and other provisions regulating the activities of the subject of the operation of the European company, i.e. national laws if the Regulation of the council of the European Communities no. 2157/2001 regarding the Statute of the European company Societas Europaea and the Law on the European company is not otherwise regulated.[53]

In the Republic of N. Macedonia, the European company acquires the status of a legal entity from the moment of its entry in the trade registry[54]. The European company entered in the trade register shall have the status of a joint-stock company with head office in the Republic of Macedonia.[55]

The Law on the European Company allows companies to have a different main office on the territory of the Republic of N. Macedonia from its registered office.

The possibility to transfer the headquarter from the Republic of N. Macedonia to another EU member-state is conditioned by the obligation of the management body of the European company to submit a notification and to publish the adopted proposal for transfer of the headquarter in the "Official Gazette of the Republic of North Macedonia" and in at least one daily newspaper, within maximum two months from holding an assembly session on which the decision is made to accept or reject the proposal for transfer of the headquarter of the European company. In this way, the right of every shareholder is guaranteed to be timely informed about the activities in the company and the right to have an insight into the circumstances. The most important is that this law provides

[50] Official Gazette of R.N. Macedonia no 115/2010.

[51] Article 2 of the Law on the European company (Off. Gazette of R.M. no. 115/2010).

[52] For example, according to article 18 of the Law on the European company: "The provisions of the Regulation, of this Law and the provisions of the Law on Trade Companies regarding the transformation of trade companies, shall be applied to the procedure for incorporation of a European company with transformation."

[53] Article 1 paragraph 2 of the Law on the European company (Off. Gazette of RM no. 115/2010).

[54] Entries will be done by the Central Register of the R.N. Macedonia.

[55] Article 12 of the Law on the European company (Off. Gazette of R.M. no. 115/2010).

a transfer of the registered headquarter of the European company to another member-state without it legally terminating (meaning no liquidation).
Regarding the European company management systems stipulated by the Law on the European company, we can say that the Law on Trade Companies demonstrates a high degree of compliance even uniformity. Namely, even if there existed a one-stage management system in our country, as was the case in some EU member-states, such laws would have provided an opportunity, by establishing a European company, to stipulate a two-stage management system (management and supervisory board). But, the possibility to choose between one or two-stage management systems in the joint-stock companies in the R. N. Macedonia is not a novelty and is about already revived models so objectively it can be concluded that in this sense, our companies will not face any particular novelties and thus issues. Moreover, as a mitigating factor can be stated the fact that the composition of the bodies, as well as the content of the rights and obligations stipulated by the Law on the European company, largely overlap and complement with the Law on trade companies of the Republic of N. Macedonia. This can also apply to the provisions of the Law on European companies referring to financial reporting, termination, liquidation, and bankruptcy.
The provisions of the Law on the European company stated in chapter IV referring to employees' involvement in decision-making in European companies, stipulate employees' involvement in the following manner: from the very establishment of the company by forming a negotiation board and by a council of employees in the established European company.
The process of negotiating run by the negotiating board should be finished by concluding a written agreement governing the: 1) the scope of settlement regulation; 2) the composition and number of members, the allocation of spots and duration of the mandate of the members in the representative body of employees in the European company participating in the decision-making process; 3) the manner and procedure of notifying and counselling with the representative body of employees in the European company; 4) the place, duration, and several meetings of the representative body of employees in the European company which is to be held; 5) the funds that shall be provided for work of the representative body of employees of the European company; 6) duration of the settlement; 7) cases and procedure for repeated negotiation for concluding a settlement, and 8) the manner of amending the settlement in case of emergent circumstances which significantly affect the interests of the employees.[56]
The Council of Employees shall be established for employee participation in the European company in the deciding by counselling and notifying. The Council of Employees in the European company shall participate in the decision making process regarding issues referring to the European company or a company from another Member State of the European Union related thereto, as well as regarding issues wherefore the bodies of the European company in each separate state do not have the right to decide independently.[57] The Council consists of representatives of the employees in the European company, i.e. companies-participants. The Law on the European company stipulates the right of the council of employees or its body to once a year hold a meeting for supervising the operation of the European company for reporting and counselling about the operation and development plans of the European company. According to the provisions of the law, the communication is in relation council of employees or its body and the supervisory body of the European company. The Council of Employees in the European company shall decide on the allocation of spots among the representatives of the employees in the supervisory body of the European company by appointing or electing representatives of the employees from different Member States of the European Union, in proportion to the share of employees at the companies

[56] Art. 43, Law on the European Company, Off. Gazette of RNM no. 115/2010.
[57] Art. 44 paras. 3 and 4, Law on the European Company, Off. Gazette of RNM no. 115/2010.

– participants in the certain Member States of the European Union concerning the total number of employees in the European company.[58]
Other matters in the area of social and work relations, especially the right to informing and counselling, as regulated in the member-states, are left to domestic regulations valid in the subject areas[59].
The representative of the employees in the Republic of Macedonia in the body supervising the work of the European company with head office in the Republic of Macedonia shall be appointed by the trade union, and in case if there is no trade union the same shall be elected by the employees on direct elections with secret voting.[60]
A top priority in the collaboration between the European company and the council of employees is mutual trust. The company will anyway be obliged to provide space, means, and conditions for work to the representatives of the employees and will additionally be obliged to cover the costs incurred during the negotiations. Thus the employees' representatives enjoy specific rights and protection, so they cannot have authorizations contrary to their role, nor can be put in a less favourable position concerning other employees.
Finally, the integration of the Republic of N. Macedonia in the internal EU market means not only removing the trade obstacles but also providing conditions for adjusting the forms of the trade companies from the Republic of N. Macedonia on the EU market and providing a choice of form that guarantees them smooth cross-border operation when they want to meet not only local requirements. By acknowledging the form of the European company, trade companies will be provided with a legal model of trade company by which they will be able to plan and conduct reorganization of their activity at the EU level, to expand their production and fully realize their comparative advantages and realize maximum gain running a business through the whole European Union territory.[61] Since the high degree of adjustment of the national regulations with the EU regulations is emphasized in terms of trade companies, it can be concluded that the implementation of the national regulations should not be an obstacle for implementing this law. Still, reviving the provisions of this law will be possible after R. N. Macedonia becomes a full member of the EU.

VI. CONCLUSION

The research emphasizes that the initial goals of the Regulation for the European company have been achieved to a certain degree, but some improvements can be made. The Regulation provides European dimension companies to make a cross-border transfer of their headquarters according to the founding act, to better reorganize and restructure, and to choose between different variants of management structure. The Directive suggests providing the right of employees' involvement in the company's management. The European identity and national nature of the European company are other positive aspects of this legal form.
However, from the practices derived from the implementation of the Regulation so far, several issues can be noted. Firstly, the Regulation for the Statute of the European Company does not stipulate a uniform form of the company, so taking into consideration the number of member-states, we can say that there are 27 forms of companies. The Regulation itself contains more instructions for regulating the national law, which creates legal uncertainty. Additionally, it can be

[58] Art. 50 par. 1, Law on the European Company, Off. Gazette of RNM no. 115/2010.
[59] European company. Lawyer no. 225, (2011): 13.
[60] Art. 51, Law on the European Company, Off. Gazette of RNM no. 115/2010.
[61] Proposal-Law on the European company, Skopje, June 2010, 3.

noted that the number of established companies is not equally distributed in the member-states, which probably means that the Regulation on the Statute of the European Company is not fully adjusted to the position of companies in all member-states. We believe that in the future the goal should also be to decrease the minimal founding investment for the European company, which is pretty high at this moment. Still, it is expected that the Regulations and respectively the Directive, will be subjected to certain changes which will be made to improve the regulation, based on a previous assessment of the influence of those changes.

The analysis of the Macedonian Law on European company shows that the provisions of the Regulation and the Directive in it are taken and adapted at a satisfactory level. What is especially important, the Macedonian laws in this area, especially the Law on Trade companies, demonstrate a high degree of compliance with the European legislation, which in future, i.e. after the accession of R. N. Macedonia in the EU, would mean readiness to respond to requirements for consistent enforcement of regulations in the area of trade companies.

Maybe it would be more appropriate to understand the subjected Regulation as a minimum framework from which companies will start in the future in regulating the area of shareholders within the community, while the Directive should be further regulated by a binding Regulation (Decree) for which time will tell. Anyway, the engagement committed to this area, which gains even more intensity through the years, proves the significance of business relations for the functioning of the European Union, which if nothing else is an economic community to the greatest extent.

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