



Erasmus+



European Company Law

An Introduction

Deolinda Meira – ISCAP / IPP (PORTO / PORTUGAL)

European Company Law

1. The European challenge
2. Ways to build the EU corporation law
 - A. Harmonization
 - B. European Court of Justice Jurisprudence
 - C. European legal entities
3. Conclusion

1. The European challenge



28
Member States



1
market

The European challenge

- Internal market *vs* 28 legal systems.
- EU Member States have agreed to move towards a “single European Market”.
- Every European company has access to a market of nearly 500 million consumers.
- European economic area based on a common market.

- Treaty of Rome (1957) Art. 2

"The Community shall have as its task, **by establishing a common market** and progressively approximating the economic policies of Member States, to promote throughout the Community

- a harmonious development of economic activities,
- a continuous and balanced expansion,
- an increase in stability,
- an accelerated raising of the standard of living and
- closer relations between the States belonging to it."

The European challenge

- The internal market:
"an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured".
- The keyword of the common market: **freedom**.
- In the EU common market people, goods, services and money can circulate within the EU as freely as within a single country.

The European challenge

- So we have **one common market**
- **28 Member States** and
- **28 different different legal systems and 28 corporations law.**

The European challenge

Two different legal cultures:

- **Common law:** Anglo-Saxon tradition. Judicial cases are regarded as the most important source of law. Judges have an enormous role in shaping British law.
- **Civil law:** Based on Roman law (*ius civile*), the law applicable to all Roman citizens. It's a codified law, with comprehensive legal codes. The judge's role is to establish the facts of the case and to apply the provisions of the applicable code.

The European challenge

- **1** common market: the Internal market
- **2** legal cultures: civil law and common law
- **24** official languages
- **28** legal systems / 28 corporations laws
- How can EU create minimum common standards for business?

Ways to build the EU corporation law

A. Harmonization

The process of creating common standards across the internal market.

Harmonization aims to create consistency of laws, regulations, standards and practices.

The same rules will apply to businesses that operate in more than one member State.

Ways to build the EU corporation law

A. Harmonization

- EU wants to harmonise a number of rules relating to companies and other entities (e.g. associations, foundations).
- Harmonization has generally been done by “Directives” (article 50.2 TFEU)
- “Directive” = Legal act adopted by the Council of EU that every Member State must implement.
- Directives have to be implemented, translated, by national legislation of Member States.
- Directives normally leave member states with a certain amount of freedom as to the exact rules to be adopted.

Ways to build the EU corporation law

A. Harmonization

- Directives (article 288 of The Treaty on The Functioning of The European Union)
- *“A directive shall be binding, as to the **result** to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of **form** and **methods**.”*

Ways to build the EU corporation law

A. Harmonization

- Directives: mainly lay down general rules on setting up limited liability companies, capital and disclosure requirements. Some examples:

1.10.2009

EN

Official Journal of the European Union

L 258/11

DIRECTIVES

DIRECTIVE 2009/101/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 16 September 2009

on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent

Ways to build the EU corporation law

A. Harmonization

- **Directive 2012/30/EU** (replaces the 2nd Company Law Directive)

Covers the formation of public limited liability companies and rules on maintaining, increase and reduction of capital.

DIRECTIVE 2012/30/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 25 October 2012

on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent

Ways to build the EU corporation law

A. Harmonization

- **Directive 2009/102/EC** (the 12th Company Law Directive)

Provides a framework for setting up a single-member company (in which all shares are held by a single shareholder).

It covers **private limited liability companies**, but EU countries may decide to extend it to **public limited liability companies**.

But, even with all Directives, the legal regime is not the same in all 28 member states.

Ways to build the EU corporation law

A. Harmonization

- Minimum capital in EU:

JOINT STOCK COMPANY

Some examples:

Czech Republic	<i>akciová společnost (a.s)</i>	2,000,000 CZK (74 000 EUR)
France	<i>société anonyme (SA)</i>	37 000 EUR
Germany	<i>Aktiengesellschaft (AG)</i>	50 000 EUR
Italy	<i>società per azioni (S.p.A.)</i>	120 000 EUR
Latvia	<i>akciju sabiedrība</i>	35 000 EUR
Portugal	<i>sociedade anónima (SA)</i>	50 000 EUR
Romania	<i>societate pe acțiuni (SA)</i>	90 000 lei (20 000 EUR)
Spain	<i>sociedad anonima (SA)</i>	60 101 EUR
Slovakia	<i>akciová společnost (a.s)</i>	25 000 EUR
United Kingdom	<i>Public Limited Company</i>	50 000 £ (66 000 EUR)

Ways to build the EU corporation law

A. Harmonization

- Minimum capital in EU:

LIMITED LIABILITY COMPANY

Some examples:

Czech Republic	<i>společnost s ručením omezeným</i>	1 CZK
France	<i>société à responsabilité limitée</i>	0 EUR
Germany	<i>Gesellschaft mit beschränkter Haftung (GmbH)</i>	25 000 EUR
Italy	<i>società a responsabilità limitata</i>	10 000 EUR
Latvia	<i>sabiedrība ar ierobežotu atbildību</i>	2 820 EUR
Portugal	<i>sociedade por quotas</i>	1 EUR
Romania	<i>societate cu răspundere limitată</i>	200 RON (50 EUR)
Spain	<i>sociedad de responsabilidad limitada</i>	3 100 EUR
Slovakia	<i>společnost s ručením omezeným</i>	5 000 EUR
United Kingdom	<i>private limited company</i>	0 £

Ways to build the EU corporation law

B. European Court of Justice Jurisprudence

Ways to build the EU corporation law

B. European Court of Justice



Role: Ensuring EU law is interpreted and applied the same in every EU country; ensuring countries and EU institutions abide by EU law.

- **Established in:** 1952
- **Location:** Luxembourg
- **Website:** [Court of Justice of the European Union](https://www.cjeu.europa.eu/) (CJEU)

Ways to build the EU corporation law - B. European Court of Justice



The most common types of case are:

- i. **interpreting the law** – If a national court is in doubt about the interpretation or validity of an EU law, it can ask the Court for clarification. The same mechanism can be used to determine whether a national law or practice is compatible with EU law.
- ii. **enforcing the law** – this type of case is taken against a national government for failing to comply with EU law.
- iii. **annulling EU legal acts** – if an EU act is believed to violate EU treaties or fundamental rights, the Court can be asked to annul it .Private individuals can also ask the Court to annul an EU act that directly concerns them.
- iv. **ensuring the EU takes action** – the Parliament, Council and Commission must make certain decisions under certain circumstances. If they don't, EU governments, other EU institutions or (under certain conditions) individuals or companies can complain to the Court.
- v. **sanctioning EU institutions** – any person or company who has had their interests harmed as a result of the action or inaction of the EU or its staff can take action against them through the Court.

Ways to build the EU corporation law

B. European Court of Justice Jurisprudence



The **European Court of Justice** has often had to rule on cases involving companies.

The court's task is to ensure that the law is applied uniformly in all Member States.

European Court of Justice landmark decisions:

- “*Centros Ltd*” (1999)
- “*Überseering BV*” (2002)
- “*Inspire Art Ltd*” (2003)

Ways to build the EU corporation law

B. European Court of Justice Jurisprudence

- *Centros Ltd*, a wine import and export business, was registered in the United Kingdom and applied in Denmark, where it traded, to register there.
- The Danish authority refused on the basis that the company was attempting to avoid the Danish requirement for companies to pay up a minimum of share capital.
- In Denmark this was 200,000 Danish kroner (25 000 EUR), while in the UK the minimum capital requirement was £ 1.

Ways to build the EU corporation law

B. European Court of Justice Jurisprudence

- *Centros Ltd* argued that it had the right to be recognised in Denmark under the provisions of freedom of establishment in the EU Treaty.
- The ECJ held that the Danish authorities' refusal to recognise the company was contrary to EU Treaty.



Start the race to the bottom!

Ways to build the EU corporation law

c. European legal entities

Ways to build the EU corporation law

C. European legal entities

- The European Parliament and the Council have jointly delivered various regulations over time establishing :
 - common rules directly applicable to companies, established under the rules of Member States (e.g. the adoption of IAS/IFRS accounting standards or the regulation cross-border insolvency proceedings)
 - and rules on European types of legal entities .

Ways to build the EU corporation law

C. European legal entities

- Rules on European legal entities apply throughout the EU.
- They co-exist with national ones: the 28th regime of EU law
- This has been done by “Regulations”.
 - ✓ Regulations are directly applicable in each Member State.
 - ✓ They have the force of law in all Member State.

Ways to build the EU corporation law

C. European legal entities

- **European Economic Interest Group (EEIG)**
Council Regulation (EEC) No 2137/85 of 25 July 1985
- **European Public Company (SE)**
Council Regulation (EC) No 2157/2001 of 8 October 2001
- **European Cooperative Society (SCE)**
Council Regulation (EC) No 1435/2003 of 22 July 2003

European Economic Interest Group

- **Czech:** *Evropské hospodářské zájmové sdružení (EHZS)*
- **French:** *Groupement européen d'intérêt économique (GEIE)*
- **Latvian:** *Eiropas Ekonomisko interešu grupa (EEIG)*
- **Portuguese:** *Agrupamento Europeu de Interesse Económico (AEIE)*
- **Romanian:** *Grup European de Interes Economic (GEIE)*
- **Slovak:** *Európske zoskupenie hospodárskych záujmov (EZHZ)*
- **Spanish:** *Agrupación europea de interés económico (AEIE)*

European Economic Interest Group

- EEIG creates an instrument for business, which may be formed by persons from at least two Member States.
- It must **not have** as its primary purpose the making of profits.
- The purpose of the EEIG is to facilitate or develop the economic activities of its members by a pooling of resources, activities or skills. This will produce better results than the members acting alone.
- An EEIG cannot employ more than 500 people.

European Economic Interest Group

- One of the more famous EEIG is the Franco-German television channel.

arte

Ways to build the EU corporation law

C. European legal entities

- **European Economic Interest Group (EEIG)**
Council Regulation (EEC) No 2137/85 of 25 July 1985
- **European Public Company (SE)**
Societas Europaea
Council Regulation (EC) No 2157/2001 of 8 October 2001
- **European Cooperative Society (SCE)**
Council Regulation (EC) No 1435/2003 of 22 July 2003

European Public Company (SE)

- SE is a legal structure that allows a company to operate in different EU countries under a single statute, as defined by the law of the Union.
- An SE is governed:
 - by the provisions of the regulation; and
 - for those aspects not covered by the regulation, by the national provisions adopted in application of European measures targeting the SE specifically and those applicable to public limited liability companies.

European Public Company (SE)

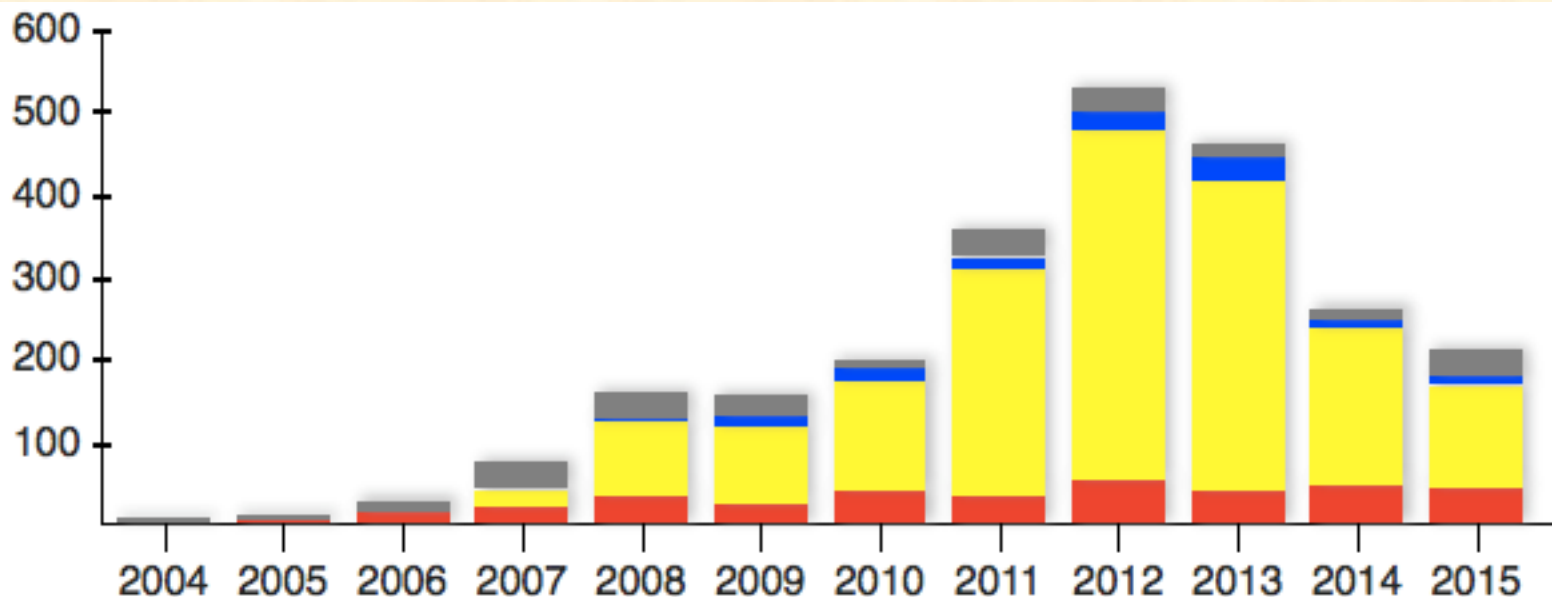
SE can be created in the following ways:

- By merger of national companies from different member states;
- By the creation of a joint venture between companies (or other entities) in different member states;
- By the creation of an SE subsidiary of a national company;
- By the conversion of a national company into an SE.

European Public Company (SE)

- Minimum capital: 120 000 EUR
- The capital of an SE is divided into shares.
- No shareholder shall be liable for more than the amount he has subscribed.
- SE has legal personality.
- Two possible governance models (in addition to the general meeting of shareholders)
 - management board + a supervisory board
 - administrative board

European Public Company (SE)





Ways to build the EU corporation law

C. European legal entities

- **European Economic Interest Group (EEIG)**
Council Regulation (EEC) No 2137/85 of 25 July 1985
- **European Public Company (SE)**
Council Regulation (EC) No 2157/2001 of 8 October 2001
- **European Cooperative Society (SCE)**
Societas Cooperativa Europaea
Council Regulation (EC) No 1435/2003 of 22 July 2003

Cooperatives

- **Cooperatives are legal persons** governed by private law that carry on any economic activity without profit as the ultimate purpose and (a) mainly in the interest of their members, as consumers, providers or workers of the cooperative enterprise (“mutual cooperatives”), or (b) mainly in the general interest of the community (“general interest cooperatives”).
- **Cooperatives have a social propose:** the satisfaction of its members needs (economic, social, cultural, etc.) or in the general interest of the community;
- **Cooperative members** are consumers, users, providers or workers of the cooperative.
- **Cooperative:** entity of the social economy sector.

European Cooperative Society (SCE)

- No matter where they are established, SCEs are governed by EU regulations and principles which are supplemented by the laws on cooperatives in each Member State.
- In 2015, the German meat marketer Westfleisch changed its legal form to a Societas cooperativa Europaea.

European Cooperative Society (SCE)

- An European Cooperative Society must be created:
 - by five or more persons, residing in different Member States or
 - By legal entities established in different Member States.
- The subscribed capital shall not be less than 30 000 EUR.

European Cooperative Society (SCE)

EUsCOOP

European Cooperative Society (S.C.E.) providing cooperation support services to web & mobile based entrepreneurship for facilitating startups creation, consolidation and internationalisation

*.. establishing a **European Cooperative Society (SCE)** for platform exploitation & management*



EUCORD



european cooperative
for rural development

Conclusion

In the books we have the internal market.

In action, this internal market has frontiers:
linguistic and juridical.

Working together, translators and jurists play a
main role to make internal market really happen.

Conclusion

In the books we have the internal market.

In action, this internal market has frontiers:
linguistic and juridical.

Working together, translators and jurists play a
main role to make internal market really happen.

Thank you!