Mendel University in Brno
Faculty of Business and Economics

European Companies – Process of Establishment and Their Place in the Economy of the EU Member States

Bachelor Thesis

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Brno 2015

Firstly I want to thank doc. JUDr. Martin Janků, CSc., the supervisor of my bachelor thesis, for his recommendations, pieces of advice and scientific assistance that helped me accomplish my bachelor thesis. I would also like to thank JUDr. Tomáš Grulich, Ph.D. and Mr. Jiří Matyáš for their help with the sources for the practical part of my thesis.

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Abstract

Galasovský, P., European Companies - Process of establishment and their place in the economy of the EU member states. Bachelor thesis. Brno: Mendel University, 2015.

This bachelor thesis focuses on process of establishment of the European Companies and their impact on the economy of the EU member states. The thesis is divided to two parts. First part describes the genesis of the idea of the European Company, their legal aspects and the process of their establishment. The second part analyse the position of these companies on the European market. The end of the thesis contains the evaluation of the market analysis and the prediction of future development.

Keywords

European Company, European Union, establishment, market, analysis.

Abstrakt

Galasovský, P. Evropské společnosti – proces zakládání a jejich význam pro ekonomiku členských států Evropské unie. Bakalářská práce. Brno: Mendelova univerzita v Brně, 2015.

Tato bakalářská práce se zabývá procesem založení evropských akciových společností a jejich postavením a celkovým vlivem na ekonomiku členských států Evropské unie. Práce se dělí na dvě části. V první části se zabývá genezí myšlenky evropské společnosti, jejím legislativním rámcem a způsobem jejího založení. Druhá část komplexně analyzuje postavení těchto společností na evropském trhu. Závěrem této práce jsou výsledky analýzy trhu a nástin možností dalšího vývoje.

Klíčová slova

Evropská společnost, Evropská unie, založení, trh, analýza.

Content

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RoSE - Council Regulation n. 2157/2011 of 8 October 2001 on the Statute for a European Company (SE).

NoSE - Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees.

AoSE - Act n. 627/2004 Coll. on the European Company

SE - Societas Europaea

RC - Registered Capital

CFS - Closing Financial Statement

CNB - Czech National Bank

EU - European Union

JSC - Joint Stock Company

1 Introduction

The main idea of the European economic integration is an economic development which should be allowed by connecting Member States' economies. In order to achieve this main objective it is necessary to create conditions to ensure that business entities can operate in the territory of other Member States without major legislative and administrative barriers. This condition is not new, it has been discussed since the establishment of the first integration groups in Europe after the World War II. Finally in 2001 were adopted by the Council of the European Union relevant legislative standards in the form of Council Regulation with effect from 8. April 2004. By this act the European legislation allowed the creation of new forms of legal entities on a supranational level. Besides the European Cooperative Society and the European Economic Interest Grouping it was mainly the European (Joint Stock) Company.

As the main advantages of setting up the European Companies are considered many factors such as the mobility of the seat, the possibility of cross-border mergers, negotiation and participation of employees, the internal structure or the supranational dimension of the company and its associated company's image as a European product. The reasons for establishing European companies are largely individual; undoubtedly it is interesting that many of the European Companies were founded as a "product" for further trading in the form of so-called ready-made companies.

Examining the problematic of the European Companies from the legal, economic and managerial perspective in the context of development of the business environment is in the Czech Republic relatively topical. Among other reasons it is the fact that most of the European Companies were established in Germany and in the Czech Republic.

2 Aim of the thesis and its methodology

The aim of this bachelor thesis is to analyze the nature and legal aspects of the establishment and management of the European company in accordance with the European and national legislation. Also it should analyse the specifics of the European Companies in the Czech Republic, demonstrate its advantages and disadvantages from the legislative, economic and managerial point of view.

The findings of the scientific literature, whether the monographic articles in professional journals, were the basis for the theoretical background of work in the form of literature survey. Another necessary information were obtained from the study, content analysis and comparison of primary documents of the European and Czech legislation that issue the problematic of European Companies.

The analysis of the reports and statistics contributed to obtain concrete conclusions describing the impact of European Companies on the EU market and also demonstrating the advantages and disadvantages of this type of companies in the European business environment. The conclusions drawn from the analysis of the Market cannot be considered as absolute and it is impossible to generalize them because, as it was previously told, there exists many companies which are not active but only prepared for future trading. Objective conclusions are also problematic because some information of this type of companies are difficultly reachable or are even unavailable.

Objective of the thesis is to describe the legal regulations connected to SEs and determine their impact on the European market. The thesis is divided into three consecutive chapters. The first chapter of the thesis is a theoretical introduction to the issue of European Companies from a historical and a legal point of view. It contains a description of basic European principles for the establishment and operation and also their specification in the Czech legal order.

The second chapter of the thesis summarizes the advantages and disadvantages of the European Companies compared to "traditional" Joint Stock Company, analyse the EU market and examines the impact of the European Companies on the European economy.

The third chapter provides an overview of a collected data, describes the SE´s impact on the EU market and provides an outline of possible future development of the market in accordance to operation of the European Companies.

3 European (Joint Stock) Company

3.1 Legal definition of the European Company

The European Company is a supranational legal entity whose legal regulation is based directly on the Community law. Due to that it is able to establish company under this legal entity in the whole area of the European Union with the similar properties, rights and duties. The basis of this entity is formed by the *Council Regulation n. 2157/2011 of 8 October 2001 on the Statute for a European Company (SE)* and its provisions are directly applicable in all EU member countries from 8 October 2004, when the RoSE came into force.

This RoSE is subsidiary supplemented by the *Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees*. These regulations are based on fact that each member country will create its own legislation, which will focus on the legal deficit artificially created by this Directive. (Dědič, Čech, 2006, p. 5)

To the Czech legal order is the statute of the European Company included by the *Act n. 627/2004 Coll., Act about the European Company*. This Act regulates the legal relations of the European Company, unless they are not covered by the RoSE or the DoSE. (Dědič, Čech, 2004, p. 135)

3.2 History of the European Company

The idea of uniformly modified supranational legal entity is as old as the European Community itself. First idea about this project appeared in year 1959 in France on the 57th National Notary Congress. It did not take a long time and in year 1966 Dutch professor Pieter Sanders created a first unofficial proposal of the European Company. The first official regulation was submitted by the European Commission in year 1970. This regulation was inspired by the proposal of prof. Sanders. Another proposal was submitted by EC in year 1975.

The European Company should obey only the community law and should be totally independent on the national law of the individual member states. Because of that in the 80´s were these documents taken as something innovative and timeless. The company established in London should have the same properties, rights and duties as the company established for example in Luxembourg. The degree of progressivity and innovation was so high in these times and caused temporary extinction of this project. The biggest problem were efforts of the member states to get the internal organization of the company closer to their national legal orders of the joint stock companies. The result of the future negotiations between the member states caused a huge diversification from the original regulation. The next step from the EC was done in year 1989 during the process of realization of the White Book[1]. Another modification of the regulation was done in year 1991. Both of these proposals move away from the conception created in 70´s and became a basis of the final solution of the SE Regulation.

After the solution of mostly all questions about the SE became the biggest obstacle the question about involving the employees to the process of company´s management. In year 1993 the negotiations were stopped during the next 5 years and the new impulse was brought by the report of the Competitiveness Advisory Group headed by former Italian Prime Minister Carlo Ciampi (also known as "Ciampi Group"). The report emphasized the necessity of the supranational legal entity, the closure of the internal market and also calculated the savings following the usage of this legal entity to 30 billion Euro per year. Another fact for future negotiations of this project was the pressure of many significant European company groups in the forefront with the British Petroleum (BP), which declared their interest of the European Company.

In year 1996 the experts group was convened to solve the question of the employee's involvement. The group was leaded by Etienne Davignon, former vice-president of the EC. The result of their research was the compromise primarily based on the possibility of the degree negotiation of participation in each exact case. This compromise enabled

[1] Completing the Internal Market: White Paper from the Commission to the European Council (Milan, 28-29 June 1985

to open again the negotiations in the European Council, but did not bring final success, because the proposal did not satisfy any group of the conflict.

After finding a final solution on the meeting of the European Council on 7 and 8 December 2000 in Nice, the European Council adopted the European Company Regulation and its subsidiary directives on 20 December 2000. The documents were formally signed on 8 October 2001 and without any changes were in force till year 2004, when new 14 member countries entered the Community and with these changes came into force on 8 October 2004, The RoSE had to be novelized due to the list of the legal entities, which can enter the process of the SE establishment.

Another amendments of the RoSE are not expected today, however this Regulation includes, as well as the other community regulations, the mechanism of Obligatory Legislative Revision. Paragraph 69 of the RoSE obliged the EC to prepare a report after the 5 years of the RoSE been in force, it means till 8 October 2009, and submit it to the European Parliament and to the EC containing eventually also the proposal of some improvement. To this time the report has not been submitted. (Dědič, Čech, 2006, p. 8-14)

3.3 Organizational structure

Each European Company can be based on the monistic or on the dualistic organizational model. These rules are embed in the par. 38 of the RoSE and it is the only part, expect of the process of SE establishment, which is fully regulated by the RoSE, not by the national legislation of the member states. The shareholders can choose the organizational model not only during the company´s establishment, but also during the whole life of the company. Each model has its own specifics, which are described in detail below, but the RoSE also specify the rules uniformed for both models. (Hodál, Alexander, 2005, p. 208-213)

3.3.1 Monistic organizational model

The monistic model is based on traditions of the countries using Common Law and France. This model is not based on the community law, but on the national legislation.

In the Czech Republic is this model specified by the BCA[2], which came into force in 2014. In this model the SE is managed by the Governing Board, which has not only the executive power, but also a controlling function. (Business Corporations Act)

The Governing Board must have at least 3 and at most 18 members. The members are voted by the SE General Meeting. The Board meets in intervals determined in the Statutes of the company, but at least once per 3 months. This is necessary, because the Board has to discuss a progress and expected development of the company each 3 months. (Hodál, Alexander, 2005, p. 213-218)

3.3.2 Dualistic organizational model

In the dualistic model the executive and controlling power is divided to two independent bodies. The executive power is performed by the Board of Directors and their steps in company´s management are controlled by the Supervisory Board.

Members of the Board of Directors are voted by the Supervisory Board, but the national legislation can allow, that the BoD will be voted by the General Meeting, as usual in the Czech Joint Stock Company. The BoD can be composed by only one member, but only in case, that the SE has only one shareholder. If not, at least 3 members are needed to establish the BoD. (Act on European Companies)

The Supervisory Board is voted by the General Meeting. The RoSE disallow the SB to do an executive role, but on the other hand gives to the Board rights to require all information needed for controlling function. The SB can be composed by only one member, no maximal number of members is stated. (Hodál, Alexander, 2005, p. 221-223)

3.3.3 Identical elements of both models

The RoSE includes some rules, which are same for the boards of companies of both organizational models and it do not allow any changes by the national legislation of the member countries.

[2] Act n. 90/2012 Coll., Business Corporations Act

For the decision making process is necessary to determine the conditions of the quorum. If the Statutes do not determine otherwise, for the resolution possibility must be presented or represented at least half of the board members and the decision has to be authorized by at least half of the presented or represented members.

The RoSE also determines the unitary function period, which has to be stated in the Statutes, but cannot exceed 6 years. After this period the members can be appointed for another period, but the Statutes can determine some restrictions.

As a member of SE body can be appointed also a legal person, unless the national legislation does not forbid it. This legal person must appoint an individual to represent it in the body. This individual must be eligible to enter the body in accordance with national legislation. Czech legislation does not allow this option. (Hodál, Alexander, 2005, p. 223-225)

3.3.4 General Meeting

The General Meeting of SE is the highest body of the company. Its competences are given by the RoSE and also by the national legislation. According to par. 54 of the RoSE the General Meeting must held at least once per calendar year until the 6 next months after the end of accounting period. National legislation of some countries can require the meetings more frequently, typically for companies in financial sector. (Business Corporations Act)

The GM makes decision in all cases, which are given by the national legislation for joint stock companies, but also in cases, which are specific only for SE. These specific cases are especially:

1. transfer of the SE registered office to another Member Country
2. appointing the members of the Supervisory Board, the Governing Board and particularly also of the executive body
3. transformation of SE to national Joint Stock Company

The RoSE does not regulate the position of the shareholders during the meeting. This part is regulated only by the national legislation of each member state. (Hodál, Alexander, 2005, p. 229-234)

3.4 Financial structure of SE

The financial structure of the European Companies is practically same as for the Joint Stock Companies. According to the par. 1 of the RoSE are the SEs obliged to create a Registered Capital which has to be divided to shares and has to be expressed in Euros. The minimal amount of RC is determined to 120.000 Euros, the maximal amount is not limited. In case that the national law requires higher minimal RC for companies doing business in some field, the SEs are obliged to create this Capital in that amount. The Companies are also obliged to create a Closing Financial Statement, which has to be created for each economic year and expressed in Euros. On the other hand the par. 67 of the RoSE enables Member States, which do not entered the third stage of the European Economic and Monetary Union, prescribe to Companies the duty to deposit the RC and create the CFS in the currency of the Member State. In this case the national law has to allow the possibility to express the RC and create the CFS parallel in Euros.

In the Czech Republic are SEs, according to AoSE, obliged to state the RC and create the CFS in Czech Crowns. It also allows to publish these data in Euros. According to RoSE has to be used for the conversion the exchange rate, which was valid the last day of the month preceding the month, in which was the Company established. Due to this fact there occurs a problem, because for the following documents, such as for the CFS, has to be used the exchange rate of the Foreign Exchange Market, which was declared by the CNB at the end of the day, in which was the Statement created. This will result in situation when the assets and liabilities of the company will not be balanced. The solution of this problem was not found to this time. (Dědič, Čech, 2006, p. 291-298)

The next very important part of the company´s financing is the taxation system. As well as the whole financial structure, also the taxation duties are for the SEs mostly about the same as for the Joint Stock Companies. The problem of taxation is not determined by

the RoSE, because the Member States have very different tax conditions in some cases. Due to this fact these regulations have to be determined by the national law of the Member State, in which has the Company its registered office. (Accounting Act)

In the Czech Republic the SEs have the same tax conditions as the Czech Joint Stock Companies. For example from the point of view of the corporate income tax, the SEs are subjects of the unlimited tax liability. The tax is calculated not only from the domestic income, but also from any other worldwide incomes of this company. The SE is also obliged to submit a Tax Return for each calendar year, according to the Accounting Act. The Tax Return must be also submitted after the successful transferring of the registered office. The time period for its submission is the last day of the month following the month, in which the office was transferred. (Nerudová, 2005, p. 120-121)

3.5 Forms of establishment

The process of establishment of the European Company is in many ways very different than the establishment of the classical Joint Stock Company. The process of SE´s establishment is strictly determined by the RoSE and it allows only very small space of the adjustment by the national laws. The RoSE includes the set of constraints which influences the process of establishment which has to be fulfilled. There are four main restrictions:

- restrictions of subjects, which can establish the new SE
- restrictions of forms of SE´s establishment
- restriction of need of the supranational element
- restriction of the registered office of the new SE

As mentioned above the SE can be established only in specified ways by defined subjects. The RoSE specifies in detail for every form of establishment the subjects (legal entities), which can establish the SE by this form. This subjects are usually legal persons (mostly Public or Private Limited Companies). The individuals can directly estab-

lish the European Company only by formation of a holding SE. But also in this case the major role is entrusted to legal persons (in this case they are called “promotional”).

The promoters must also fulfill the condition that they were establish under the national law of some Member State and their real and registered office is placed in the EU. On the other hand paragraph 5 of the RoSE gives option to Member States to allow the establishment of SE, which registered office should be placed in their territory, by the legal persons with real office outside of the EU. These legal persons has to fulfill another two conditions, which means that they were established under the law of some EU Member State and has its registered office in that State. This legal person must also have a *permanent and effective relationship with the economy of the state by which are they governed.*

It does not mean, that the SE should not been accessible for investors and shareholders from the states outside the EU. As mentioned before, the process of establishment of the holding SE can enter as founders also companies which do not have their office in any Member State. The shareholders of the SE can be from beginning any individuals or legal persons from any country in case that they are also shareholders of some company with the registered office in some Member State. The condition that the process of merger can enter only the companies with their registered office in the EU does not influence the necessity of the shareholder´s seat. The RoSE also does not determine any condition of transfer of the shares which can be then sold to any subject.

The foreign shareholders can acquire the share in any SE in two ways. Firstly they can establish a SE by merger or a holding SE. The second possible way is obtaining shares from founders listed in par. 2 and 3 of the RoSE. In case they do not fulfill the conditions of SE establishment, they have to establish the SE by some other subjects, which have this right and then obtain its shares when the new SE is established.

In the following pages the paper will focus on the forms of the SE establishment. There exists four main forms of establishment according to RoSE. (Dědič, Čech, 2006, p. 63-70)

3.5.1 Formation by merger

The first option how to establish a new SE is a merger of at least two Joint Stock or European Companies if they fulfill the condition that at least two of them are governed by the law of different Member State. Also there is a possibility of merger of the parent company with its subsidiaries. The registered office of the new SE can be placed in any Member State, it depends only on the choice of the owners. The merger can be done by two different procedures – by the acquisition or by the information of a new company. In the first case the legal entity of SE will have the newly formed company, in the second case the legal entity will have the successor company.

The basic point of a merger is the *Project of merger* which have to fulfill the requirements stated in par. 20 of the RoSE. Also any other statements can be determined by the merging companies in that project. The next step of this procedure is publishing the information about the members of merger and also about measurements of protection of creditors and minority shareholders. This necessary requirement is stated in par. 21 of the RoSE. This project has to be approved the general meetings of the founding companies and then each company has to ask a court, notary or another competent authority in its State for confirmation, that all steps needed for the merger according to EU law and also national law were done correctly and completely.

In the following pictures are described two of the possible ways of merger:

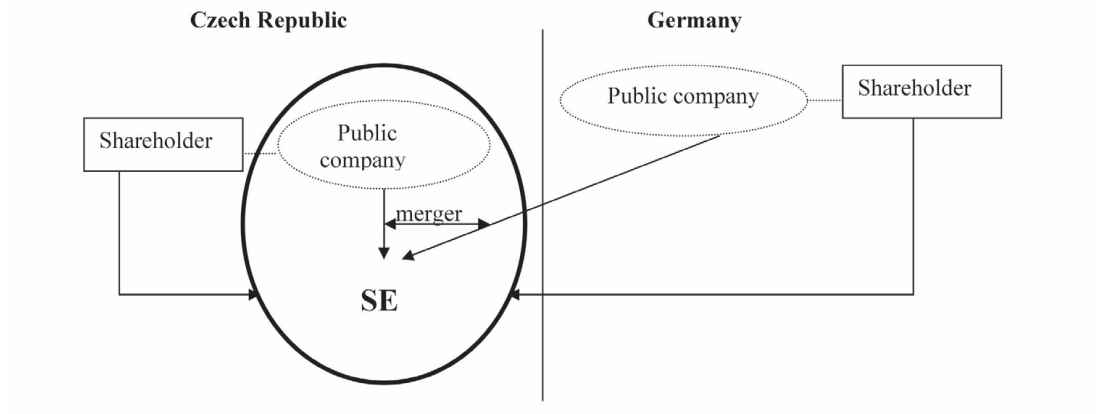

Figure. 1 Scheme of formation by merger to original Member State

Source: Nerudová D., Societas Europaea - Tax and legal aspects, 2005, p. 122

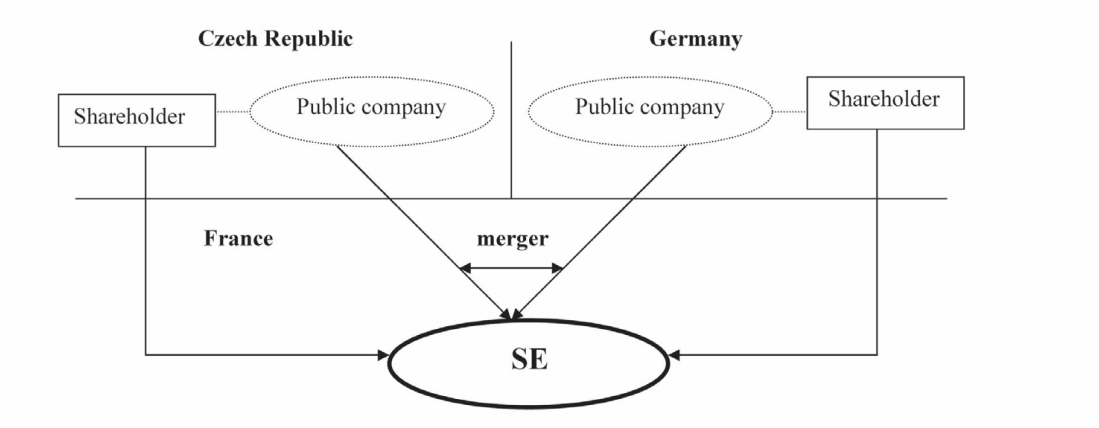

Figure. 2 Scheme of formation by merger to different Member State
Source: Nerudová D., Societas Europaea - Tax and legal aspects, 2005, p. 122

Assets and liabilities of each founding company are transferred to the new SE, their shareholders become the shareholders of the new SE and the founding companies disappear. The process of merger is finished by enrolling the new SE to the Business Register and after this act it cannot be canceled. (Pokorná, Holešovský, Lasák, Pekárek, 2014, p. 391-392)

3.5.2 Formation of a holding SE

The second option how to establish a new SE is formation of a holding company. The holding SE can be established only by at least two Joint Stock Companies or Private Limited Companies which were established under the national law of some Member State. These companies must also have the registered office and the headquarters in the EU. Expect of these restrictions, they also have to fulfill at least one of two important conditions. They have to be governed by the national law of some Member State or they must have at least two years a subsidiary company governed by national law of some another Member State.

The shares of the founding companies become a deposits to the new SE. As for the merger also for the establishment of a holding SE there is a necessary requirement of creation of the *Project of establishment of a holding SE*. This project has to be created uniformly by executive bodies of the founding companies. Primarily is the project cre-

ated to inform about the legal and economic aspects and describes the consequences of the establishment for employees and shareholders. The project also determines the minimal share of each founding company which has to put into the newly formed SE. This share must present at least half of the permanent voting rights.

The project must be then controlled by the expert witness who creates a report including the statement, if the proposed ratio of shares is fair and legitimate. If there are no existing obstacles then the project can be approved by the General Meetings of each founding company. If the project is approved by all General Meetings the shareholders have then 3 months to tell company if they are willing to put their share into the newly formed SE. The new SE is establish only in case that each company is able to fulfill the minimal amount of shares according to establishment project. If the founding company fulfill this condition, it is obliged to inform about that in a National Journal and from the day of publishing has the rest of the shareholders one month period to decide, if they also want to put their shares into the new SE. After this time the newly formed SE is inscribed to the Business Register of the Member State of its registered office. (Pokorná, Holešovský, Lasák, Pekárek, 2014, p. 392-393)

In the following picture is described one of the possible structure of a holding European Company:

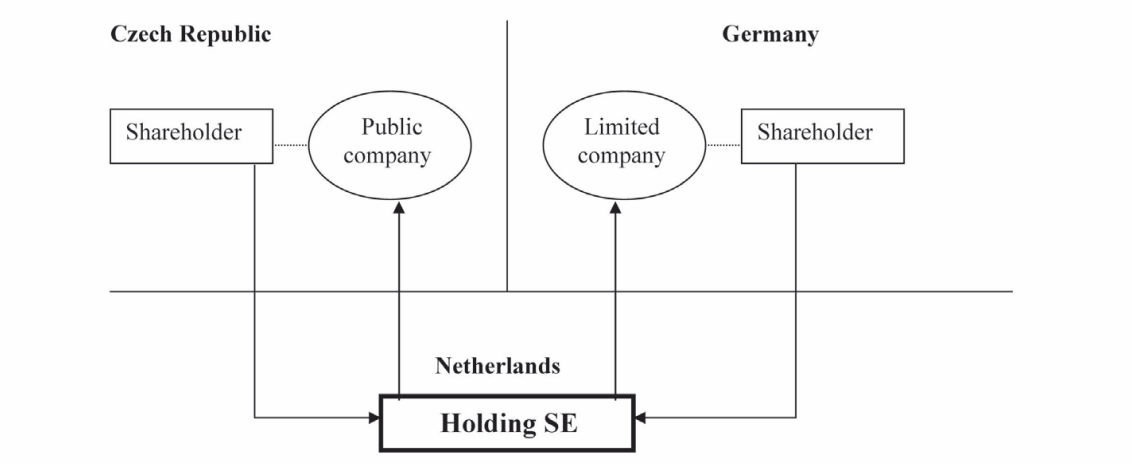

Figure. 3 Scheme of formation of a holding SE

Source: Nerudová D., Societas Europaea - Tax and legal aspects, 2005, p. 122

3.5.3 Formation of a subsidiary SE

The third option how to establish a new SE is a creation of subsidiary company. This option is enabled for companies which were established under the national law of some Member State and which have its registered office and the headquarters in the EU. They also has to fulfill the condition that at least two of them are governed by the national law of different Member States or they have its subsidiary company which exists at least two years and is governed by the national law of any other Member State. The company is able to be a participant on this process also in case that it has its branch office in some different Member State.

The companies which are involved in the process of establishment must fulfill the conditions of the national law in the State of their registered office determined for the Joint Stock Companies. (Pokorná, Holešovský, Lasák, Pekárek, 2014, p. 393)

In the following picture is described possible structure of establishment of the subsidiary company:

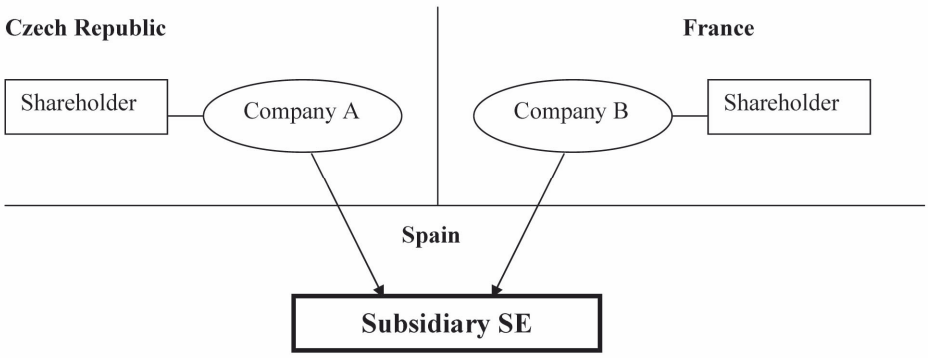

Figure. 4 Scheme of formation of a subsidiary SE

Source: Nerudová D., Societas Europaea - Tax and legal aspects, 2005, p. 123

3.5.4 Conversion of existing Joint Stock Company into an SE

The last possibility of SE´s establishment is dedicated only for Joint Stock Companies. The procedure is based on the conversion of the JSC to SE. The company which would like to do this conversion has to fulfill the condition that it has to be established under the national law of any Member State, it must have its registered office and headquar-

ters in the EU and also is obliged to have a subsidiary company governed by the national law of another Member State. The process of conversion do not influence the company as a legal person, because the conversion do not cause the termination of the company neither the formation of a new company. The RoSE also disallow the transfer of the registered office during the process of conversion. This should prevent from circumvent of the supranational element of SEs.

As in the others forms of establishment also for the conversion is necessary the *Project of conversion* which have to be prepared by the executive body of the company. This body is also obliged to prepare a report about the legal and economic aspects of the conversion which have to also describe the consequences of the conversion for employees and shareholders.

The project has to be published in a way determined by the national law of each Member State at least one month before the General Meeting, which should decide about the project. The General Meeting can decide about this project only if it was approved by any expert witness appointed in accordance with the national law. It is because the company must have clear assets in minimal amount of the Registered Capital of the newly formed company. In the following picture is described possible structure of establishment of the subsidiary company:

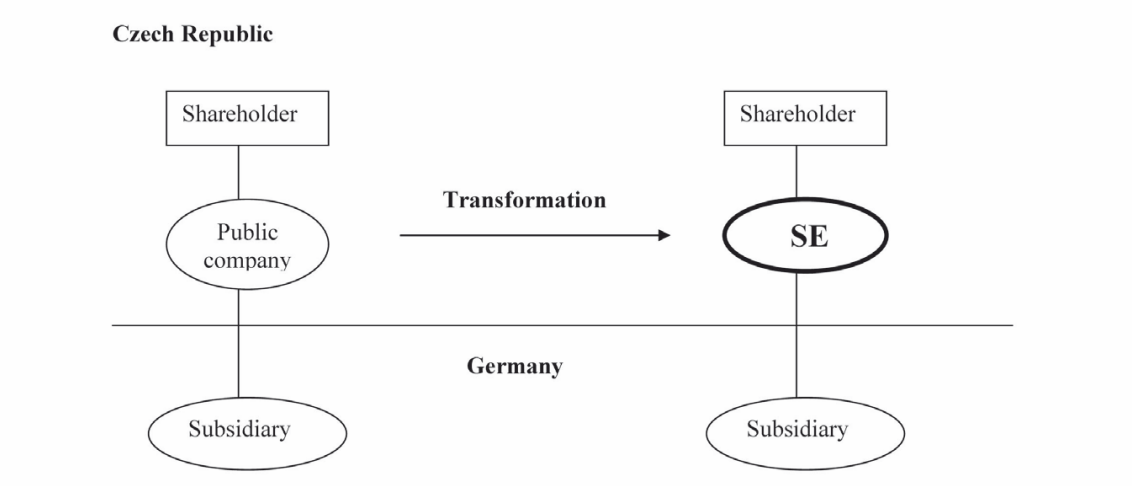

Figure. 5 Scheme of transformation of the JSC into an SE

Source: Nerudová D., *Societas Europaea - Tax and legal aspects*, 2005, p. 123

Par. 66 of RoSE also enables the possibility that the SE formed by conversion can be converted back to the JSC which will be then governed by the national law of the State in which has this SE its registered office. This process can be done after at least two years from the enrollment of the SE to the Business Register and after approval of at least two Closing Financial Statements.

The process of conversion can be used for example as a way of a transfer of the JSC to another Member State. The procedure is very simple. The JSC convert itself to the SE, then transfer its registered office to another Member State and after the period of two years makes a reverse conversion back to the JSC. (Pokorná, Holešovský, Lasák, Pekárek, 2014, p. 393-394)

3.6 Transferring the registered office

One of the biggest advantages of the European Companies is their possibility of easy transfer of the registered office. For the companies in the Czech Republic doing business under another legal entity it is almost impossible to transfer their registered office to another country. This option is comprehensively stated in the par. 8 of the RoSE a do not allow the Member States any major adjustments through their national legislation. The RoSE does not prohibit the situation, when the real and the registered office are not on the same place. Otherwise, in some countries is this situation prohibited according to their national law. During the process of transferring must be fulfilled two basic criteria:

1. The rights of the shareholders and creditors of the company have to be secured.
2. The transfer cannot result into extinction of the company or into creation of the new SE.

The process of office transferring has exactly defined procedure which has to be done for a successful transfer to another Member State. The first step is creation of the *Project of transferring the registered office*. This duty is entrusted to executive body and the project has to include exactly defined data, it means at least:

- name, office and ID number of the company
- suggested modifications of the Statutes[3]
- suggested time and organization plan of the transfer
- consequences of the transfer focused on employees involvement
- and the rights of SE shareholders and creditors

When the project is finished, it has to be inserted into the national Business Register. This has to be done at least 2 months before the General Meeting, which should approve the transfer. Than the executive body has to prepare a report about the economic and legal consequences for shareholders, creditors and employees. The shareholders and creditors has right to know the content of the transfer project. If all these conditions are fulfilled, the General Meeting can take place to decide about the transfer. For approval of the proposal it is needed at least 2/3 of votes of the presented shareholders, if the Statutes do not determine otherwise.

The SE cannot transfer its registered office, if it entered the process of winding up, bankruptcy or if another type of this proceedings is conducted against this company. (Dvořák, 2009, p. 731-737)

3.7 Involving of employees

The question of involving of employees in decision making of the European Company was one of the biggest problem during the negotiations between the Member States about creation of this legal entity. The problem was solved by withdrawing this question out of the RoSE and then by creation the new Council Directive (DoSE). This is known as the Davignon compromise. This compromise enabled the adoption of RoSE with the fact, that this question was then solved independently of the RoSE.

[3] The Statutes has to fulfill the criteria of national legislation in the state, where the new office will be placed.

For the SEs is the solution of this problem necessary because until it is not completely solved, the SE cannot be established. And the solution can be sometimes very difficult, because it has to follow national legislation at least of two Member States. One of them is the state, where the new SE will have its registered office, the others are States, where are the offices of the companies, which establishes the new SE. Due to that is the problem solved in DoSE solved in big detail which resulted in very complex rules which do not take care only of the employees of the new SE, but also of the employees of the founding companies and its subsidiaries. (Vik, 2009, p. 24)

The concrete solution in the SE has to be solved as an agreement between executive bodies of the company and the Negotiating Board, which represents the employees. The exact requirements of this agreement has to be determined by the national law, in the Czech Republic it is determined by § 54 of the AoSE. The agreement has to be done in the period of 6 months, which can be extended in case of need to maximally 12 months. If the agreement is not done also after this period, then it will be used the provisions of the § 53 of the AoSE.

The employees has also right to have impact on a process of voting the members of the SE´s bodies. This possibility is guaranteed by the § 64 of the AoSE. There exists only one exception in the case that the new SE was established as a subsidiary of another SE, then the § 64 of AoSE will be used only in the case, if the impact on the voting process had at least 50% of employees of the founding SE.

The possibilities of the involving of employees are basically three. Firstly, the employees can create a Board of Employees, which will then negotiate with the executive body of the company. Also the Board of Employees can decide that the involving of employees will be reduced only on the right of information in range determined by the national law of the Member State, in which has the company its employees. Finally, the employees can involve the decision making process by entering to the executive or supervisory body of the company. (Eliáš, Pokorná, Dvořák, 2010, p. 382-383)

4 Impact on the EU market

4.1 Total number of companies

This part of the thesis focuses on the position of the SEs on the European Market. For this purpose was used the Database of the European Companies provided by the European Trade Union Institute. This organization collects data about the SEs since year 2005. As first part of the analysis was necessary to calculate the total number of SEs. Following graph shows by year the number of newly established companies. These numbers were current on 30. April 2015.

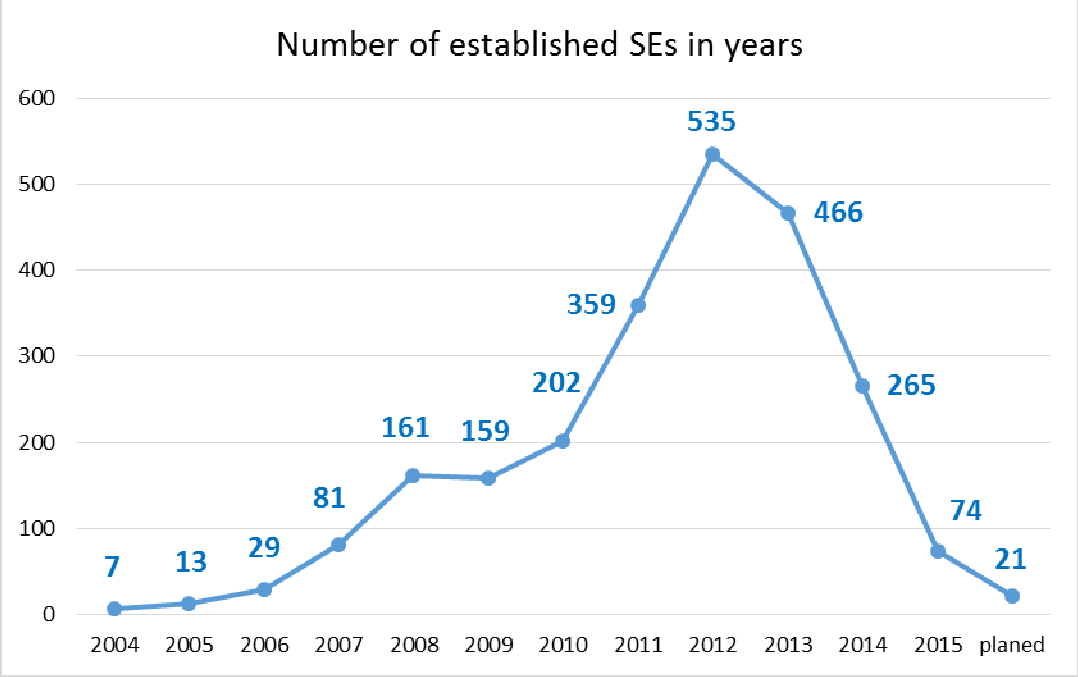

Figure. 6 Number of established SEs

Source: ETUI, SE Database, 2015; edited by author

From this graph we can find that the number of newly formed companies was increasing each year and reached the maximum in year 2012. Since this year it started to decrease mainly because of the two important factors. Firstly it was the effect of world financial crisis on the European market. The crisis started in 2008 in the USA and came to Europe in the end of 2010. Even though the companies were affected by this crisis in

2012 and they started to revise their business activities. The second main factor was the change of national legislation in the Czech Republic. In 2012 was finished the modification of the Czech Business Code and to the classical Joint Stock Companies were given new opportunities such as the possibility of the monistic organizational structure. And as mentioned in the following chapter because the huge percentage of SEs have their registered office in this country, this had to dramatically change the situation on the SE´s market.

4.2 Geographical distribution

Another important fact about the European Companies is their geographical distribution across the Community. Because of easy process of the office transferring there could be expected the wide range of distribution between all Member States. In the following graph are displayed the numbers of all companies which have the registered office in a given country as well as the companies with more than 5 employees. This is generally taken as a factor that the company is not established only for the future reselling.

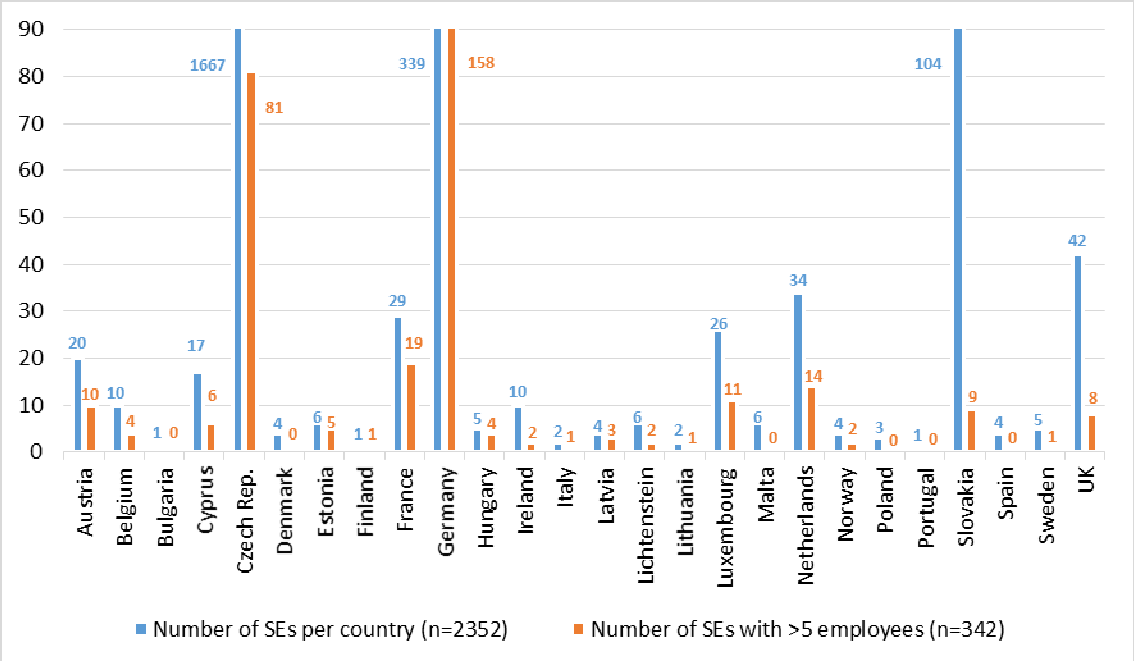

Figure. 7 Geographical distribution of SEs

Source: ETUI, SE Database, 2015; edited by author

As was previously mentioned there was expected the wide range of companies' distribution and also the fact that higher amount of companies will have their headquarters in countries like Cyprus and Malta because of their favorable tax legislation. Although this the analysis showed totally another results.

It showed that more than 70% of the companies have their registered office in the Czech Republic. Also it is interesting that almost 90% of the companies are situated in only three Member Countries. Except the Czech Republic are these companies placed in Germany and in Slovakia. On the other hand in Cyprus and Malta there are together placed only 23 companies which means only 1% from the whole amount. This could mean that these three countries have better conditions for the running the business under the legal form of SE, but this is not true as well.

When we look on the amount of normal SEs (with more than 5 employees) we can see, that the biggest number is in Germany and the ratio between the operating companies to the whole amount is about 47%. Better ratio in this way has only France, where almost 66% of the companies normally run the business. More than 50% ratio has then only Austria, but Luxembourg (42%) and Netherlands (41%) are also on the top of this ranking.

On the other hand in the Czech Republic from the whole amount of 1667 established companies only 81 of them normally run the business. This means that the operating ratio is around 5%. Quite better situation is in Slovakia, where this ratio is around 9%.

This situation is caused by two major factors. Firstly it is the fact that the Czech and Slovak Joint Stock Companies can use the monistic organizational structure, which is one of the biggest mentioned advantages of SEs, from 2012. In other Member States which allow this possibility it was available much earlier. Because of that grew up in these countries many companies which focus on the ready-made form of SEs with aim to resell them to customers who will be willing to pay for easy process of obtaining the SE. Due to this they skip the long process of establishment and become very quickly the owners of the European Company.

4.3 Forms of foundation

As mentioned above the RoSE enables to establish the SE in four different ways. Each of them has its own specifics and restrictions so the company which wants to establish the new SE has to carefully choose the type of establishment. This choice should be made in accordance to company´s current legal form, predicted expenditures and legal environment of a country, where the newly formed company will have its registered office. The following graph shows the number of all established companies for each possible type of establishment.

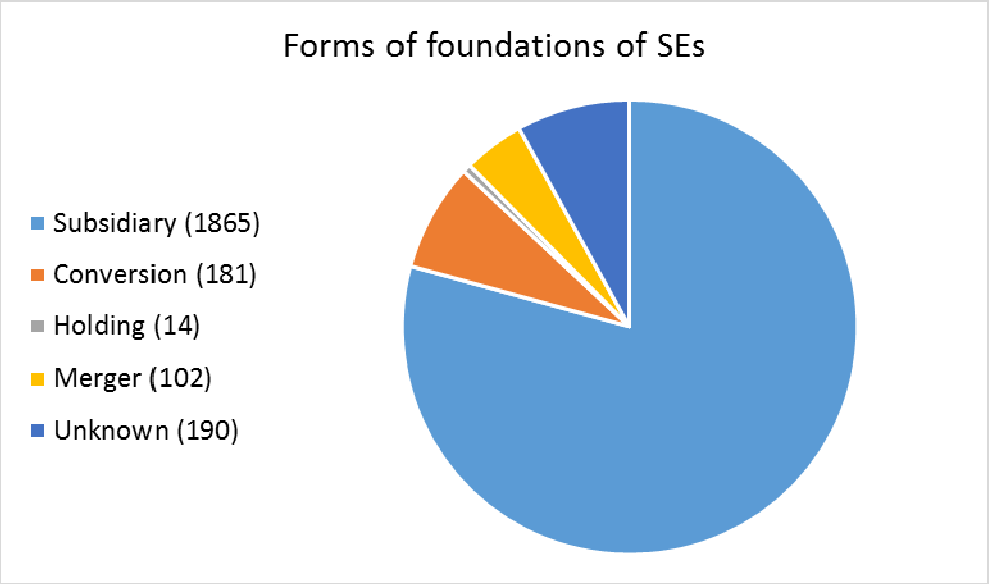

Figure. 8 Forms of foundation of established SEs
Source: ETUI, SE Database, 2015; edited by author

In the graph we can see that the most companies (around 79%) were established as a subsidiary company. The second most frequent type of establishment is a conversion of existing Joint Stock Company (around 8%), followed by the companies established by merger (around 4%). The least frequent type of SE´s establishment are the holding companies. In this time there exists only 14 companies established as a holding which is around 0,6% of the total amount of established SEs. For the rest of companies the database does not include any further data about their form of establishment. We can consider that these companies did not still fulfill all of the necessary steps of establishment and do not run any business. Because of that they are not so important for the analysis.

The imbalance between the types of establishment is caused primarily by the fact that the most of the SEs were established as a ready-made companies with the aim of future reselling. As was found out in the previous chapter, huge percentage of the companies are still established only for this purpose a do not make any business. Because of this the analysis does not describe the real percentage of operating companies and is not significant. For this purpose was made another analysis which obtains a data about establishment only from the companies which normally run their business. As a factor of difference was again chosen the number of employees which had to be equal or greater than 5. The results of this analysis are shown in the following graph.

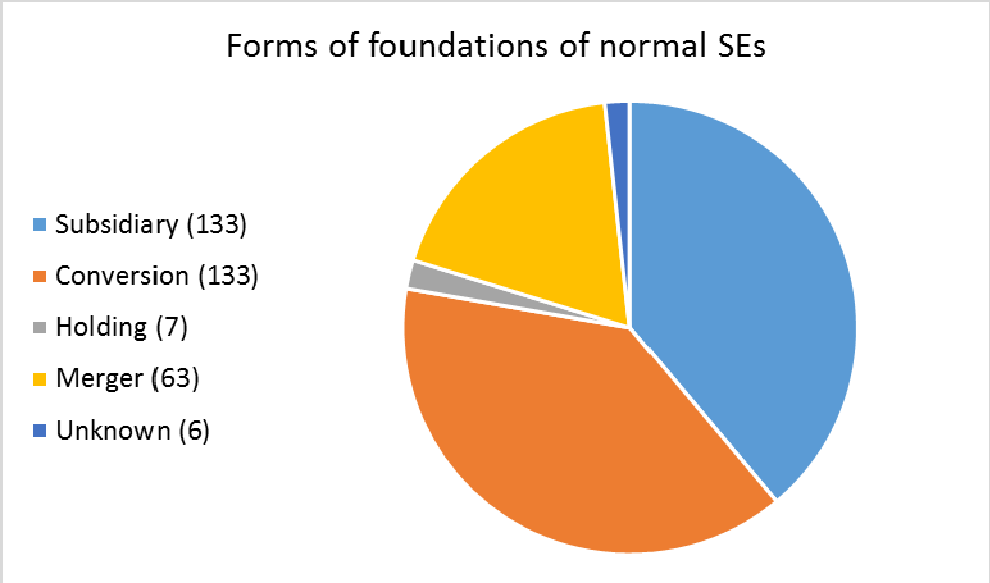

Figure. 9 Forms of foundation of normal SEs

Source: ETUI, SE Database, 2015; edited by author

In this graph we can see that the percentage is much different than in the previous example. Most of the normally operating companies were established as a subsidiary or by conversion (both 39%). Another 19% of the normal companies were established by merger and only 2% of these companies exist in a form of holding. Again there exist a few companies with unknown type of establishment. Because this number is very small we can consider that this is caused only by the incompleteness of the database. The reason why the most normal companies are established by the first two types is obvious. These types of establishment are for the companies the easiest ones and allows them to create a new SE much faster than using the different types of establishment.

4.4 Areas of business activities

From the economical point of view it is necessary to know for which type business activity it could be usable to obtain the company under the legal form of SE. Here it is a big problem to determine the exact number of companies running a business in a given market sector. It is again caused by the ready-made companies, which do not operate in any way and are only waiting for the new shareholders. Because of that the analysis was made only from the data of companies with 5 or more employees. These companies were divided to 9 major business areas which are most significant for the SE´s market. In the following graph are shown the results of this analysis.

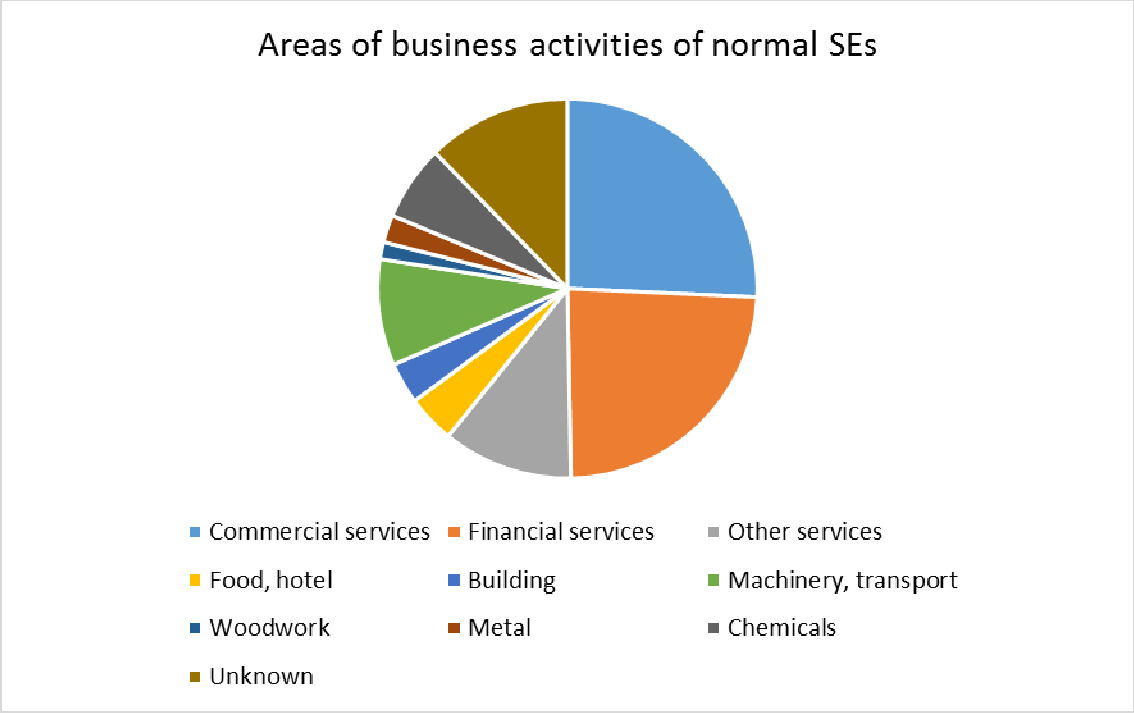

Figure. 10 Areas of business activities of normal SEs

Source: ETUI, SE Database, 2015; edited by author

From this graph is obvious on the first view that most of the normally operating companies, almost 64%, are focused on offering some services. Big percentage of these companies focuses mainly on the financial sector. Good example of a usability of the SE´s opportunities can be a sector of food and hotels in which operates 5% of the normal companies. These companies often operate in more than one country so they nicely ful-

fill the supranational element of the SEs. From the production companies operate under the legal form of SE only the big supranational companies, which are mostly focused on constructing or providing materials (metal, chemicals) or machines necessary for the building. Again this analysis is not complete at all because almost 13% of companies did not reveal their sector of business activity or the database does not contain these type of data.

Thanks to these data we can consider that the legal form of SE is more usable for bigger companies which sell their products or provide their services in more than one country so they can easily reach the mentioned opportunities of SEs. In the last 3 years the biggest increase of newly formed companies were in the machinery and metal sectors, from services the most increasing was the financial sector. In the future we can expect further increase mainly in that sectors, because these parts of the market are generally the most growing ones.

4.5 Types of organizational structure

As mentioned before, the European Company can be managed by two different types of the organizational structure. Following graph describes the ratio of usage between them.

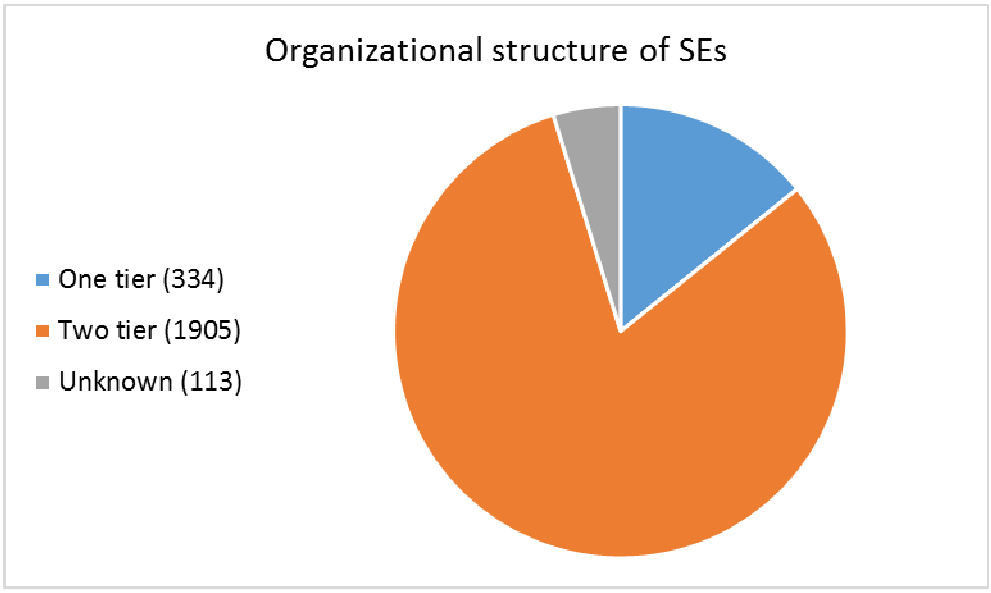

Figure. 11 Organizational structure of SEs

Source: ETUI, SE Database, 2015; edited by author

Although the possibility of the monistic structure was mentioned as one of the biggest opportunities of the SEs it can be seen in this graph that most of the companies, more than 80%, are using the dualistic model. This fact is caused mainly by the geographical distribution of the companies. It was mentioned that most of the companies were established and have their registered office in the Czech Republic, Slovakia and Germany. In these countries there exists a tradition of dualistic organizational structure in the Joint Stock Companies and because the SEs are much related to them, this tradition appears also in the companies operating under this legal form. As in the previous examples also here the database do not include the data about all companies and for some of them this type of information is missing.

Again there occurs a problem of analysis significance which is caused by the established ready-made companies. For this purpose was the analysis made also only from the data of the normally operating companies which are shown in the following graph.

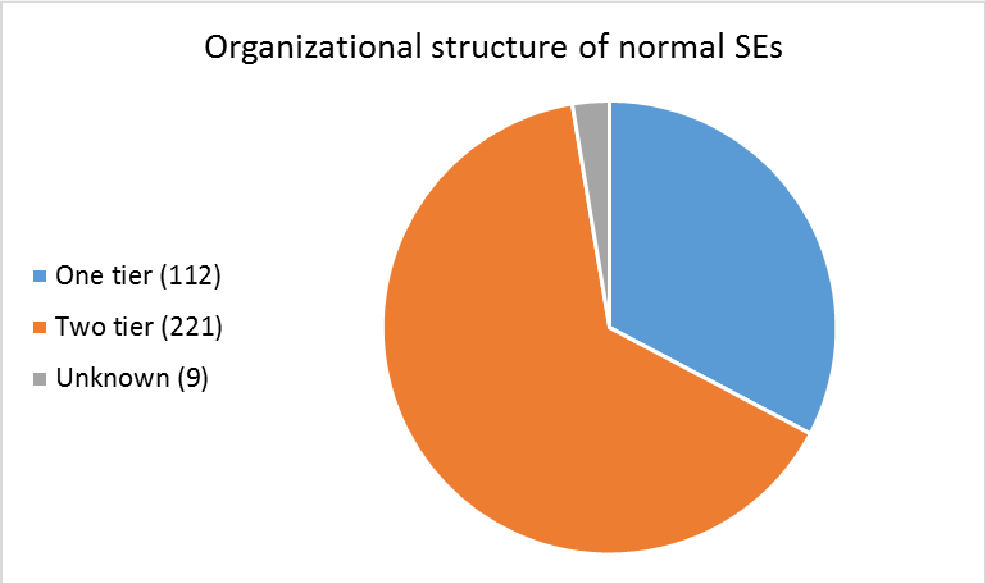

Figure. 12 Organizational structure of normal SEs
Source: ETUI, SE Database, 2015; edited by author

Here we can see that the ratio between the two structure types is much smaller than in the previous example. Otherwise, the dualistic model of the company´s management still dominates. Expect the geographical distribution, as was mentioned above, another

important fact which influences the choice of the organizational structure is the size of the company. The legal form of SE is still more usable for bigger companies with the supranational business interests. This means that these companies operates with huge amount of money and are responsible for many transaction – production, operational and also financial. In this case it is much safer to divide the executive and supervisory power to two different bodies.

Firstly, the shareholders do not have to rely only on one body (or person in case of a general director) which have the full executive privileges and can easily harm the company. Secondly, everybody is only a human which can make a mistake, so the supervisory role of another people can help the decision makers to stay calm and they can concentrate better on their work. Because in case they would make a bad decision, the supervisory body can prevent the company from damaging.

Because of this fact it can be expected that bigger percentage of the newly formed companies will have the dualistic organizational structure. The data from the last 3 years approves that expectation, because almost 70% of the newly formed companies in that period operates with divided executive and supervisory power.

4.6 Companies with transferred office

The possibility of easy transfer of the registered office from one Member State to another is one of the most important and mentioned opportunities of the SEs. If the company fulfills the criteria for the transfer according to the RoSE and the national legislation of the State in which it operates and if the General Meeting allows this transfer, the company can move its office to another EU Member State. If this happens, the company is then governed by the national law of this state. Especially it is important to mention here the tax aspects of this transfer, because the taxes are one of the most frequent reasons of the office transferring.

On the other hand to this time only 83 companies, which means 3,5% from the whole amount, have used the option of transfer. And only 28 of them normally run their business. This is caused mainly by the fact that more than half of the currently established

companies has been formed in the last 4 years. This means that these companies are quite new on the market and they still did not have the reason or the possibility to use this option. The following table shows the number of companies, which entered (green color) or leaved (red color) the given country.

AT	BE	BG	CRO	CYP	CZE	DEN	EST
9/3	2/2	0/0	0/0	6/0	6/6	0/9	0/0
FIN	**FR**	**GER**	**GR**	**HUN**	**ICE**	**IR**	**IT**
1/1	5/7	8/8	0/0	1/1	0/0	2/1	2/0
LAT	**LIE**	**LIT**	**LUX**	**MAL**	**NE**	**NOR**	**POL**
0/0	0/0	0/0	11/14	4/0	4/18	0/2	2/0
POR	**ROM**	**SVK**	**SLO**	**SPA**	**SWE**	**UK**	**TOTAL**
0/0	0/0	2/3	0/0	4/0	0/2	15/7	83

Tab. 1 List of inbound and outbound transferred companies.

Source: ETUI, SE Database, 2015; edited by author

Here we can see that the most companies, which transferred their office, moved to the United Kingdom. It can be caused by the system of shares evidence, because this country is really friendly to the shareholders and offers them the biggest possibility of the shares hiding. Another successful countries, which are interesting for the shareholders from the point of view of the seat, are Luxembourg, Austria and Germany. The reason here can be the economic power. Great ratio between entering and leaving companies have Cyprus and Malta. Here it is caused by the tax legislation of these countries. It is known that these two states have the most friendly tax duties in Europe.

On the other hand the state with the biggest number of leaving companies is the Netherlands, followed by the Luxembourg and Germany. This can be for someone a big surprise, because all of these countries are economically strong. The reason can be again the taxes, because from the point of view of the taxes these countries are not so friendly for the companies. The tax rates here are quite high and the systems are very strict. Also the insurance rates are in these countries very high. For example Germany has huge insurance contributions – together is from the employee´s gross salary paid more than

40% to the state budget for this purposes. Also the corporate income tax connected with the trade tax in amount of 33% is one of the highest in Europe. (Finance.cz, 2015)

Similar situation is in Denmark and Norway. From these states are the companies only leaving and any of them is willing to come in. Here the most possible reason is, as well as in the previous cases, again the taxes and compulsory contributions for the social and health insurance, which are in these two states the highest in Europe. (Finance.cz, 2015)

4.7 Important companies running as SE

As was mentioned, the legal form of SE has many opportunities for companies running their business under it. On the other hand most of these opportunities are much easily reachable and usable for developed companies. In case of higher amount of employees we can mention the possibility of involving them to management processes, in case of higher turnover or profit the company can easily move its seat to another EU Member State and use the advantages of lower tax duties. Also this possibility of the seat transfer can be useful for companies doing business in more than one country.

These advantages of the SEs are surely the main reasons why also some big companies decided to change their legal form to SE and run their business under it. The exact reasons are most likely different for each company, but few main characteristics have all of these companies same. Firstly, all of them do their businesses in more than one country, and although that most of them are operating through the whole Europe, all of these companies have their registered offices in only three economically strong countries, which are Germany, Austria and France.

In the following table are listed the most known and developed companies operating on the European Market. It is obvious that all of them are very developed with long history and well-known brand. Their business activities mostly belongs to the main market sectors which were mentioned in the previous chapters. Also the type of organizational structure corresponds to the previously mentioned expectations. The companies, which have the registered office in Germany and Austria are managed by the dualistic system. The only exception is Puma which is managed by the Administrative Board. Other

companies, registered in France, are managed by the one-tier system. Again it comes from the country´s tradition, because in France most of the national Joint Stock Companies are managed by only one board. (Puma.com, 2015)

Name	Year of SE establishment	Area of business activities	Number of employees	Organiz. structure
Allianz	2006	Insurance, funds	177.000	Two-tier
Basf	2008	Chemicals	95.000	Two-tier
BP Europa	2010	Petroleum, gas	96.000	Two-tier
Christian Dior	6000	Wearing apparel	6.000	One-tier
Dekra	2010	Science activities	22.000	Two-tier
E.ON	2012	Electricity, gas	62.239	Two-tier
Eurotunnel	2014	Transport	3.744	One-tier
LVMH	2015	Retail trade	114.635	One-tier
MAN	2009	Car manufacture	55.000	Two-tier
Porsche	2007	Car manufacture	11.500	Two-tier
Puma	2011	Textile manufacture	10.836	One-tier
RWE	2012	Electricity, gas	18.000	Two-tier
Strabag	2004	Civil engineering	73.000	Two-tier
Webasto	2012	Car equipment	10.000	Two-tier

Tab. 2 List of important companies operating under the SE

Source: ETUI, SE Database, 2015; edited by author

In the future we can expect that the SE legal form will be more interesting for the bigger companies. Few of them have just started the establishment process and they are now making the steps to become the SE. On these companies focuses the following chapter.

4.8 Planed European Companies

When the new SE is being established, it has to fulfill an exactly given criteria according to the RoSE. The database contains also information about these companies, which entered the process of establishment. In this time there are 21 companies which are willing to become the SE. The most important are three of them, listed below.

4.8.1 Airbus Group

Surely the most important one, which has to be mentioned, is the Airbus Group. The company is, together with the Boeing, the leader in the manufacturing of planes for public transport. The company will be registered in the Netherlands with the one-tier organizational structure. The last entry about the number of employees is from the year 2013, when the company employed 140.405 employees worldwide.

4.8.2 BWIN Party Digital Entertainment

The second important company planning to become the SE is BWIN. It is one of the biggest companies in the world providing the services connected with betting and gaming. It offers the bets on sport and cultural events and it also runs an online casino. It will be established by merger of the Austrian and British BWIN branches and in year 2013 it had 2770 employees. If the process will be successful, BWIN will be the first registered SE in Gibraltar.

4.8.3 TOM TAILOR Holding

The last of the important companies is the clothing giant Tom Tailor which is now going to operate in Europe through its subsidiary in form of SE. This subsidiary will be established by merger of its German and Austrian branches and will have its seat in Hamburg. In 2014 the holding employed moreover 6500 employees.

As well as in the previous chapter also for these companies is the conversion to SE a logic step, because they can easily use its mentioned opportunities. In the future we can expect the increase in number of this type of companies, because if this change will be profitable for the companies, their competitors will surely follow them.

5 Discussion

The legal form of the European Company is very similar to the classical Joint Stock Companies, but it has a few characteristics which are specific only for this type of companies. Generally we can say that doing business under this legal form is more suitable for the developed companies with higher budget and also with higher amount of employees. These companies can easily reach the mentioned opportunities and also there are more likely able to cover the expenditures connected with the establishment of the new company. Especially when they are forming the holding company, they have to calculate with the long procedure and high expenditures. This can be a reason why now exist on the market only a very small number of SE holdings.

As the biggest opportunity of the European Companies still remains the possibility of easy transfer of the seat to another EU Member State without need of changing the legal form. This can be mentioned as the biggest advantage of this process, because only the SE can be transferred from one country to another in accordance to legal continuity. For the companies with another type of legal form is very difficult to transfer their seat to another country, some countries do not allow this option at all.

On the other hand the European Court of Justice solved the question of transferring the seat of a company established under the national law to another country. The result was the statement that current European legislation do not prohibit this option, but the Member States are entitled to prohibit it. There could be interesting to monitor the future development in that case, because there will surely appear more and more companies, which will be interested in the cross-border seat transfer. (Curia.europa.eu, 2008)

Another advantage of the SEs can be a tax optimization which is again connected with the seat transfers. For example the countries like Malta or Cyprus can be presented like the countries of “tax paradise”. In this time there are established only a few companies with SE legal form in these two states. As was mentioned this is caused by the low time of operation of many SEs. In few next years we can expect the increase of this number

because the companies will better analyse their possibilities how to decrease their tax liabilities and they will start to explore the opportunities of these countries.

Another important feature of the SE for the shareholders is the possibility to keep their names in anonymity. Few years later this was one of the biggest advantage of SEs and also the reason why many people decided to obtain them, mostly in a form of ready-made company. But because this property is not governed by the European Law but the national laws of Member States, now the conditions for the publishing of shareholders are in almost all of the EU countries mostly the same as for the classical Joint Stock Companies. This means that now there exists any reason why to run the business under the SE for this purpose.

Some companies run their business under the SE legal form only because their management thinks that this improves the image of the company. But the question of the image can be very disputable. Surely we can find persons for whom is the SE legal form some guarantee of prestige. On the other hand there are also many individuals and companies which look on this legal form with distrust. This is caused by the fact that this legal form is still relatively new and has no tradition in the business environment. But this will surely improve in the following years if more and more companies will use the SE form.

One of the biggest disadvantages of the SEs is the high amount of compulsory Registered Capital, which has to be, according to RoSE, at least 120.000 Euros. So in case that a company will operate only in one state, it is better to choose the form of classical Joint Stock Company. For example in the Czech Republic, where the most of the SEs are established, is the minimal amount of Registered Capital for JSC 2.000.000 CZK (c. 71.500 €) and in Germany it is set to 50.000 €. The only country, which do not request the minimal amount of Capital is the United Kingdom, where this duty was abolished in 2006.

6 Conclusion

The aim of this thesis was to summarize the specifics of the European Companies and to analyse their impact on the EU market. It describes the legal specifics of this type of companies and tries to evaluate its pros and cons. Also it summarizes the possible ways of company´s establishment which are strictly governed by the European Law, especially by the RoSE. Running the business under this legal form can be much more complicated as for example under the JSC, the problem can occur for example in case of employees involving to the decision making process. From the analysis of the current SE market is obvious that this legal form is still not used as much as it could be and as was expected. The number of 342 normally operating companies is quite low and it perfectly shows the willingness of the companies to run the business as a European Company which is really small.

In the results of the analysis we can see that the largest activity of SEs is in the Central Europe and in Germany, where almost 75% of the active companies are registered. Also we can see that most of these companies were established as a subsidiary of another SE or they were formed by conversion of an existing Joint Stock Company. These two types of establishment are the easiest ones and they dominate the EU internal market.

From the economical point of view the most important part of analysis was the examination of the type of business activities which these companies have on the market. From the results we can consider the future development mainly in the financial sector and in the sector raw materials production. We have also found out that although the SE legal form offers the companies the possibility of one-tier organizational structure, most of them are managed by the two-tier system. Mainly it is caused by traditions of the countries where the SEs are established.

Another important part of the analysis was the examination of the use of seat transfer which is assessed to be the biggest advantage of the SE. From the results of the thesis it is obvious that the companies do not still use this option at all, because from the total amount of 342 normally operating companies only 28 of them used the possibility of the

seat transfer. On the other hand we can expect a future development in this area, because the companies still need some time to calculate positives and negatives of their current placement and to compare them with the opportunities for tax optimization.

We can also expect very soon some new “big players” on the SE´s market. Maybe the most important one will be the American aircraft giant Airbus as well as the well-known brand Tom Tailor. The entrance of these large companies on the market can help to increase the common knowledge of the SE legal form and also to improve the untrusting view in the business environment.

Although that this legal form exists and is used more than 11 years, it is still found by the major part of EU market as something new and trustworthy. Mostly it is given by the low number of companies operating under this legal form. Also the important fact that these companies are established under the EU Law plays a big role in the general perception. Therefore, the main final question in the end can be if the long process of negotiations about this legal form was successful and if it offered the society something useful. At present it does not seem like this at all, but maybe the next years to come will show us an opposite results.

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