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Is the Number of Established Societas Europaea in the Czech Republic Still Puzzling?

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Summary: The number of European companies founded in the Czech Republic can be described as the Czech puzzle, according to the paper "The Czech Societas Europaea Puzzle" by Horst Eidenmüller and Jan Lasák. They are concerned with the question why two thirds of all European companies from all countries of the European Economic Area (EEA) are established in the Czech Republic. At the same time, there is a presumption that this phenomenon of ready-made European companies will pass away. Though, the aim of this paper was to analyse the development of newly registered European companies in the Czech Republic after 2014 and compare it with the period until the end of 2013. The authors conclude that the growth rate of European companies registered in the Czech Republic is approximately the same. By contrast, annual growth rates are rising in Germany and Slovakia which also have had a considerable number of SEs.

Keywords: European Company, Czech corporation law, shelf/ ready made companies, Czech Societas Europea Puzzle, UFO companies

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1. Introduction

A European company (hereinafter referred to as 'SE') can be understood as a multinational company which acts as a legal person and is governed primarily by the European law. It can also be found under the name European joint stock company or Societas Europaea. Each European company has the abbreviation SE in its name. The European Company is regulated by Council Regulation No. 2157/2001 on the Statute for a European Company and subsequently by Council Directive 2001/86 supplementing the Statute for a European Company with regard to the involvement of employees. Both regulations entered into force on 8 October 2004 and also apply to the countries of the European Economic Area (EEA). In the Czech Republic, the European company is regulated by the Implementing Act No. 627/2004 Coll., on the European Company, as amended. Council Regulation (EC) No 2157/2001 describes four basic ways of establishing a European company: merger, transformation of a public limited company, holding and the establishment of a subsidiary. At the same time, the transnational principle must be met. However, if a European company is set up by a parent European company, there is no longer a European dimension required, in other words, the involvement of companies from at least two EEA countries is not necessary. The company is established by a memorandum of association. Each European company acquires its legal personality on the day of its incorporation. Under Article 12 of Regulation No 2157/2001, any European company is to be entered in the commercial register in which it has its registered office.

The European company should have been more interesting for the founders from the perspective of transnational business than individual national company law. Otherwise, there would be no need to introduce these companies into European law at all. In 2010, a European Commission report[1] on European companies was issued. This was also required by the Council Regulation[2], which asked for a report to be issued within five years of the entry into force of this Regulation. The report contains a list of the most important positive and negative aspects and factors that influence the establishment of European companies in the European Union. The positive aspects for the establishment of a European company are mainly the following: the European image of the European company, the transnational nature of the company, the possibility of relocation, the

[1] The application of Council Regulation 2157/2001 of 8 October 2001 on the Statute for a European Company (SE): REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL. In: *ec.europa.eu* [online]. 17.11.2010 [cit. 2020-01-20]. Available at: https://ec.europa.eu/transparency/regdoc/rep/1/2010/EN/1-2010-676-EN-F1-1.Pdf

[2] Council Regulation No. 2157/2001 on the Statute for a European Company, Article 69.

possibility of cross-border mergers, the potential for reorganization and the possibility of group simplification. Easier financing could also be seen as an advantage, since the legal form of a European company ensures a better position in dealing with banks and in requests for EU support. The disadvantages of a European company include the costs of setting up, time-consuming and complex procedures and legal uncertainty. The total establishment costs range from approximately EUR 100 000 up to EUR 2 to 4 million. One of the most expensive foundations in history was Allianz SE and BASF SE (EUR 95 million and EUR 5 million).[3]

According to this report, as of October 10, 2010, 657 European companies were registered in all EEA commercial registers. At first glance this seems to be good news, but unfortunately, on closer examination, the analysts found that most of these companies do not do any business. More than four fifths of these companies were empty. These are the so-called shelf / ready-made companies or companies without employees. Thus, only less than one fifth of the companies fulfilled their purpose for which they were set up, namely to carry on business within the EEA. The authors of the report state that the setting up of ready-made SEs by professional service providers in these countries can be explained by the fact that the system of ready-made companies available for sale is common here (in the Czech Republic and Germany). According to respondents in the public consultation, companies buy ready-made SEs mainly to save time and costs and avoid complex and uncertain start-up procedures. A number of respondents stated that ready-made SEs also enable SEs to be set up without having to meet a demanding cross-border element or having to negotiate employee involvement. The ability to avoid difficult requirements is particularly important for smaller companies. On the other hand, workers' organizations are concerned that ready-made SEs could be used to circumvent the provisions of the SE Directive concerning the involvement of workers. In this context, it is necessary to mention the lack of information on many ready-made SEs after their activation. This is partly explained by the fact that annual accounts are published retrospectively. Another explanation may be that due to their small size, some companies are required to disclose only the abridged balance sheet and the notes on the financial statements. In some cases, the accounts are not available at all without any justification"[4].

The phenomenon of the large number of SEs in the Czech Republic was also dealt with by Czech and European experts, including academics. For example,

[3] The application of Council Regulation 2157/2001 of 8 October 2001 on the Statute for a European Company (SE): REPORT cit. quot., pp. 4–5.

[4] The application of Council Regulation 2157/2001 of 8 October 2001 on the Statute for a European Company (SE): REPORT cit. quot., p. 7.

the aforementioned authors of the article "The Czech Societas Europaea Puzzle" Horst Eidenmüeller and Jan Lasák in 2011 believed that the reason for this fact is the simpler possibility of effective corporate governance, where the choice between monistic and dualistic management is important, moreover, it can bring considerable economic benefits. The Czech implementing law for a European company regulates the model of a dualistic European company[5], where there can be only one member on the management and one member on the supervisory board, whereas the board of monistic society must have at least three members[6]. Though surprisingly, the choice of dualistic (and not monistic) management with fewer members is being chosen in the Czech Republic to simplify the management of a company[7]. The authors conclude that according to their survey among 88 Czech SEs, there are strong reasons why Czech companies chose this form of society, such as simplifying the internal governance structure and a positive European image of SE. At the same time, however, they report that overall demand is lower than the number of SEs and they consider the numbers of shelf SEs to be too optimistic[8].

However, according to later work from 2013 by Jan Cremens and Anders Carlson[9], that monitors the functioning of the SEs, new European subsidiaries in the Czech Republic are being steadily created further. Moreover, compared to the numbers of national companies, they are considerable and their turnover is constant. The analysis is complicated by the fact that registrations require minimal information. The authors of 15-page study on this topic further describe the typical creation process of a SE in the Czech Republic that takes place gradually. "*After registration, nothing happens for a while. This period can sometimes be from 6 months to a year. Then the changes start, share capital is paid up, companies move to a new address and new board members are coming and going. New or anonymous shareholders enter, there is often a new company name, there are changes in the share structure, in the trade register and in the VAT register and sometimes some employees can be found in the statistical register* ".[10]

[5] Implementing Act No. 627/2004 Coll., On the European Company, as amended, § 23–26.

[6] Act No. 513/1991 Coll., Commercial Code, as amended (the "Czech Commercial Code"), section 194 (3).

[7] Eidenmüller, H. G. M., Lasak J., *The Czech Societas Europaea Puzzle* (December 7, 2011). ECGI – Law Working Paper No. 183/2011. Available at SSRN: https://ssrn.com/abstract=1969215 or http://dx.doi.org/10.2139/ssrn.1969215, p.10–14.

[8] Eidenmüller at al., cit. quot., pp. 10–14, 16.

[9] CREMENS, J., CARLSON. A. *The SE in the Czech company law landscape - an introduction*. Brussels: ETUI aisbl, 2013, ISBN 978-2-87452-283-3.

[10] CREMENS at al., cit. quot., p. 110.

They also state that it seems that European company is in fact the first and, above all, domestic solution for small companies that do not want to fulfil the obligations of Czech corporate law. The fact that it is possible to create a company with a very simple internal structure, according to which a legal entity has only one member of the Board of Directors, seems to be the key explanation for the high incidence of SE in the Czech Republic. SE is therefore an alternative to a domestic limited liability company. The legal form is very similar to a Czech joint-stock company with dual management but substantially simplified in its management, as confirmed by several other authors [Štrauch (2008), Glück (2009), Eidenmüller and Lasák (2011)][11]. Most Czech European companies are set up by their mother company. These SEs no longer need a European dimension, in other words, the involvement of businesses from at least two EEA countries is not necessary. In the Czech Republic, they are offered for sale as ready-made companies that can do business according as other Czech companies without the European dimension. The permanent establishment of new SEs is due to the popularity of this solution, and although overall demand is not overwhelming, these companies are still being sold. The minimum capital requirement is officially higher than for the Czech limited liability company but there is neither capital control nor a statutory audit of actual transactions after the creation of an SE. Thus, SEs registered by one person may be several in the chain, without high capital requirements. In addition, the minimum required capital is guaranteed by the parent SE, which acts as the sole shareholder. This is probably the reason why the same person (s) related to the business provider also appear in the records. The vast majority of SEs are therefore established / purchased in the Czech Republic by small and medium-sized enterprises or individuals and perceive it as a business tool with few employees and low corporate costs, and the prescribed minimum capital does not seem discouraging. In conclusion, the study states that a limited number of Czech SEs are cross-border or transnational in nature and the authors have (to date) no evidence that they would function differently than European companies established elsewhere. Their owners are interested in transfers of seats, legal restructuring or European image. However, their creation can simply be the result of contact with a (Czech) consulting company that recommends this form of business.[12]

Both of the above studies work with the legal status of company establishment under the Czech Commercial Code valid until the end of 2013 and mentioned that the situation could change with a more appropriate setting of domestic business

[11] CREMENS at al., cit. quot., p. 120.
[12] CREMENS at al., cit. quot., pp. 109–110, 119–122.

corporation management, which happened with the new Business Corporations Act from January 1, 2014.

Ambruz & Dark Deloitte Legal dealt with experience with the practical functioning of a European company in the Czech Republic in 2017. First of all, it pointed out that since 2014, when the Business Corporations Act came into force, the board of directors of a joint stock company with monistic structure can have only one member. On the other hand, the European Company Act requires at least three members of the corporate governance structure. It further states that the transfer of the registered office can now be achieved even for the classic forms of capital companies and in practice this "advantage" of SE did not work. Their article also deals with the influence of employees' rights, which according to the authors in the Czech Republic do not enjoy much popularity. Therefore, SEs in the Czech Republic do not carry out traditional business and perform more like a classic holding company with minimum or no employees. The authors conclude that it will be interesting in the future to see whether shareholders, with regard to Czech alternatives to a European company, decide to abandon this legal form and replace it with, for example, a joint-stock company.[13]

As described in introduction, many experts believed that this phenomenon of ready-made European companies in the Czech Republic will pass away over the years, because there is not so much demand for this type of transnational form of business. Part of the "hope" was also put into 2014 and the adoption of the Czech Business Corporations Act. Though, the aim of this paper was to evaluate the development of newly registered European companies in the Czech Republic after 2014 and compare it with the period until the end of 2013. All this against the background of the number of SEs in other countries of the European Economic Area.

2. Material and methods

This paper works with data from 2004 to 2019, precisely from October 10, 2004 (date of entry into force of the Regulation) to December 31, 2019. The database and overview of established European companies (ECDB – European Company (SE) Database) is provided by ETUI (European Trade Union Institute). Aggregated information is based on data obtained from national commercial registers or the Official Journal of the EC. It is updated regularly, but there may

[13] Zkušenost praktickým fungováním evropské společnosti v českém právu. In: *www.epravo.cz* [online]. [cit. 2019-06-13]. Dostupné z: https://www.epravo.cz/top/clanky/zkusenost-praktickym-fungovanim-evropske-spolecnosti-v-ceskem-pravnim-radu-106050.html

be slight distortions due to data being taken from different sources that might be differently structured.

Methods of description, analysis, synthesis and comparison were used.

3. Results

According to the ECDB database, 3,223 European companies are registered in the European Economic Area until the end of 2019. 2,177 of those, which is approximately 66 %, are registered in Czechia. Germany and Slovakia follow. The remaining 25 EEA countries, where at least one European company was established, account for only 10 % of all registered SEs.

The ECDB divides European companies into normal European companies, micro / empty European companies and UFOs of European companies. Companies with more than 5 employees are called "normal SEs". The ECDB representatives also state that the number of 'normal' SEs' is likely to be greater, only the ECDB is unable to identify them. Most SE companies are established as branches and therefore have no employees at the time of incorporation. After the activation process is likely to increase the number of employees. Empty/ micro SEs have fewer than 5 employees and may, for example, do business in property management. As for UFO European companies there is no categorization information available in their case. This group also includes ready-made companies, which are established without the subject of activity and employees.

The table 1 shows that the Czech Republic, Germany and partly also Slovakia account for a large part of the number of European companies. There are significantly less companies with more than 5 employees than the total registered companies.

Table 1: Number of established SE in EEA countries 2004–2019

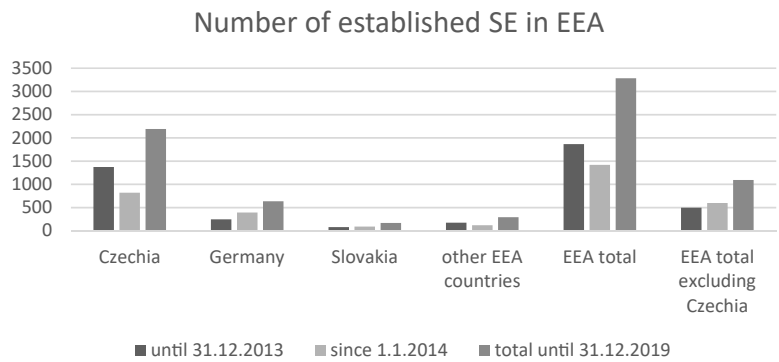
Country	Number of established SE	SE with >5 employees
Belgium	7	6
Czechia	2177	137
Denmark	1	0
Estonia	10	7
Finland	1	1
France	36	33
Ireland	12	5
Italy	3	1
Cyprus	27	10
Liechtenstein	13	4
Lithuania	1	1
Latvia	7	6
Luxembourg	33	16
Hungary	5	5
Malta	9	0
Germany	567	401
Netherlands	37	23
Norway	4	3
Poland	9	2
Portugal	1	0
Austria	20	9
Slovakia	159	25
Spain	2	0
Sweden	5	2
United Kingdom	35	7
Greece	2	1
Bulgaria	5	4
Romania	35	0
TOTAL	**3223**	**709**

Source: http://ecdb.worker-participation.eu/

When analysing the following graphs it is crucial to understand that by the end 2013 it was possible to set up a company for about ten years (exactly 3,371 days, which is about 63% of the entire possibility of SE existence) and since 2014 it is 6 years (exactly 2,006 days) , which is 37% of all days in the reporting period.

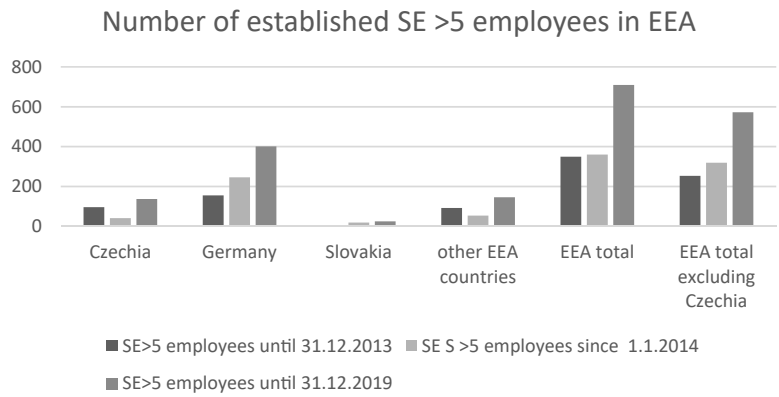
From the two graphs below it is obvious that while the Czech Republic is clearly leading in the total number of registered European companies, the situation will change in favour of Germany as soon as we focus only on companies with more than 5 employees.

Chart 1: Number of established SE in EEA 2004 – 2019



Source: http://ecdb.worker-participation.eu/

Chart 2: Number of established SE >5 employees in EEA 2004–2019



Source: http://ecdb.worker-participation.eu/

The chart 3 shows that growth rate of established SEs in the Czech Republic is slowing compared to Germany. There were 391 companies registered by our neighbours, which is 61.6 % of all European companies registered in Germany in 6 years. In the previous nearly 10 years, this was 38.4 %. Thus, the growth rate of registered companies in Germany is rising. The same applies to Slovakia. The situation in the Czech Republic is the opposite. There have been 819 companies registered out of a total of 2,190 SEs in the Czech Republic since 2014. By the end of 2013, 62.6 % had been registered and since 2014 it has been 37.4 %.

Thus, the average growth rate per year remains approximately the same. The number of companies registered in the Czech Republic is still high, however, unlike Germany and Slovakia, its growth does not increase over time.

Chart 3: Percentage of SE established until 2013 and since 2014



Source: http://ecdb.worker-participation.eu/

The positive development of the number of European companies with more than 5 employees in Germany has already been mentioned above. Chart 4 shows interesting development in the Czech Republic and Slovakia, where out of 25 European companies with more than 5 employees registered in Slovakia, 19 (i.e. 76 %) were established after January 1, 2014. As for the Czech Republic, 41 companies out of 137 (30 %) have had more than 5 employees in the same time period.

Chart 4: Percentage of SE >5 employees established until 2013 and since 2014



Source: http://ecdb.worker-participation.eu/

Comparing the absolute number of companies with more than 5 employees in the Czech Republic and Slovakia (41 versus 19) since 2014, the results are close to the expected reality if we want to fulfil the purpose and meaning of the European company.

4. Conclusions

The Czech Republic, as outlined in this paper, has taken the lead in the number of established European companies. In doing so, it has also largely contributed to a certain negative perception of European companies. Since 2007, European companies have been massively established in the Czech Republic with an effort to sell them. Thus, most of the listed companies are still waiting for their owners. The fact that many established companies that have not yet been sold has long led many analysts to question whether this approach is meaningful at all and has a future.

European society should have brought many benefits. Transnational mergers, the choice between a monistic and dualistic management system, the ability to move headquarters abroad, a new image and greater prestige. Over time, most of these benefits have been incorporated into national legal systems for domestic forms of business. In 2014, Act No. 90/2012 Coll., On Business Companies and Cooperatives (Business Corporations Act) came into force, where Czech entrepreneurs are allowed a monistic organizational structure that was supposed to

compensate for the advantages of a European company in the area of corporate governance. A part of academics and professionals expected a decrease in the number of registered European companies in the Czech Republic.

The aim of this paper was to evaluate the development of newly registered European companies in the Czech Republic after 2014 and compare it with the period until the end of 2013. All this in comparison with registered European companies in other countries of the European Economic Area.

From the analysis of data processed from the ECDB database, the authors conclude that the growth rate of registered European companies in the Czech Republic is approximately the same. 63% of European companies in the Czech Republic were registered in roughly the first ten years and 37% of SEs since 2014, i.e. in the last 6 years. Expectations of professionals were therefore not fulfilled and the adoption of the Business Corporations Act, effective from 2014, did not affect the number of established SEs. This also applies to companies that have more than 5 employees. By contrast, growth rates are rising in Germany and Slovakia which also have had a considerable number of SEs.

The number of European companies registered in the Czech Republic (with 10 million inhabitants) still constitutes more than 66 % of all SEs in the entire European Economic Area, which has more than half a billion inhabitants. On the other hand, data from the Czech Statistical Office show that SE accounts for less than half a percent of the roughly half a million capital companies operating in the Czech Republic. Therefore, this is not an important legal form of business in the Czech Republic, and even more so in other EEA countries.

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