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Impact of European law on Polish company law*

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Since Poland's accession to the European Union, European law has become part of the legal system in force in Poland. Treaties and regulations are directly applicable, whereas directives and recommendations require implementation into Polish law. Polish courts are obliged to apply and interpret European company law and to interpret Polish company law in such a way that it complies with European law. If in doubt as to the interpretation of European company law, the courts may — and in some cases must — refer a question to the Court of Justice of the European Union for a preliminary ruling. The judgment of the Court is binding on the courts of all Member States. Polish companies may conduct business activity in another Member State and foreign companies may conduct business activity in Poland. Companies of the Member States may conduct their business activities by establishing companies under the provisions of European law, e. g., *Societas Europaea*. *Societas Europaea* (SE) is a European public limited company whose capital is divided into shares. The European company is a cross-border company that can operate in the EU countries alongside national public limited companies. The autonomous status of an SE in relation to domestic public limited-liability companies is determined by two circumstances: first, the SE's personal statute (*lex societatis*), legal capacity and other elements of the SE's legal status are determined by the regulation either directly or by indicating the ways to fill in the gaps in the regulation; second, the content of the regulation, which contains specific rules for the creation and operation of the SE, distinguishes it from national public limited-liability companies. European law also influences the legal situation of Russian citizens and companies who are partners (shareholders) of a company registered in a Member State.

Keywords: European law in Poland, cross-border merger of companies, cross-border division of a company, cross-border conversion of a company, international jurisdiction, conflict-of-law rules, methods of interpretation of European law, pro-European interpretation.

1. The impact of European company law on Polish legislation

The competence to adopt European Union (EU) company law acts has been conferred on the EU institutions pursuant to: Art. 50 of the Treaty on the Functioning of the European Union[1] (TFEU) (specific competence), Art. 114 TFEU (general competence) and Art. 352 TFEU (subsidiary competence)[2]. In turn, Art. 81 TFEU confers the competence to adopt acts in the field of procedural law and company law relating to the conflict of laws. Since Poland's accession to the EU, the entire European acquis (*acquis communautaire*),

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[1] Treaty on the Functioning of the European Union of 25 July 1957. Consolidated version (hereinafter all European acts are available at: https://eur-lex.europa.eu/oj/direct-access.html (accessed: 29.01.2022).

[2] *Mańko R.* Kompetencje Unii Europejskiej w dziedzinie prawa prywatnego w ujęciu systemowym // Kwartalnik Prawa Prywatnego. 2016. No. 1. P. 75.

including the case law of the Court of Justice[3] (CJ), has been part of the Polish legal system. It should be added that European law is also indirectly addressed to Russian companies as partners (shareholders) of companies based in an EU Member State[4].

European company law is a set of provisions contained in the Treaties[5] and legal acts adopted on their basis, which aim to: 1) guarantee the possibility of exercising the freedom of establishment for companies (Art. 49 TFEU); 2) integrate domestic company law in order to ensure the functioning of the internal market in EU countries (Art. 26 (1) TFEU). The integration of domestic company law into European law is carried out directly and indirectly: Treaties and regulations are directly applicable in Poland, while directives and recommendations must be implemented into Polish law by the legislator.

1.1. Regulations

In European company law, the main role is played by regulations governing European companies: Regulation 2137/85 on the European Economic Interest Grouping (EEIG), Regulation 2157/2001 on *Societas Europaea* (SE) and Regulation 1435/2003 on *Societas Cooperativa Europaea* (SCE). The legal regime of SE and EEIG based in Poland is also determined by the Act on the European Economic Interest Grouping and European Company[6]. This act transposes into Polish law the Directive 2001/86 on the involvement of SE employees and is an implementing act to Regulation 2157/2001. The following regulations are also addressed to companies: Regulation 1606/2002 regulating the application of accounting standards, Regulation 2017/1129 on the prospectus and Regulation 596/2014 on market abuse. The legal situation of companies is also determined by: Regulation 1215/2012 on jurisdiction and Regulation 2015/848 on insolvency proceedings.

1.2. Directives

Directives are addressed to the EU Member States, which are obliged to transpose them into national law. The choice of form and means of transposing the directive is left to the legislators of the Member States (Art. 288 (3) TFEU).

Directive 2017/1132[7] regulates the following issues:

— disclosure of company particulars, the validity of the company's obligations and the nullity of a company;
— the capital of a public limited liability company;
— mergers of companies;
— division of the company;
— cross-border mergers, divisions and conversions;
— disclosure of particulars of branches of foreign companies.

The other Directives concern:

— financial statements;

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[3] Court of Justice of the European Union (before: European Court of Justice). The judgments of the Court of Justice of the European Union are available at: http://curia.europa.eu (accessed: 20.07.2020).

[4] In its judgment in case C-536/13 ("*Gazprom" OAO*) CJ held that Council Regulation on jurisdiction "must be interpreted as not precluding a court of a Member State from recognising and enforcing, or from refusing to recognise and enforce, an arbitral award prohibiting a party from bringing certain claims before a court of that Member State, since that regulation does not govern the recognition and enforcement, in a Member State, of an arbitral award issued by an arbitral tribunal in another Member State".

[5] TFEU and Treaty on European Union of 7 February 1992.

[6] Dziennik Ustaw [Journal of Laws]. 2005. No. 62. Item 551.

[7] Directive 2017/1132 was amended by Directive 2019/2121.

— audits of financial statements;
— single-member companies;
— takeover bid;
— shareholders' rights;
— involvement of SE and SCE employees.

1.3. Recommendations

Recommendations and opinions have no binding force (Art. 288 para. 5 TFEU), although — as an instrument of the so-called soft law harmonisation, they set the direction to be followed by the national legislator and taken into account by courts when interpreting national law[8]. Recommendations on corporate governance in public limited companies have played an important role in European company law.

2. The influence of European law on Polish courts

Cooperation of Polish courts with the CJ. The courts of the Member States (including Polish courts) are European courts. They apply and interpret European company law in accordance with national methods and taking into account the interpretation directives developed by the CJ: firstly — the expressions used in the provisions of European acts are autonomous[9] and should be interpreted uniformly throughout the Union; secondly — in accordance with the principle of practical effectiveness (*effet utile*), priority should be given to the result of interpretation which makes it possible to effectively achieve the objectives set therein; thirdly — in the case of differences between the language versions — the provision should be interpreted taking into account the purpose and scheme of the regulation[10]; in my opinion, however, this does not lead to the abandonment of the linguistic interpretation[11], but to the choice of the result of the linguistic interpretation which is consistent with the result of the teleological interpretation[12].

If a court of a Member State has doubts as to the interpretation of a provision of EU law, it may refer a question to the CJ for a preliminary ruling. The obligation to submit a question for a preliminary ruling rests with the court whose decisions are no longer subject to appeal. All courts of the EU Member States are bound by the CJ judgment[13]. The cooperation between national courts and the CJ is regulated by Art. 276 TFEU. This provision allows for the conclusion that it is for the Court to interpret European law, and for the national court to apply this law (para. 35 of the CJ judgment C-81/09*, Idryma Typou*).

The CJ interprets European law in the proceedings: 1) for a declaration of an infringement by a Member State pursuant to Art. 258 TFEU; 2) on the validity of an act of EU law (Art. 263–264 and 267 (1) (b) TFEU); 3) on preliminary questions referred by national

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[8] CJ judgment in the case C-322/88 (*Salvatore Grimaldi)*.

[9] More on this: *Guzewicz A.* Wykładnia autonomiczna pojęć prawa spółek w orzecznictwie Trybunału Sprawiedliwości Unii Europejskiej. Warszawa: C. H. Beck, 2019.

[10] Point 43 of the CJ judgment of 28 June 2012, C-19/11 (*Marcus Geltl*).

[11] Otherwise when we assume that the CJ uses the so-called *Radical Teleological Method*: "This method concentrates on the purpose and/or the context of the rule in question, and the leaves the level of linguistics as soon as a discrepancy is observed between the language versions" (*Derlén M.* Multilingual Interpretation of European Union Law. Austin; Boston; Chicago; New York; The Netherlands: Wolters Kluwer Law & Business Kluwer Law International, 2009. P. 47).

[12] More on this: *Napierała J.* Wykładnia prawa spółek Unii Europejskiej. Warszawa: C. H. Beck, 2020. P. 114–123.

[13] For example, the decision of 25 January 2018, IV CSK 664/14, in which the Polish Supreme Court took into consideration the judgment of the CJ in case C-106/16 (*Polbud*).

courts on the interpretation of European law, including European company law. Below are presented examples of judgments in which the CJ has interpreted the provisions of European law governing: 1) jurisdictional matters; 2) conflict of laws (private international law); 3) substantive company law. In its judgments, the CJ refers to its own decisions, which were issued on the basis of previously binding but similar regulations.

The court of the Member State must first examine whether it has jurisdiction to give judgment. Regulation 1215/2012 governs jurisdiction in civil and commercial matters, but does not contain provisions that regulate corporate matters as a whole. Art. 24 (2) of the Regulation 1215/2012 governs only the jurisdiction in cases on invalidity of resolutions of the company's bodies. In other cases, it is the jurisdiction of the court for the place of performance of the contract, the place of the tort/delict or the general rule according to the *actor sequitur forum rei* principle. However, in a typical situation, disputes between the partners and the company and between the partners themselves should be settled by the court of the place of performance. The relationship between these entities is treated by the CJ as a form of an obligation relationship. On the other hand, if the obligation resulting from the legal relationship between the company and a management board member, deriving from the employment contract, has been breached, the court of the place of residence of the management board member is competent. The role of CJ is also to distinguish between the scope of Regulation 1215/2012 and the scope of Regulation 2015/848 on insolvency proceedings. Below several examples of cases in which the CJ interpreted the rules of jurisdiction are presented:

In the case C-47/14 (*Holterman Ferho Exploitatie BV*), a holding company having its registered seat in the Netherlands and three of its German subsidiaries brought an action for damages against the former director and manager of those companies, residing in Germany. The plaintiffs accuse the defendant of, i. a., infringement of company law, consisting in improper performance of the duties of a director of the holding company and a manager of the companies. In its judgment, the CJ emphasised that the relationship between the company and a member of its management board (director) is an obligation, the subject of which is the provision of services. A dispute between a management board member and the company should therefore be settled by the court of the Member State in which the management board member conducted or was to conduct their business in the performance of their function. This place is determined by the will of the parties, the company's articles of association or other document. In the absence of such documents, the court should determine where the board member "in fact, for the most part, carried out his activities in the performance of the contract. <…> For that purpose, it is possible to take into consideration, in particular, the time spent in those places and the importance of the activities carried out there, it being a matter for the national court to determine whether it has jurisdiction in the light of the evidence submitted to it"[14].

In case C-560/16 (*E. ON Czech Holding AG*), the general meeting of a company with its registered seat in the Czech Republic, under a *squeeze out* procedure, adopted a resolution to transfer the ownership of all of the company's shares to the majority shareholder who resided in Germany. Minority shareholders brought an action to investigate whether the agreed share price was fair. The CJ recognised the jurisdiction of the court of the company's seat (Czech court), by referring to the provision of the regulation on jurisdiction in matters concerning the validity of decisions of the company's body (resolutions of the general meeting). Such a decision is debatable, since a finding that the share price was not fair cannot lead to the invalidity of the resolution. In the opinion of the CJ: first, the provision of the regulation on exclusive jurisdiction applies also to the partial repeal of a reso-

[14] Point 64 of the judgment C-47/14 (*Holterman Ferho Exploitatie BV*).

lution; second, the attribution of jurisdiction to the Czech court is in line with the objectives of the regulation, namely the predictability of jurisdictional rules and legal certainty.

In the case C-603/17 (*Peter Bosworth*), a group of UK companies claimed compensation for alleged fraudulent conduct of Swiss-resident former holding directors (chief executive officer and chief financial officer) who were also members of the management board of the subsidiaries. The key to determining jurisdiction in this case was for the CJ to decide whether the companies and directors were bound by an individual employment contract. If so, the competent court would not be the UK court but the defendants' place of residence. The provisions of the Regulation on jurisdiction for individual employment contracts are not only specific but also exhaustive. *Ergo*, if the obligation resulting from an individual contract of employment was breached, neither contractual nor tort jurisdiction would come into play. The CJ found that from the perspective of the regulation on jurisdiction the parties to the dispute were not bound by the individual employment contract because there was no relationship of subordination between them. In this case, the situation was evident, since it was in fact the directors themselves who decided on their legal situation, by influencing the content of the contract and exercising control over the current activities of the company.

It should be added that the case law of the Court of Justice has developed the view that the "subordination" of a management board member to a company is determined not only by the employment contract, but also by the content of the relationship resulting from their appointment under the company law[15]. This view is based on the adaptation by the CJ — for the purposes of interpreting the provisions of the regulation on jurisdiction — of the "subordination" criteria developed by the CJ in the interpretation of the Treaty's freedom of movement of workers and substantive European employment law. The jurisdictional qualification of the relationship between a management board member and a company as an individual employment contract, irrespective of its source, has, in my view, been aptly criticised: just as it would not be appropriate to exclude employee protection simply because a management board member who has the status of an employee is at the same time bound by a corporate relationship by virtue of his appointment, also the violation of specific obligations arising from the corporate relationship of the company should not be subject to the protection specific to employment law[16]. The CJ judgments in cases C-47/14 (*Holterman Ferho Exploitatie BV*) and C-603/17 (*Peter Bosworth*) seem to take account of this criticism; This is because the CJ differentiates the criteria of "subordination" required for the interpretation of the regulation on jurisdiction from the criteria of "subordination" required when interpreting the provisions of European law regulating various aspects of employment relationships.

European law does not govern the conflict of laws in the company law. However, companies may be addressees of European provisions on the law applicable to obligations[17] (e. g. the law chosen by the parties remains the applicable law in the dispute between the acquiring company and the creditor of the company being acquired[18]). The conflict of law provision of Regulation 2015/848 on bankruptcy proceedings is also addressed to com-

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[15] Polish company law — similarly to German law — adopts the concept of separation (*Trennungstheorie*) of legal relationship between a management board member and the company into a relationship resulting from appointment (*Bestellungsverhältnis*) and a relationship resulting from an employment contract (*Anstellungsvertragsverhältnis*). Polish Commercial Code *expressis verbis* provides that the contract of employment of a management board member may take the form of an employment contract.

[16] *Weber J.* Die Geschäftsführerhaftung aus der Perspektive des Europäischen Zivilprozessrecht // Zeitschrift für ausländisches und internationales Privatrecht. 2013. Bd. 1. S. 70.

[17] Regulation 593/2008 "Rome I".

[18] CJ judgment in the case C-483/14 (*KA Finanz AG*).

panies[19]. The case C-594/14 (*Simona Kornhaas*), in which an action was brought before a German court by a receiver of an English company in bankruptcy operating in Germany can serve as an example. The official receiver demanded that the company's manager reimburse a payment made to a third party at a time when the company was already insolvent. The CJ ruled that the *lex fori concursus*, i. e. German law, is applicable in this case.

The CJ also interprets the substantive EU company law. The judgment of the CJ in case C-394/18 (*I. G. I. Srl*), which dealt with the interpretation of the provisions of Directive 82/891/EEC on the division of a company may serve as an example[20]. This directive regulates the division of a public limited company carried out by transferring all the assets of the company being divided to the acquiring companies. Among the measures to protect the creditors of the company being divided, the Directive does not regulate the *actio Pauliana*. On the other hand, the Italian legislator, when implementing the Directive, has extended its provisions: 1) a public limited liability company may also be divided; 2) a division may also be carried out by transferring part of the assets; 3) the creditors of the company being divided are entitled to *actio Pauliana*. The CJ ruled: first, that it had jurisdiction to answer the question referred for a preliminary ruling on the provisions of the Directive which the Italian legislator also took into account in the division of a public limited company and which do not prohibit division by transfer of part of the assets of the company being divided; second, that national laws can protect creditors' interests by means of the *actio Pauliana*; The Directive does not exhaustively regulate the measures to protect creditors and, moreover, the *actio Pauliana* does not challenge the validity of the division, but only its effectiveness towards creditors.

Member States are bound by agreements concluded by the EU with other organisations and countries (Art. 216 (2) TFEU). On 1 December 1997 a Partnership and Cooperation Agreement entered into force, which was also concluded between the EU and the Russian Federation[21]. In the case C-265/03 (*Simutenkov*), the CJ interpreted the provisions of Art. 23 (1) of this Agreement, the content of which was the assurance by Member States that Russian citizens exercising the freedom of movement of workers will not be discriminated against[22]. In this case, the CJ was determining the meaning of the expression of undertaking to "ensure", and in particular whether the expression should be interpreted as a commitment to achieve a result or to act diligently.

Interpretation of Polish company law in line with European law. If the provisions of European company law are not directly applicable, the legal basis for the decision shall be found in the Polish company law. When interpreting Polish law, however, European law is a "point of reference"[23].

Courts and other authorities of EU Member States are obliged to interpret national law in such a way that the result of this interpretation is consistent with European law. This obligation results from the CJ case law.

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[19] According to Art. 7 (1) of Regulation 2015/848, the law applicable to insolvency proceedings and their effects is the law of the state where the proceedings are opened.

[20] Amended by the directive 2007/63/WE. Currently, the division of domestic companies is governed by the Directive 2017/1132.

[21] The agreement was in force for ten years.

[22] Operative part of the judgment C-265/03 (*Simutenkov*): "Art. 23 (1) of the Agreement on partnership and cooperation establishing a partnership between the European Communities and their Member States, of one part, and the Russian Federation, of the other part <…> must be construed as precluding the application to a professional sportsman of Russian nationality, who is lawfully employed by a club established in a Member State, of a rule drawn up by a sports federation of that State which provides that clubs may field in competitions organised at national level only a limited number of players from countries which are not parties to the Agreement on the European Economic Area".

[23] *Kalisz A.* Wykładnia i stosowanie prawa wspólnotowego. Warszawa: Oficyna a Wolters Kluwer business, 2007. P. 49.

The point of reference for a conforming interpretation covers both, the EU Treaties and the acts of European company law issued on the basis of these Treaties. In practice, the European company law directives are the primary point of reference. The summary of the case-law on interpretation in conformity with European law was given by the CJ, first in the judgment in the case C-282/10 (*Maribel Dominguez*) and more recently in the judgment in the case C-545/17 (*Pawlak*). According to the CJ, when interpreting national law in accordance with the provisions of European company law directives, the national court should:

— as far as possible be guided by the wording and purpose of the EU directive;
— take into account all national methods of interpretation, including linguistic, systemic and functional;
— not infringe the prohibition of interpretation *contra legem*; *contra legem* can be both an interpretation which is merely limited to the linguistic meaning of the national provision, even though it leads to an absurd result, as well as a broadening (narrowing) interpretation that is carried out contrary to the rules of interpretation of a specific national interpretation concept;
— not infringe the general principles of EU law, including in particular the principle of non-retroactivity, C-212/04 (*Adeneler*) and the principle of legal certainty — underlying, inter alia, the provisions of the Polish Code of Civil Procedure regulating the time limit for bringing an action (C-545/17, *Mariusz Pawlak*).

The Polish legal doctrine points out[24] that the interpretation in accordance with the EU directive should not only be made within the framework of a linguistic, systemic and functional (including teleological) interpretation, but also taking into account other methods collectively recognised as having law-making elements (*Rechtsfortbildung*). It is about a broadening (narrowing) interpretation and legal inference: 1) *a simili* and *a contrario*; 2) filling in the gaps by means of *analogia legis*; 3) *analogia iuris* and 4) inference *a fortiori* (*a maiori ad minus, a minori ad maius*).

3. The impact of European company law on companies

Companies of the Member States may exercise the freedom of establishment (Art. 49 TFEU). The freedom of establishment enables Polish companies to conduct business activity in another Member State; while foreign companies are allowed to conduct foreign activity in Poland.

Freedom of establishment (Ger. *Niederlassungsfreiheit*). The freedom of establishment can be exercised by a company that has a connection to the EU: firstly, it was established in an EU Member State; secondly, it is present in the EU through: 1) registered office; 2) central administration, i. e. the place where day-to-day decisions concerning the company's activities are made, or 3) principal place of business. At the same time, the relationship of a company with the EU is not determined by the citizenship of its partners (shareholders). Therefore, the freedom of establishment may also be exercised by a company established in Poland by Russian citizens, or a company with a seat in Poland established by a Russian parent company[25].

[24] *Rowiński W.* Wykładnia prounijna w orzecznictwie, naczelnych organów władzy sądowniczej. Poznań: Wydawnictwo Naukowe UAM, 2019. P. 283.

[25] *Szydło M.* Krajowe prawo spółek a swoboda przedsiębiorczości. Warszawa: LexisNexis, 2007. P. 199; *Opalski A.* Europejskie prawo spółek. Zasady prawa europejskiego i ich wpływ na polskie prawo spółek. Warszawa: LexisNexis, 2010. P. 91.

The freedom of establishment of companies can be exercised directly under the TFEU. The content of the freedom of establishment has been clarified in case law, where the CJ broadly interprets Art. 49 TFEU. Companies can exercise their freedom of establishment through:

— transferring their real seat (81/87, *Daily Mail*; C-208/00, *Überseering*; C-371/10, *National Grid Indus*);
— establishing a branch in another Member State (79/85, *Segers*; C-212/97, *Centros*; C-167/01, *Inspire Art*);
— transfer the company's assets to another country (C-64/11, *Commission v. Spain*), including assets of a branch of a foreign company (C-64/11, *Commission v. Portugal*);
— establishing a subsidiary (C-446/03, *Marks & Spencer*; C-196/04, *Cadbury Schweppes*);
— taking control of a foreign company (C-251/98, *Baars*);
— cross-border mergers (C-411/03, *Sevic Systems*), cross-border division of a company[26] as well as cross-border conversion (C-210/06, *Cartesio*; C-378/10, *Vale*).

The CJ also recognised a cross-border conversion through the transfer of the registered office itself as a form of the freedom of establishment in the case C-106/16 (*Polbud*)[27]. According to the CJ, Art. 49 TFEU allows companies not only for the choice of place of business activity, but also the choice of law of that Member State, which does not require the identity of the registered office location and the real seat of the company.

The correlate of the freedom of establishment is the prohibition of its restriction (Art. 49 para. 1 sentence 1 TFEU), i. e. — generally speaking — the prohibition of the application by a Member State of measures (including legislation) which may "hamper or render less attractive" the exercise of the freedom of establishment (item 32 of the CJ judgment in the case C-19/92, *Kraus*). The prohibition to restrict the freedom of establishment concerns measures taken by a Member State which cannot be justified. Measures taken by a Member State are justified only if they pass the test formulated by the CJ in the judgment in case C-55/94 (*Gebhard*), namely: 1) when they are taken due to the so-called *imperative requirements in the public interest* and in a non-discriminatory and proportionate manner, i. e. 2) when they are appropriate (suitable) to achieve the purpose they serve and 3) when they are necessary, i. e. they do not exceed the scope necessary to achieve that purpose.

In the case law, in addition to the typical important needs of general interest — such as the protection of the interests of minority shareholders, employees and creditors of the company — the CJ also lists: health protection (C-570/07 and C-571/07, *José Manuel Blanco Pérez*, *María del Pilar Chao Gómez*), national tax protection (C-371/10, *National Grid Indus*); on the other hand, in the judgment C-384/08 (*Attanasio Group*), the CJ classified the areas of road safety, environmental protection and consumer protection as important needs of the public interest, and in the judgment C-81/09 (*Idryma Typou*), it stressed the need to protect the honour and surname.

The measures that, e. g. have been directed at the wrong addressee, are not "appropriate". According to the CJ, such a feature is not demonstrated by, e. g., Greek regulations — which aim at journalists' compliance with rules and principles of professional ethics — allowing to punish the shareholders holding more than 2,5 % of shares in a television company, who do not have any real influence on the conduct of journalists appearing on television (C-81/09, *Idryma Typou*).

[26] The cross-border division of a company is governed by the directive 2019/2121 (OJ L. 2019. No. 321. P. 1).

[27] In this case, the company based in Poland was moving its registered office to Luxembourg.

In case C-371/10 (*National Grid Indus*), the CJ ruled that the tax on the unrealised part of the capital gains (silent reserves) imposed on a company emigrating from the Netherlands is appropriate in relation to the legitimate and worthy of protection objective of allocating fiscal competence between Member States. However, the immediate collection of tax made at the time of the transfer of the seat of the company goes beyond what is necessary. A softer measure — by means of which the intended objective can be achieved just as effectively — is to defer the collection of tax until the actual realisation of profits.

Companies of EU Member States may conduct a business by establishing EEIG, SE and SCE.

A European Economic Interest Grouping is a corporation which has its seat, name, organisational structure and legal personality distinct from its participants ("members"). The purpose of the grouping, however, is not to integrate (concentrate) its participants, like an association or a company, but "only" to create conditions for their effective cooperation. This cooperation is to facilitate or develop business activity of EEIG participants, as well as to improve or increase the results of this activity (e. g. through professional promotion of business activities carried out by the EEIG participants). The general purpose of the EEIG, has been further specified in other provisions of the regulation: 1) the purpose of the EEIG is not to generate profits; 2) the activities of the EEIG are only ancillary to the economic activities of its participants; 3) Regulation 2137/85 also specifies which activities the EEIG is not allowed to carry out.

Societas Europaea is a European public limited company whose capital is divided into shares. The European company is a cross-border company that can operate in the EU countries alongside national public limited companies. The autonomous status of an SE in relation to domestic public limited-liability companies is determined by two circumstances: first, the SE's personal statute (*lex societatis*), legal capacity and other elements of the SE's legal status are determined by the regulation either directly or by indicating the ways of filling the gaps in the regulation; second, the content of the regulation which contains specific rules for the creation and operation of the SE, that distinguish it from national public limited-liability companies.

Regulation 2157/2001 governs:

— methods of formation of an SE;
— registered office of the SE and its transferability;
— the freedom to choose the SE organ system;
— the involvement of employees in the SE.

An SE may be created by:

— a merger of companies of Member States;
— a formation of a holding SE;
— a formation of a subsidiary SE;
— a conversion of a national public limited-liability company into an SE;
— a formation of a subsidiary SE (daughter SE) by an existing SE.

The SE registered office must be located in the Member State where the head office is located. An SE may transfer its registered office to another Member State without it being wound up and re-established. The transfer of an SE's registered office to another Member State does not change its legal status. It remains a European company; on the other hand, "only" the national stock law changes, to which SE will be subject in a subsidiary manner, i. e. in matters not regulated by Regulation 2157/2001.

Regulation 2157/2001 grants the SE the option of choosing one of the two management systems for the company: 1) a two-tier system in which the management and control

functions are separate: conduct of affairs and representation is the responsibility of the management organ and supervision of the conduct of the SE's affairs is the responsibility of the supervisory organ; 2) a one-tier system in which the management and control functions are the responsibility of a single administrative organ. The regulation also contains a specific provision under which each Member State — whose national legislation provides for one of the two regimes for public limited liability companies — may issue appropriate provisions (applicable to an SE) governing the second of these regimes. Since Polish company law is governed by the dual system, the Polish legislator used the power to regulate the one-tier system in SE with its seat in Poland.

An SE may only be registered if the rights of employees are guaranteed to allow them to influence the decisions taken within the SE (employee involvement). The involvement of employees may take the form of: informing; consultation and participation, meaning the exercise of influence by an organ representing the employees or the employees' representatives on the company's affairs by: 1) the right to elect or 2) the right to appoint a certain number of members of the supervisory board or the SE's administrative organ; 3) a right to recommend or 4) to object to the appointment of some or all of the members of these organs.

Societas Cooperativa Europea is a European cooperative that can issue shares. The registered office of the SCE should be located in the EU in the same country as its head office. The share capital is divided into registered shares of equal nominal value specified in the articles of association. The articles of association may also provide for the possibility of issuing securities other than shares, without voting rights. The number of members of the SCE and its capital are variable. The capital may be increased by progressive contributions by members or by the admission of new members; it may also be reduced by the repayment of payments made. The employees' participation in an SCE is governed by Directive 2003/72/EC. An SCE in the Member States has the status of a cooperative.

Currently, 2654 EEIG, 42 SCE[28] and 2125 SE[29] have been registered in the EU. In Poland — 10 EEIG and 13 SE[30] have been registered.

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Влияние европейского права на польское корпоративное право*

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С момента присоединения Польши к Европейскому союзу (ЕС) европейское право стало частью польской правовой системы. Договоры и постановления ЕС имеют прямое действие, а директивы и рекомендации должны быть включены в польское законодательство. Польские суды обязаны применять и интерпретировать европейское корпоративное право и польское корпоративное право в соответствии с европейским законодательством. В случае сомнений относительно европейского корпоративного права суды могут (а в некоторых случаях должны) передать вопрос для предварительного решения в Суд ЕС. Решение Суда ЕС является обязательным для судов всех государств — членов ЕС. Польские компании могут вести хозяйственную деятельность в другом государстве — члене ЕС, а иностранные компании — в Польше. Польские компании вправе также создавать европейские компании, например Societas Europaea (SE, европейская публичная компания с ограниченной ответственностью, капитал которой разделен на доли). Европейская компания является трансграничной компанией, которая может работать в странах ЕС наряду с национальными публичными компаниями с ограниченной ответственностью. Автономный статус SE по отношению к польским публичным компаниям с ограниченной ответственностью определяется двумя обстоятельствами: во-первых, личный устав SE (lex societatis), правоспособность и другие элементы правового статуса SE регулируются регламентом либо напрямую, либо путем указания способов заполнения пробелов в регламенте; во-вторых, регламент содержит конкретные правила создания и функционирования SE, которые отличают его от национальных публичных компаний с ограниченной ответственностью. Европейское право также влияет на правовое положение российских компаний и граждан, которые являются партнерами компаний, зарегистрированных в государстве — члене ЕС.

Ключевые слова: европейское право в Польше, трансграничные слияния компаний, трансграничное подразделение компании, трансграничная конвертация компании, международная юрисдикция, нормы коллизионного права, методы интерпретации европейского права, проевропейская интерпретация.

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