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# The European Company (*Societas Europaea*) and its application in the insurance industry

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**Abstract**

This paper investigates how the European Company (SE) is used in the insurance industry and discusses the reasons for choosing the corporate form by large multinational insurance corporations. The study is carried out by analysing already established SEs in the insurance sector and what benefits this corporate form brings them. The article utilizes doctrinal analyses of the legal acts regulating the SE together with the empirical data collected from various reports, press releases, interviews and other forms of personal communications with the representatives of the SEs in the insurance sector and experts in the field.

*Keywords:* EU Insurance Law, Insurance Regulation, European Company, Societas Europaea

## 1. INTRODUCTION

The internationalisation of financial services is constantly increasing. Insurance sector is no exception. The nature of insurance business, where the service provider and the customer do not necessarily need to meet each other in order to execute a transaction, allows many large multinational companies to provide certain insurance services across various countries. However, the smooth operation of such insurers can and often is impaired by different national norms regulating insurance market in each country. It may seem that the situation should be different in the EU with its tendency to gradual harmonisation of rules aiming for creation of a single market. This market would make the operation of companies across the Union easier by eliminating the number of regulatory and procedural obstacles. And indeed one can observe the effect of the so-called 'single EU passport' provided for in the current Insurance Directives (Directive 2002/83/EC, 2002, Recital 8).

Consequently it may be assumed that operating across the EU does not present any obstacles for an insurance undertaking authorised in one of its states. However the actual state of affairs is quite different. It has been pointed out that the notion of harmonised EU Insurance Law is applicable mostly to the Insurance Company Law whereas in Insurance Contract Law the norms protecting 'general good' in the country of commitment create certain restrictions for the firms which to provide their services.[21] Moreover, certain areas of the EU Insurance Company Law are strongly fragmented as well. The relevance of the issue increased with the entering into force in 2016 of new EU-wide prudential rules, introduced by the Directive on the taking-up and pursuit of the business of Insurance and Reinsurance, also known as Solvency II (Directive 2009/138/EC, 2009). The Directive increases capital requirements for majority of insurers, especially those with a high risk profile. Consequently they are looking into ways to optimize their business and dispose of the unprofitable lines, often resorting to the insurance portfolio transfers. This creates a need for a mechanism that allows to mitigate jurisdictional differences and streamline cross-border processes, insurance transactions in particular. Therefore the use of the European Company (SE) could be considered.

The SE was introduced in 2001 and became available three years later with the entering into force of the relevant legislation (Council Regulation /EC/ No 2157/2001, 2001). It allows companies to be established under the EU law and operate throughout the Union as a single entity. The main advantages of the SE are cross-

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[21] See Norio-Timonen J, 'Legal Coherence as a Prerequisite for a Single European Insurance Market' in: Smits, Letto-Vanamo, 2012.

border mobility and reorganizations. On the other hand it has some serious limitations and as a result has not gained wide popularity.[22]

The European Company has been studied at length in the academic literature (Gold, 2009; Malke, 2010; Kirshner, 2010a; Stollt M, Kluge, 2011, 181). However none of the works investigate in depth the use of the Company in the insurance industry and its possible advantages. The issue was briefly mentioned in the comprehensive report on the operation of SE as one of the viable options for banks and insurance companies to conduct group restructuring and enhance their capital efficiency (Ernst & Young, 2009, 225–226).

Further investigation of the topic may reveal other benefits of the SE for insurance sector, which have not been considered before. The results of such investigation would be potentially important for the large multinational companies looking into ways to optimise their insurance business and streamline group operations.

This paper utilizes doctrinal analyses of the legal acts regulating the SE together with the empirical data collected from various reports, press releases, interviews and other forms of personal communications with the representatives of the SEs in the insurance sector and experts in the field.

The paper is organised as follows. Section 2 offers a brief overview of the main features of the SE and its regulation as well as its recent statistical data. Section 3 discusses the general positive and negative sides of the Company. Section 4 considers the use of the SE in the insurance sector together with its issues and benefits. Section 5 presents the conclusions.

## 2. THE EUROPEAN COMPANY: REGULATION AND MAIN FEATURES

### 2.1. Legal provisions

The European Company is a public limited company with share capital and legal personality which can conduct its activity throughout European Union and European Economic Area (EEA). It is intended to facilitate operations of the companies wishing to expand their business across EEA. It is regulated by the Statute for a European Company (ECS or the Statute), which consists of two acts: Council Regulation on the Statute for a European Company (SE Regulation) and Directive supplementing it with regard to the involvement of employees (SE Directive) (Statute for a European Company, 2001, n 4). In matters not regulated by the ECS the national legislation applicable to public limited liability companies of the country in which SE is incorporated applies. Additionally the Company is governed by the provisions of its statutes (Statute for a European Company, 2001, art. 9).

The adoption of the ESC was a process marked by stark controversies between its parties. It took around 30 years to agree on since it was proposed (Gold, 2009, n. 6, 19).The main obstacles were different systems of worker participation in the Member States and their unwillingness to give up their autonomy and control over the fundamental areas of Company Law. Ultimately the issues were resolved through regulating worker related aspects by a Directive which provided an option of choosing between one and two-tier board structure systems and leaving a large portion of issues to beregulated by national laws of the Member States. This introduced a high level of fragmentation into the SE regulation substantially decreasing the Company's attractiveness.

At the beginning of the negotiations when the first proposal for the European Company was submitted the suggested new company structure had truly European nature with single tax rules, companies' register and uniform EU legislation (Lenoir, 2008, 13). However, due to the large differences in the Member States' national legal systems and political interests these progressive aims were left unachieved. As a result the Statute explicitly excludes taxation, competition, intellectual property or insolvency (Council Regulation /EC/ No 2157/2001, 2001, Recital 20). Moreover 'winding up, liquidation, insolvency, cessation of payments and similar procedures' are governed by the national law of the SE's country of incorporation' (Council Regulation /EC/ No 2157/2001, article 63). This inherent fragmentation creates a lot of issues and complications for the firms wishing to incorporate as SEs. For example, due to the absence of unified tax treatment when a company wants to transfer its registered office to another country, it may become a subject for double taxation (Malke, 2010, 25).

### 2.2. Main features

According to the article 1 of the SE Regulation, a European Company is a public limited company with share capital and legal personality which can conduct its activity throughout European Union and EEA. Its capital is divided into shares and each shareholder is liable only for the amount of shares he or she has subscribed to (limited liability). Additionally it has

[22] As of May 17th 2017 only 2797 SEs have been established (ETUI (2017), European Company (SE) Database, http://ecdb.worker-participation.eu).

legal personality meaning that it can acquire its own property, participate as a claimant or respondent in court proceedings, etc. The Statute sets up the requirement for the capital of an SE to be expressed in euro. The amount of the subscribed capital cannot be less than 120 000 euro. A higher requirement may be prescribed by the national laws of Member States (Council Regulation /EC/ No 2157/2001, 2001, art. 4).

The SE can transfer its registered office to another Member State, which cannot result in its winding up or creation of a new legal person (Council Regulation /EC/ No 2157/2001, 2001, art. 8). This allows the company to freely move its registered office throughout the EEA countries.

The Statute pays a considerable amount of attention to the questions of workers participation. For instance, it prohibits an SE to be registered before the conclusion of an agreement on arrangements for employee involvement (Council Regulation /EC/ No 2157/2001, 2001, art. 12/2).

SE, as any other company, shall have its name as a part of its identity. Usually corporate identity consists of the legal entity's name, registered office, registration number and corporate form.

The location of the SE's registered office shall be inside the EU, in the same state as its head office. When an SE no longer has its registered office in the same country as its head office, the Member State where its registered office is located, must 'take appropriate measures' in order to make the Company either to re-establish its office in the state of head office's location or transfer its registered office to the Member State where its head office is located (Council Regulation /EC/ No 2157/2001, 2001, art.64).

### 2.3. Formation and structure of the SE

According to the Statute a European Company can be formed in four different ways. Formation by merger is available only to public limited-liability companies from at least two different Member States and can be accomplished either by merger by acquisition or by formation of a new companies when two firms transfer all their assets and liabilities into a new company set up by them (Council Regulation /EC/ No 2157/2001, 2001, Section 2).

An SE can also be created by formation of a holding SE where two or more public or private limited companies from at least two different Member States exchange more than half of their shares for the shares of the SE which is being set up. In this case the companies promoting the formation of holding SE shall continue to exist and the created SE will function as a separate entity with its assets and liabilities (Council Regulation /EC/ No 2157/2001, 2001, Section 3).

Additionally an SE can be set up by a formation of a subsidiary SE (Council Regulation /EC/ No 2157/2001, 2001, Section 4). For this each of at least two companies promoting the formation of subsidiary SE shall be governed by the law of a different Member State or have at least for two years a subsidiary governed by the law of another Member State or a branch situated in another Member State (Council Regulation /EC/ No 2157/2001, 2001, art. 2/3).

Finally, an existing public limited-liability company, which has its registered and head office inside the EU and has had for at least two years a subsidiary governed by the law of another Member State, may be transformed into an SE (Council Regulation /EC/ No 2157/2001, 2001, art. Section 5, art. 2/4).

The Statute provides an option of choosing between one-tier and two-tier board structure of a company (Council Regulation /EC/ No 2157/2001, 2001, Title 3). One-tier structure is prevalent in Common law countries and provides for a single administrative organ exercising management along with a supervision of company's activities. Two-tier structure consists of a management organ controlling company's operations and a supervisory organ, responsible for overseeing the work of the management organ and protection of the shareholders' rights. The general meeting of the shareholders appoints the members of the supervisory organ which in turn appoints the members of the management organ.

## 3. STATISTICAL DATA OF THE SE

### 3.1. General statistics

In the absence of a central SE register obtaining accurate and up to date information about the existing European companies is quite challenging. The company is registered in the national register of the state of its registered office. Therefore in order to obtain data about the SEs one has to look through all the national company registers of the Member States. In order to facilitate this process the European Trade Union Institute created a European Company Database (ECDB) with a financial support from the EU (ETUI, 2017). Although the information provided by the ECDB is often incomplete, it is currently the best source available to collect statistical data about SEs.

According to the ECDB as of May 17 2017 there are 2797 registered European companies throughout the EEA. Considering the option to incorporate as an SE has been available since mid-2004 this number

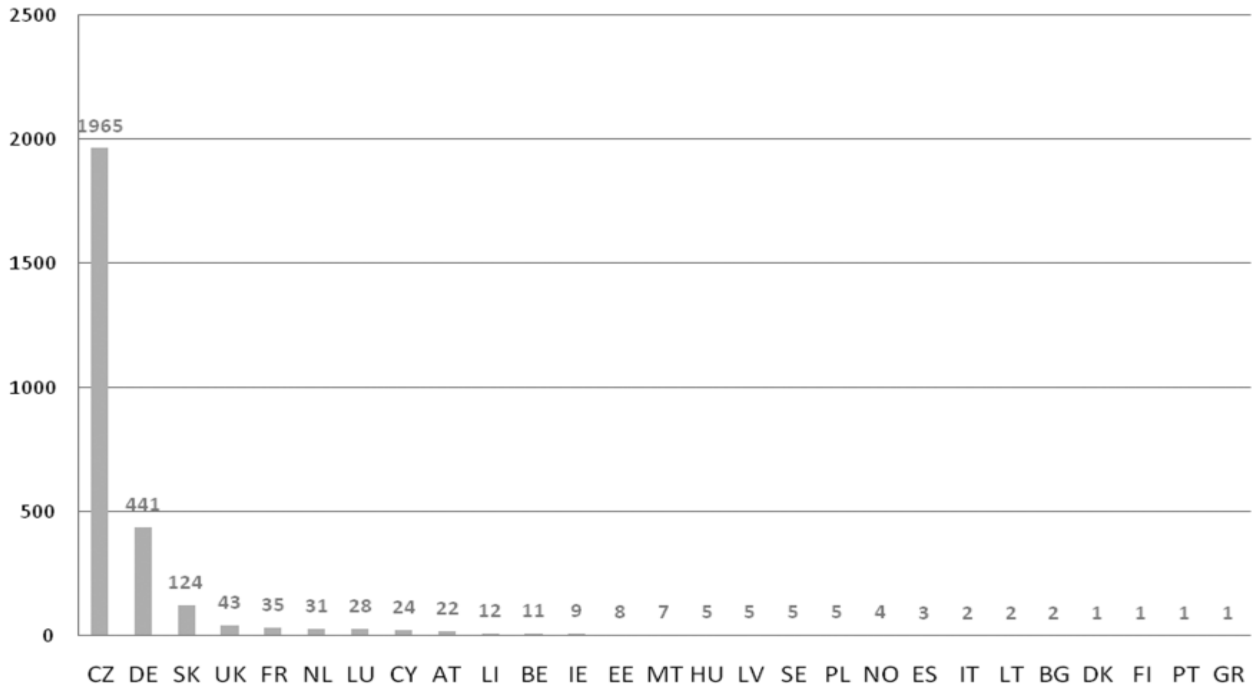


Figure 1. Total number of established SEs in each country.

is very low. Additionally the distribution of the SE's across EEA states is very uneven, as can be seen in the Figure 1.[23] According to the Figure more than 70% of all existing SEs are incorporated in Czech Republic. However, further investigation reveals that out of total 1965 SEs there only 86 have five or more employees while 1642 do not have any data at all about their numbers of employees. The subject of large popularity of European Companies in Czech Republic was studied by H. Eidenmueller and J. Lasak. They conclude that large majority of SEs there are shell companies, created in order to be subsequently sold to potential clients, and their high numbers are a result of overestimated demand for SE companies in Czech Republic (Eidenmüller, Lasák, 2011).

Apart from Czech Republic significant presence of the SEs can be observed in Germany, Slovakia, the UK, the Netherlands, Luxemburg, France, Austria and Cyprus. The top 10 countries host around 97% of all registered companies. No European Companies have yet been established in Iceland, Croatia, Romania and Slovenia.

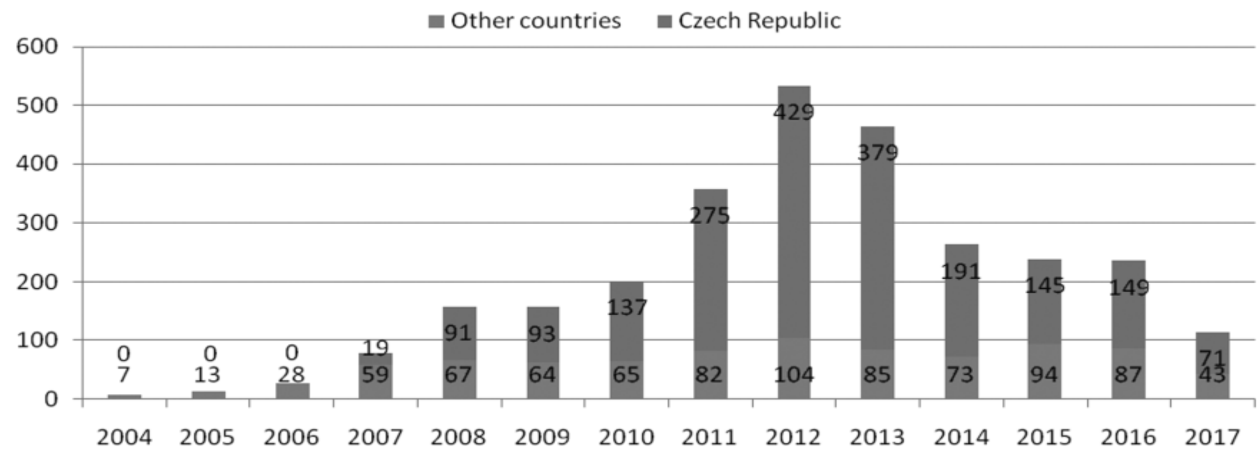


Figure 2. Number of registered SEs during each year.

[23] All the figures are made based on statistical data retrieved from ECDBhttp://ecdb.worker-participation.eu.

Figure 2 presents a breakdown of registered SEs during each year not taking into account companies that have since deregistered.

The numbers are shown separately for Czech Republic and the rest of EEA states due to disproportionately high number of SE in the former. The figure demonstrates that while during the past several years the yearly distribution of newly created SEs in other EEA states was more or less steady, in Czech Republic the number has been mostly declining since 2013. This trend could take place due to the market's realisation that the European Company is not as popular as was initially expected.

Both figures demonstrate that the popularity of the SEs is even less than initially seen considering most of them are established in Czech Republic and are not economically active. However it should be noted that SE is devised as a corporate form for large multinational companies conducting their business across two or more EEA states. Additionally even though the information collected by ETUI is quite comprehensive, it still does not give a complete picture of the current state of the SEs. This issue should be solved through an introduction of the centralised register of the SEs, which unfortunately has not been established yet.

### 3.2. SEs in the insurance sector

Considering general low popularity of European Companies it might be difficult to imagine that this corporate form will bring any advantages to insurance firms. However, as the data shows, some of the largest insurance companies decided to transform to SE, such as Allianz, Hannover RE, Swiss RE and SCOR, among others. Therefore the benefits of SE for insurance firms cannot be easily dismissed.

According to ECDB there are 31 SEs operating in insurance or reinsurance sector.[24] Figure 3 shows the distribution of insurance SEs across EEA. Accordingly SEs operating in insurance sector are present in 10 of 31 EEA states. Majority of them are incorporated in Germany followed by the UK, France and Estonia, the first three countries being among the biggest insurance markets in the EU. It should be noted, however, that some of the companies belong to the same group.[25]

Figure 4 demonstrates the number of SEs operating in life, non-life or reinsurance sectors respectively. Some of the firms operate in more than one of the sectors. According to the chart majority of the undertakings provide services of non-life insurance followed by life insurance and reinsurance.

Consequently, even though the number of SEs in insurance and reinsurance sectors is low even compared to the total number of SEs, some of the biggest companies have adopted the form. This shows that ultimately there are advantages of the European Company for the firms with large cross border operations that want to increase their efficiency and structure. A deeper analysis of their motives to convert to SE and study of how it facilitates their operations will reveal the efficiency of the European Company for the undertakings in insurance and reinsurance sectors.

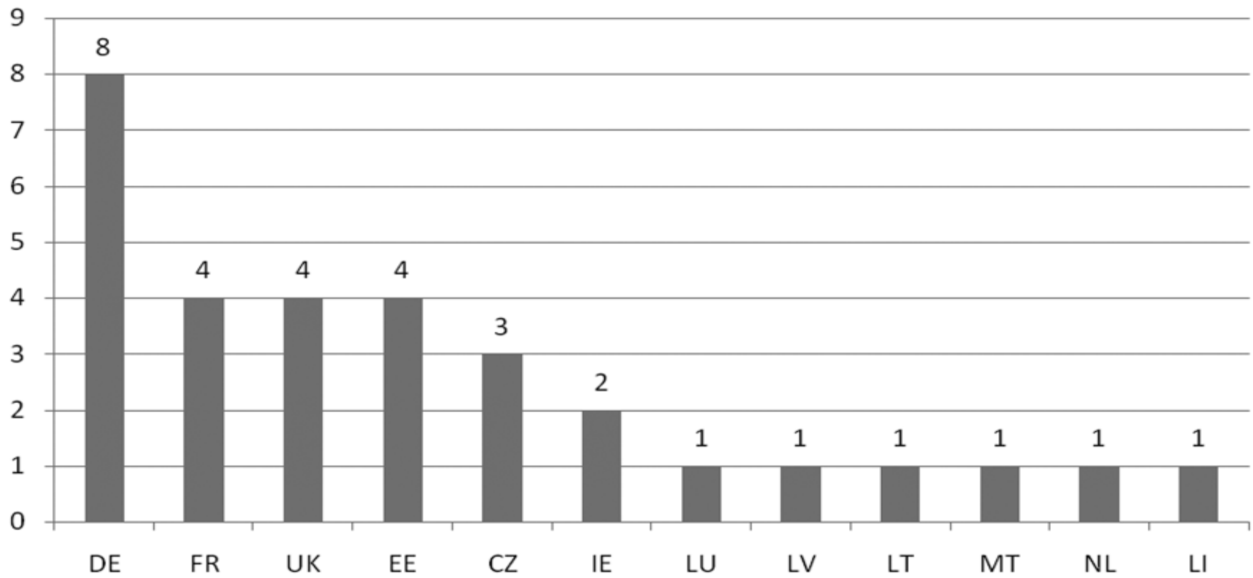


Figure 3. SEs operating in insurance/reinsurance sector according to a country of registration.

[24] ECDB (n 26).

[25] For example, SCOR has 3 SEs which all belong to SCOR Group.

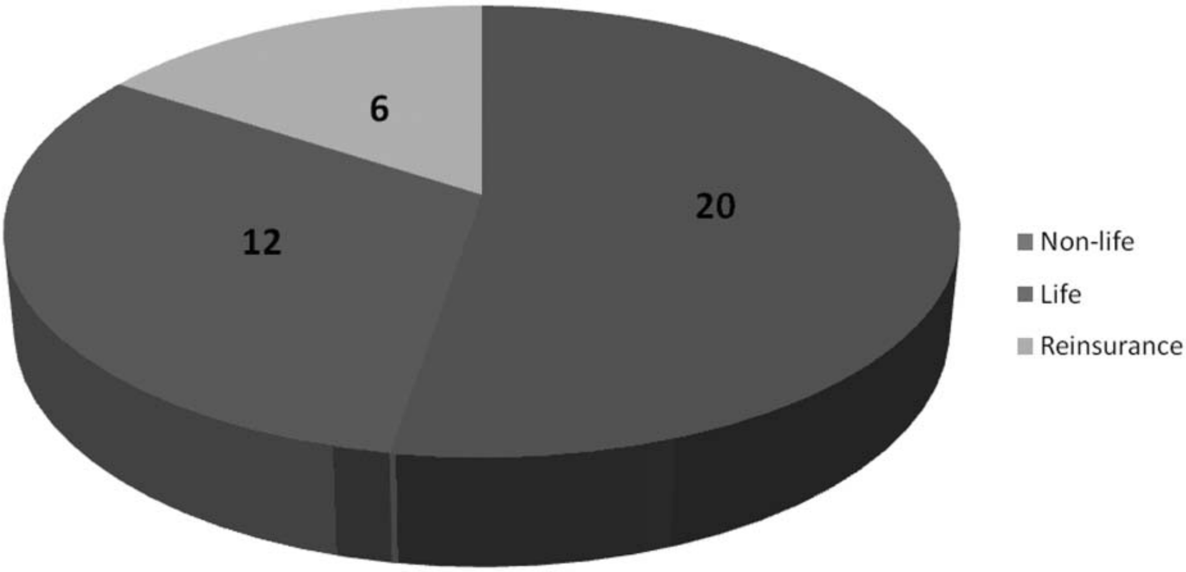


Figure 4. Number of SEs operating in Life, Non-life or Reinsurance sectors.

## 4. MOTIVES AND INCENTIVES FOR USING SE IN INSURANCE

It is important to analyse the drivers for choosing SE form in order to better understand its usage and benefits for the companies. For effective analysis they will be divided into insurance specific drivers and the ones that are not directly related to insurance.

### 4.1. Motives not directly related to insurance

After analysing companies' press-releases and conducting personal communications with their representatives it is possible to establish their main reasons for converting to SE. For some of the SEs in the insurance sector the main drivers for conversion were not directly related to insurance but dictated by the need to achieve re-branding, restructuring of business or increase the worker participation from other states, among others.

#### *4.1.1. European identity*

It is not a secret that companies sometimes choose a certain corporate structure not because of the governance or other practical reasons, but due to the reputation concerns (Eidenmüller, 2009a, 17).

The European Company, being among the first supranational corporate vehicles in the EU was perceived by various businesses as an effective marketing and branding tool despite the fact that it still is regulated largely by national legislation. The SE Statute helps to establish such identity, stipulating that 'the name of an SE shall be preceded or followed by the abbreviation SE' and that 'only SEs may include the abbreviation SE in their name' (Council Regulation /EC/ No 2157/2001, 2001, art. 11). It was estimated that the role of the image of the SE will increase with the growth of usage of this legal form (Eidenmüller, 2009a, 30).

The empirical data shows that some of the SEs in the insurance sector also paid a particular importance to the European image when choosing their corporate form. One of the respondents mentioned that there might be a value of SE in terms of publicity as it signals to the customers and counterparts that company is a 'real European undertaking', which will have a positive impact on the company's image.[26] Hannover Re in their press release stated that the choice of SE corporate form underscores 'the company's international business operations and serves as a visible external expression of […] corporate self-image as a European group with worldwide activities'.[27] ARAG SE, another German insurance company, named as one of the reasons for transformation into SE a hope to improve its reputation as internationally active insurer and increase its appeal among the European customers. They also add that 'The former name of the enterprise – ARAG Allgemeine Rechtssschutz-Versicherungs-Aktiengesellschaft was

[26] Interview with a representative of Estonian SE № 1, transcript on file with the author.

[27] Hannover Re press release https://www.hannover-re.com/45299/press-releases#/overlay/46725.

regarded as overly cumbersome and poorly suited for those purposes'.[28] Latvian insurer, BTA Insurance Company, motivated its decision to transfer to SE form by expecting this move to improve company's recognition on the EU level.[29]SCOR SE, a major French insurance company, also paid particular attention to the possibility of strengthening company's multinational and European identity while choosing to incorporate as an SE.[30]

#### *4.1.2. Worker participation*

Debates over worker participation were one of the main reasons why it took almost 30 years to reach the compromise on the SE Statute. As a result the SE Regulation was supplemented by a Directive regulating worker involvement which gave Member States more leeway in the implementation of its provisions (Council Regulation /EC/ No 2157/2001, 2001, n. 4). The success of the rules is dubious up to this day. Whereas it has undoubtedly contributed to the development of employee participation in countries where it did not exist before (van het Kaar, 2011, 195), the companies in countries with strong worker participation culture sometimes use Statute's provisions to limit such participation (Kirshner, 2010a, 1335).

Nevertheless, an opportunity to optimize worker participation at company level is still a powerful driver for choosing SE form. It has been used the most by German SEs. For example, for Allianz conversion to SE allowed to include workers coming outside of Germany to the supervisory board. Additionally the company used the new structure to circumvent the mandatory German rules and decrease the size of its supervisory board (Kirshner, 2010a, 1333).

For ARAG one of the reasons for converting to SE was the opportunity to reflect its international expansion, considering the fact that almost half of its employees work outside of Germany. Therefore the SE was used to enable company's employees to participate more effectively in its management organs.[31]

#### *4.1.3. Facilitation of cross-border merger*

At the time of its adoption the Statute was basically the only tool which facilitated cross-border mergers of companies which was a strong incentive for adoption of the European Company form. As the historical data indicates, at least 20% of SEs were established through cross-border mergers in the first three years after the Statute's ratification (Ernst & Young, 2009, 216). One of such companies was Allianz SE which in 2006 used SE to complete integration of its Italian subsidiary Riunione Adriatica di Sicurtà S.p.A. (RAS) into Allianz AG. The company states that from a legal point of view it was possible only if Allianz AG converted into a European Company.[32]

The situation has changed after the Directive on cross-border mergers (Merger Directive) has been fully transposed into the legislation of the majority of the Member States (Directive 2005/56/EC, 2005). Being available to a wider array of firms and providing more flexibility the Merger Directive quickly became the go-to solution for the companies willing to accomplish a cross-border merger thus depriving the SE Statute of its competitive edge. And indeed the data shows that after the deadline for transposing the Merger Directive has passed, the number of SEs established through cross-border merger has decreased significantly (Ernst & Young, 2009, 216).

Nevertheless, there are companies, also in the insurance sector, which still take the advantage of cross-border procedure provided by SE. Estonian insurance group ERGO merged its companies in the Baltic States, establishing as a result two entities – ERGO Insurance SE and ERGO Life Insurance SE, optimizing its operation in non-life and life sectors respectively.[33] Another Estonian-based company, used to have a life insurance company in Estonia with a branch in Latvia and a separate insurance company in Lithuania. In 2009 the two entities have been combined into a single SE. This allowed the company to unify the management and functional structure across the Baltics.[34]

Additionally, employingSE as a tool for cross-border mergers can mitigate scrutiny from supervisory organs and clients during company's restructurings. This is due to the fact that conversion to SE is often regarded as a signal of a 'legitimate, European-level restructuring' which is not the case with cross-border mergers using the Merger Directive (Kirshner, 2010a, 1301).

[28] ARAG SE press release https://www.arag.com/press/pressreleases/group/1009/.

[29] BTA SE Financial statement 2011 http://www.bta.eu.com/files/finreports/BTA_Annual_report_2011_EN.pdf.

[30] SCOR SE press release https://www.scor.com/images/stories/pdf/CP-2006/CP_2006_13_EN.pdf.

[31] ARAG SE press release (n 35).

[32] Allianz history https://www.allianz.com/en/about_us/who_we_are/history/. See also Ernst & Young (n 7), p.217.

[33] ERGO Group release https://www.ergo.ee/ergo-en/news/the-second-european-company-established-by-ergo.

[34] Interview with a representative of Estonian SE № 2, transcript on file with the author.

#### *4.1.4. Possibility of jurisdictional arbitrage*

The ability to freely move its registered office, provided by Article 8 of the SE Statute, was declared by the Commission to be one of the Company's main advantages.[35] Before the adoption of the Statute such possibility was seriously restricted in the EU. This provision generated a discussion whether the companies in the EU will be able to use the SE form to engage in jurisdictional arbitrage and avoid unfavourable national company law rules (McCahery, Vermeulen, 2005; Eidenmüller, 2009b).

As the practice shows, however, due to the serious restrictions to the mobility of SE not many firms have employed the form as a tool for jurisdictional forum-shopping. Nevertheless one of the respondents noted that possibility to move company's office across the EU was one of the important factors for choosing the form. Even though the company does not intend to use it in the near future, in case some important factors would change, for example the national regulation would become too complex, the company would consider other jurisdictions as options for relocation.[36]

### 4.2. Motives related to insurance

Due to a specific nature of insurance business, in particular authorisation and regulatory aspects of firms, some of the drivers for choosing SE form were directly related to the insurance activities of the companies and in some cases did not have high applicability to the firms outside of financial sector. On the other hand, part of the incentives is also relevant to other companies, although it has found a particular application within the insurance industry.

#### *4.2.1. Optimization of insurance group structure*

Optimization of the group structure is one of the important drivers for choosing SE regardless of the industry, however it has found a special application in the financial sector and insurance in particular.

Some of the insurance companies used SE to restructure a group according to the lines of business. For example SCOR through merger of its subsidiaries has established a parent company SCOR SE and two branches – SCOR Global Life SE and SCOR Global P&C SE, in life and non-life sectors respectively (Ernst & Young, 2009, 221–223). Another insurance group, ERGO, used SE to first unify its insurance companies in the Baltic States into ERGO Life SE in 2011, and then, two years later, merged its three non-life insurance companies into ERGO Insurance SE.[37] Apart from achieving operational synergies it has allowed the group to operate across EU based on the unified reporting and management system.[38]

Other firms took advantage of the SE to unify their subsidiaries across a geographical region. A subsidiary of Sampo Group, Mandatum Life (formerly known as Sampo Life) also decided to simplify its structure and combined its subsidiaries operating in Baltic Countries into one company – Mandatum Life Insurance Baltic SE. In this case the subsidiaries operating in Latvia and Lithuania were replaced by branches of the newly formed SE (Compiler Trade Portal, 2005). Another company operating in Baltic States also added that converting to SE allowed it to have one portfolio across Baltics, which is easier than having a separate portfolio per each state.[39]

#### *4.2.2. Increase of capital reserves*

There are also some financial considerations for insurance firms in replacing subsidiaries with branches. According to Solvency II the capital held by subsidiaries is considered their own whereas the funds held by branches are a part of the parent company funds (Directive 2009/138/EC, 2009, Recital 120). Therefore some of the companies replaced their subsidiaries with branches in order to increase their regulatory capital in preparation for the new rules.

ERGO Group noted in their press release that one of the reasons for merging its Baltic non-life insurance subsidiaries was to achieve capital optimization before Solvency II entered into force. Moreover, the previous merger of the group's Baltic life insurance subsidiaries and replacing them with branches allowed the company to achieve a rise in profit.[40]

Mandatum Life had similar reasons for merging its Baltic subsidiaries in life insurance sector and switching to a branch structure. The capital held by subsidiaries thus became part of the SE's total reserves making a positive impact on the company's compliance with Solvency II capital requirements (Kirshner, 2010a, 1301; Compiler, 2005).

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[35] European Commission, press release: http://europa.eu/rapid/press-release_MEMO-04-235_en.htm.

[36] Interview with a representative of a Maltese SE, transcript on file with the author.

[37] ERGO Group press release (n 47).

[38] Interview with a representative of Estonian SE № 1, transcript on file with the author.

[39] Interview with a representative of Estonian SE № 2, transcript on file with the author.

[40] ERGO Group press release (n 47).

Reducing the number of subsidiaries in a group and replacing them with branches also allows companies to achieve lower capital requirements as a result of diversification by having varied books of business at the same time maintaining their presence on the local markets. Additionally smaller number of legal entities inside a group has a positive impact on capital fungibility (Linklaters, 2011). For SCOR the SE structure allowed to achieve an efficient branch setup in the EU maximizing local solvency and mutualizing diversification benefits under Solvency II (SCOR SE, 2015, 88).

### *4.2.3. Regulatory reasons*

It is not surprising that insurance companies paid particular attention to regulatory considerations when deciding to incorporate as an SE. With Solvency II coming into force and bringing about a large array of changes, especially in supervisory aspects, a lot of companies are looking for the way to limit their supervisory exposure. As was mentioned in the previous section, some of the major insurance and reinsurance companies made restructurings which allowed them to replace subsidiaries with branches thus increasing their capital reserves. However, that is not the only advantage of the branch structure.

Solvency II recognises the right of (re)insurance companies to conduct their activity throughout the Community by establishing branches providing the principle of mutual recognition of authorisation (Directive 2009/138/EC, 2009, Recital 11). Regarding supervision of the companies and their branches Article 30 explicitly states: 'The financial supervision of insurance and reinsurance undertakings, including that of the business they pursue either through branches or under the freedom to provide services, shall be the *sole responsibility of the home Member State*' (emphasis added) (Directive 2009/138/EC, 2009, art. 30/1). The important implication of this provision is that when a company adopts a branch structure, all of the branches will have the same supervisor – the one of the company's home Member State. Even though the local supervisory authority of the Member State of the branch may participate in the 'on-site verifications of the information necessary to ensure the financial supervision of the undertaking'(Directive 2009/138/EC, 2009, art. 33) the actual supervision of the branch will be conducted by the authorities of the home Member State of the parent company.

Some of the firms took advantage of this provision and decreased the number of supervisors they have to report to by replacing their subsidiaries with branches. According to SCOR SE, as a result of setting up a branch structure by means of the European Company 'supervision has been integrated at the parent company level. SCOR communicates with a limited number of regulators, with whom it can share its global strategy in a privileged manner […]' (SCOR SE, 2015, 62). Some authors report that reducing the number of supervisors has significantly decreased companies' administrative and compliance costs (Kirshner, 2010b, 454).

It should be also noted that SE does not have the same benefits in other sectors as regulatory norms are specific to each industry (Kirshner, 2010a, 1300). Moreover, in case consumer rights are involved, companies cannot take advantage of unified supervision system since those issues fall under national supervision. For this reason Mandatum Life SE was unable to achieve centralized supervision in the Baltic States (Kirshner, 2010a, 1302).

Another important advantage for insurance companies offered by SE is that it allows them to make restructurings without losing the license to conduct insurance business. This was the case for Swiss Re which used SE to combine its subsidiaries into a British SE and then transfer its headquarters to Luxembourg. By using SE the company did not have to liquidate each of the subsidiaries and establish new ones, which would require new licenses for each of them (Kirshner, 2010b, 458).

## *SUMMARY*

This paper provided the discussion of the ways the European Company is used in insurance industry and what benefits it brings specifically to the insurance firms.

As was shown above, the SE, despite being a general form of enterprise, has found a special application in the financial sector and insurance industry in particular. One of the popular use cases was insurance group restructuring conducted through cross-border mergers and substituting subsidiaries with branches.

If judged by the statistical data alone, the story of the European Company and its adoption is far from successful. During more than 12 years since the corporate form became available, only 2797 European companies have been established (ECDB, n.26).

However, upon a closer examination there is compelling evidence that despite the low popularity, SE has found its use in certain industries, bringing about the advantages to the firms that converted to this new corporate form. Naturally, the shortcomings of the SE regulation and their negative impact on the overall adoption of the European Company cannot be dismissed, however there are other, less obvious factors, which determine how widely the SE is used. The low level of adoption can be attributed, among other things, to the fact that SE was specifically devised for large multinational companies operating in several states of the EU. Consequently, the capital and other requirements for the SE are substantially higher than the ones for the national companies.

The data presented in this paper points out that SE has found a particular application in the insurance industry where some of the major players have used the form to optimize their group structure, increase the amount of capital reserves in the advent of new Solvency II regulation and decrease the number of supervisory authorities to report to. Additionally European Company allows insurance companies to conduct cross-border restructurings and transfer of registered offices without losing their insurance specific licences, since such restructurings can be conducted without the company‘s winding up or liquidation. As a result the insurance companies were able to achieve substantial capital savings and increase the efficiency of their business operations, which is especially important with the entering into force of the Solvency II and its increased pressure on the ways insurance companies‘ capital and other reserves are managed. Moreover the SE makes a positive, albeit limited, impact on the decreasing ofthe fragmentation of the EU Insurance Company Law by providing a unified framework of norms for the regulation of corporate activities. Particularly, it has introduced a number of standard corporate governance rules establishing a uniform base for governing a group structure in different Member States (Ernst & Young, 2009, 224). This positive impact is unfortunately not applicable to the EU Insurance Contract Law due to the consumer protection norms and the principle of ‚general good‘, discussed previously.

Even though the current research has not found any direct empirical evidence confirming the fact that SE is actively used to simplify insurance portfolio transactions, there is nevertheless a strong theoretical indication that it can streamline such processes, in particular through cross-border reorganisations. Further research therefore should concentrate on following up this subject with more recent empirical data, since the situation can drastically change after more time have passed since the adoption of the Solvency II. Additionally, although this paper does outline a number of benefits that SE provides to the insurance companies, a subsequent investigation may reveal some previously undocumented advantages.

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