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"Europejska Spółka Akcyjna w postępowaniu rejestrowym", Natalia Banaś, Warszawa 2012 : [recenzja]

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Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.

**Natalia Banaś: *Europejska Spółka Akcyjna
w postępowaniu rejestrowym [European Public Limited
Liability Company in registration proceedings],
Wydawnictwo C.H. Beck, Warszawa 2012, pp. 277***

There is no doubt that a European public limited-liability company (hereafter referred to as *Societas Europaea* or SE) is nowadays one of the most interesting and controversial business vehicles that may conduct business activity within the entire territory of the internal market of the European Union, and which facilitates the economic integration of companies that originate from different Member States of the EU. The longstanding process of discussing the provisions of the European Union law related to SEs concluded with the adoption of the Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) [Official Journal L 294, 10.11.2001, p. 0001–0021]. Owing to the fact that the Regulation includes numerous references to the internal law of the Member States, the functioning of an SE in Poland is also regulated by the provisions of the Act of 4 March 2005 on the European Economic Interest Grouping and European Company [Journal of Laws No 62, item. 551].

The reviewed monograph presents the most important legal aspects of the formation and functioning of a *Societas Europaea* in the light of the issues arising out of the civil proceedings concerning the registration of an SE in Poland. This interesting idea to analyze the specific features of an SE in the context of the requirements relating to registration imposed by Polish, both substantive and procedural, law has been deliberately used by the Author in order to support the principal thesis put forward in the monograph according to which a *Societas Europaea* is not a company of an exclusively supranational character, but is rather a kind of a national public limited liability company that has its roots in European Union law and which, as an organisational unit, contains particular supranational elements.

The question about the legal character of an SE as a national or supranational company has already been raised in the doctrine of European company law and Polish commercial law as well and has been analysed in detail on the basis of the provisions of the Regulation 2157/2001 and its references to the national law of a Member State. Academic lawyers emphasise the fact that a consequence of the abovementioned references is the inevitable influence of the legal system of the Member State concerned on the internal structure and functioning of an SE, which in turn leads to such an effect that an SE is in fact similar in many aspects of its activity to a national public limited liability company [see for example: Kula, 2004: p. 62; Napierała, 2002: p. 24; Opalski, 2010: p. 537–541; Oplustil, [in:] Sołtysiński, Szajkowski, Szumański, Szwaja, 2008: p. 1304; Siemiątkowski, Potrzeuszcz, 2005a: p. 13; Siemiątkowski, Potrzeuszcz, 2005b: p. 18].

The new and original approach of the Author to this thesis, however, undoubtedly deserves attention since the Author presents the legal character of an SE not in the traditional way based on an analysis of the substantive law of the European Union, but from the perspective of the provisions of Polish civil proceedings by referring to the registration of an SE in Poland. Such an attitude to the issues related to the functioning

of an SE constitutes the great value of the book and is worth emphasising for at least two important reasons. First of all, the reviewed monograph focuses on a description and analysis of the provisions of Polish civil proceedings that are applicable to an SE in all of the essential aspects and stages of its formation and functioning in Poland that require registration. As a consequence of such an idea of the presentation of an SE in the monograph, this highlights the practical dimension to the functioning of a *Societas Europaea* in the Polish legal system. Secondly, the great advantage of the book is connected with the fact that it demonstrates the importance of both the substantive and procedural provisions of domestic law and the practical meaning of their coexistence with European Union law for the proper functioning of an SE.

Although the monograph is not strictly divided into separate parts, it may be noticed that its structure is in fact determined by the principal thesis concerning the legal character of a *Societas Europaea* as a national public limited liability company with European Union origins, which do not influence the functioning of an SE to such an extent that this type of company must be considered to be a supranational organizational unit.

The first part of the monograph is an introduction to the general issues relating to an SE and it consists of three chapters. At the beginning, the Author presents the idea behind the creation of an SE in the light of European economic integration as well as its historical background. The Author also highlights the most important and unique features of an SE including the sources of law that are applicable to this type of entity as well as its internal structure. The closing remarks in this part refer to the basic methods of setting up a *Societas Europaea*.

The Author describes the subsequent stages of the adoption of the final version of Regulation 2157/2001 in an interesting way in order to draw the conclusion that, as the effect of the difficult compromise between Member States and the necessity to balance their contradictory interests, the Regulation creates a company that has a national character that is supplemented by supranational elements instead of an exclusively Pan-European structure, which was the original aim of the European legislatures. The Author provides a detailed analysis of the internal structure of a *Societas Europaea* and emphasises the essential features of the dualistic system as well as the monistic system of the management of an SE. This part of the book, which deals with the scope of the competences of the administrative organ of an SE in the monistic system and the enforcement of this system of management of the company in Polish law, is worth particular attention since this unique legal method of organizing the management of a company has been introduced into Polish law for the first time. The Author highlights that under the provisions of Polish law, there is an opportunity to manage an SE using either the traditional dualistic system or a monistic system and points out the potential positive influence of this solution on the increase of the number of SEs that may be created in Poland in the future as a consequence of the growing competitiveness of the Polish legal system in comparison with the legal structures offered to entrepreneurs by other Member States of the European Union.

The next part of the monograph is devoted to the most important aspects of civil proceedings concerning the registration of an SE in Poland. The Author analyses in detail the procedural status of the participants in the registration proceedings concerning an SE and their specific attributes, including the capacity to be a party in civil cases, the capacity to sue and to be sued and the right to bring an action before the court. A separate chapter of the book also deals with the principal features of the court that

conducts the proceedings and the scope of its competences and jurisdiction. Although this part of the book is focused on an analysis of Polish civil procedure, it is really worth emphasizing that the theoretical and doctrinal reflections concerning the status of the parties to the registration proceedings are presented in a practical context as well in the monograph, since the author underlines their applicability in the process of the registration of an SE.

The most important part of the monograph comprises the chapters that are devoted to the thorough research of the procedural aspects of the registration of an SE in Poland. This part begins with interesting remarks related to the rules for the representation of an SE in the registration proceedings. Subsequently, the Author concentrates on a description and analysis of the provisions of the registration proceedings that are conducted at the most important stages and areas of functioning of an SE related to the formation of a company, the cross-border transfer of its seat and its liquidation. The final chapters of the book present the judicial processes that complete the registration proceedings and legal remedies related to appealing the court's decisions.

An undeniable benefit of this part of the monograph is primarily the Author's explication of the considerable meaning of these new issues in Polish legal system that may appear in the registration proceedings of an SE. First of all, the Author analyses the status of the managing director as a position that is specific to the internal structure of an SE and the scope of their competences, in particular with reference to representation of an SE. Legal possibility to transfer the registered seat of an SE to another Member State without the necessity of winding up a company and creating a new legal person is considered to be one of the most unique, essential and supranational features of this entity. Additionally, in the light of the provisions of the Treaty on the Functioning of the European Union related to freedom of establishment, the cross-border transfer of the seat of the company seems to be a question that is of the utmost importance [Consolidated version of the Treaty of the Functioning of the European Union – Official Journal of the European Union C 326 (26.10.2012)].

Therefore, the part of the monograph that is devoted to the registration of the transfer of the seat of an SE is really noteworthy. Referring to this issue analysed in the book, it is worth emphasising that from the perspective of Polish law, this is the first regulation that is related to the cross-border transfer of the seat of a company. The Author attempted to analyse the complex and complicated procedural issues related to the transfer of the seat of an SE, including the principles of the representation of the company and the documents required for the registration to be issued by the court, and it must be admitted that she rose to the challenge beautifully. The only reservation that comes my mind regarding this part of the monograph is that the Author should at least have indicated the significance of the transfer of the seat of a company for the proper functioning of the internal market of the European Union and the crucial meaning of the approach of the Court of Justice of the EU to this issue as expressed in its fundamental judgments [See for example : Daily Mail 81/87 (ECR 1988, p. 5483), Centros C – 212/97 (ECR 1999, I – 1459), Inspire Art C 167/01 (ECR 2003, I – 10155), Überseering C – 208/00 (ECR 2002, I – 9919), Sevic Systems AG C – 411/03 (ECR 2005 p. I – 10805), Cartesio C – 210/06 (ECR 2008, I – 9641), Vale C – 378/10 (ECR 2012, p. 0000)]. On the other hand, the Author puts forward the thesis that considers SEs as a type of national company and consistently focuses on the presentation of the most important legal aspects of their functioning in the Polish legal system. Therefore, the omission of any reflec-

tions concerning European Union law is understandable and justifiable and it should not deprive this part of the book of its great value.

The presented monograph contains a comprehensive and detailed analysis of the principal issues related to civil proceedings concerning the registration of the formation, functioning and winding up of a *Societas Europaea* in Poland. In addition to the fact that the Author concentrates on a presentation of the provisions of Polish law that are related to SEs, the monograph also includes numerous references to European Union law, in particular to Regulation 2157/2001. The coexistence of national law and European Union law in the regulation of an SE, which is a consequence of the system of the sources of the law that are applicable to SEs, and presented by the Author in the light of the registration procedure, may give readers a real insight into the practical aspects of the functioning of an SE in the Polish legal system. Although SEs have not yet gained great popularity in Poland, readers should appreciate the fact that the monograph contains not only descriptive parts and theoretical deliberations, but that the Author also presents ideas and proposals that may play an important role in the process of the registration of an SE that are related to, among others, the functioning of an SE in organisation.

Taking into consideration all of the positive aspects of the monograph, it is certain that a wide range of readers may find it to be interesting and valuable. The book may be recommended to academic lawyers specialising in company law, European company law and civil proceedings as well as for practitioners who are involved in providing legal assistance to entrepreneurs intending to set up a *Societas Europaea* or conducting registration procedures. It is also worth emphasising that the monograph may be an interesting guide for entrepreneurs who are considering taking up business activity in Poland in the legal form of a *Societas Europaea*.

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