

Chapter 5

SEs in the Czech Republic

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1. The SE in the Czech company law landscape – an introduction

The company law rules in the Czech Republic are concentrated in the Commercial Code (Act No. 513/1991 Coll.). The Regulations as such have been relatively stable over the past few years. EU law is one of the main sources of inspiration for the Czech legislator. The company law changes that were made were mostly carried out in order to implement the relevant EU Regulations and Directives. However, a new Corporate Law Act is planned to replace the Commercial Code by January 2014. The new Corporate Law Act (the Business Corporations Act) combined with a new Civil Code introduce important changes to the legislative provisions applicable to the managing and supervisory bodies of companies. The most popular company form in the Czech Republic is the limited company (s.r.o.). The Commercial Code prescribes for the limited company at the registration a minimum required capital of 200,000 Czech Koruna (CZK, in March 2012 approximately 8150 euros). In recent years the government has proposed changing the required registered capital for a limited company to 1 CZK. The proposal was introduced as a ‘response’ to the SPE proposals that were formulated at EU level (Cremers and Wolters 2011). It aimed to increase the attractiveness of the domestic corporate forms and was meant to be integrated in the new Corporate Law Act.

In fact, the implementation of the SE rules has a similar background. The Czech legislator did not provide for more flexibility or more stringency but aligned the SE rules in general with those of the national public limited company. The conditions for SE formation and the applicable provisions under Czech law (by merger, conversion, formation of a common holding company or common subsidiary) and those applicable to a na-

tional public limited company (a joint stock company – ‘a.s.’ or *akciová společnost*) are therefore quite similar. With the SE the Czech legislator has opened up the possibility to opt for the one-tier system, although this has not led to a shift away from the classic two-tier system. Several traders in corporate ready-made forms have picked up the new form coming from the EU level as a commercial activity to create SEs for sale ‘on the shelf’ with the effect that the Czech Republic has nowadays the ‘highest score’ with regard to the overall number of SEs. Little is known about the employee figures of the Czech SEs; therefore the ETUI in its European Company Database (hereafter the ECDB) classifies a large proportion of Czech SEs as UFO SEs.¹

Some scholars have concluded that the simplified corporate governance structure allowed by the SE statute constitutes the main driver for establishing a normal SE, although there are in practice few differences with the national form. In certain areas, deviations from the general principles tend towards more flexibility for the SE. For instance, there are no requirements regarding the maximum or minimum number of members of the corporate organs, whereas such requirements exist for national public limited companies (at least three members of the board of directors/at least one member of the board of directors in the case of a sole shareholder with at least three supervisory board members). The SE rules also provide the possibility of nominating one member of the supervisory board to act as a member of the management organ in the case of a vacancy as a member of the latter, and the possibility for the first general meeting of shareholders of an SE to be held at any time in the 18 months following incorporation (E&Y 2009).

Several other characteristics of the Czech SE legislation are not specifically owned by the SE. For instance, the national public limited company can transfer the registered office out of the Member State where it is incorporated and there is no specific extension of the protection of stakeholders in the case of transfers. The high incidence of SEs ‘on the shelf’ might partly be the result of too optimistic expectations on the part of the traders of the market demand for SEs (Eidenmüller and Lasák 2011).

1. A UFO SE is defined as an SE on which insufficient information is available for tracking or grouping. In the ECDB this includes (since June 2012) also the SEs ‘on the shelf’ that are set up with neither operations nor employees: <http://www.worker-participation.eu/European-Company/SE-COMPANIES/SE-Database-ECDB/News-on-European-Companies-December-2011>

However, according to the work of the ECDB group that monitors the functioning of SEs there is a steady production of new subsidiary SEs for sale, as is the case with all company forms. Compared to national company forms the number of SEs for sale is substantial and there seems to be a constant turnover. Poor registration and a lack of information make further analysis complicated.

Surprisingly, the E&Y study for the European Commission does not label the SE in the Czech Republic an attractive company form. As regards intra-Member State analysis, the Czech Republic, according to the E&Y study, is characterised by a relatively high level of attractiveness of the SE compared to the domestic public limited company. However, in their summary it is stated that the Czech Republic is characterised by a low level of attractiveness in respect of national legislation applicable to the SE and by a medium-low level of attractiveness as regards the implementation (or non-implementation) of the options left open by the SE Regulation. When implementing (or not implementing) the options left open by the SE Regulation, the Czech Republic has tended to reduce its overall attractiveness. At first sight, this conclusion is of course in sharp contrast with the actual number of created SEs. This has led to what some authors call the Czech puzzle as it does not explain why the SE corporate form designed for large transnational entities and corporations has become so popular in a country with a relatively small economy (Eidenmüller and Lasák 2011).

2. Some facts and figures

In the ETUI's ECDB a total of 1379 SEs were listed in Europe by mid-August 2012. The creation of SEs by Czech incubators had constantly increased to constitute more than 62.6 per cent of the total SEs formed in Europe (864 registered SEs).² The ECDB is the only reliable registration of SEs and is referred to not only by the European Commission but also by all important scholars and researchers. The database covers more companies than the EU Official Journal as it also includes information

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2. Four years after the SE Rules came into force (on 1 November 2008) the Czech share was 33 per cent (101 registered SEs). At that time, no SE was created in 11 countries in the EU/EEA. Three countries (Czech Republic, followed by Germany with 89 SEs and the Netherlands with 28 SEs) had a total share of 72 per cent of all registered SEs. In the meantime, the Czech share has doubled in relative terms and is almost seven times higher in absolute figures.

published only in national registers or information that appears much later in the Official Journal. According to the quarterly updates of the ECDB the Czech Republic continues to ‘mass produce’ SEs: in June 2012 more than 113 were reported in three months (<http://ecdb.worker-participation.eu>). Interestingly, on top of that, a Czech trader has started to establish SEs in the United Kingdom through a virtual office provider in London (in the period March–May 2012 an additional 37 inactive SEs).

The creation of SEs proceeds steadily over time; in the past year (till mid-August 2012) 240 new SEs were established in the Czech Republic (more than 70 per cent of the total increase). After registration, nothing happens for a while. This period can sometimes be from 6 months to a year. Then the changes start, share capital is paid up, companies move to a new address and new board members are coming and going. New or anonymous shareholders enter, there is often a new company name, there are changes in the share structure, in the trade register and in the VAT register and sometimes some employees can be found in the statistical register. The proportion of SEs that are at first intended as ‘on the shelf’ and SEs that are directly created on demand often shifts over time. More traders can be identified, although the number of available SEs has not increased that much.

The companies that are created are legal entities, but for most companies it is unclear at the moment of registration whether these entities pursue activities or operations. The SEs often have very general names, with simplified rules that can ‘serve’ any interested client. It is also unknown whether there are any employees. National registers do not oblige companies to deliver such information when registering the SE and it can be questioned whether national registration is reliable. Therefore, these registers often provide information on neither employee figures nor on operations. The only additional information, if available, comes from commercial business or trade registers and the Supplement to the Official Journal of the European Union. In a random check of the ECDB data we found anonymous registered owners in 50 per cent of the 300 cases examined. For these reasons the ECDB labels a substantial part of the ‘ready-made’ companies in the Czech Republic UFO companies. In the March 2012 update 10 Czech UFO SEs were moved to the normal category as more information could be obtained. Out of these 10 companies, nine seemed to be very small with less than 20 workers. Although information is lacking, it is supposed that these establishments had no employees at the time of creation. Some were for sale, or on ‘the shelf’,

already for more than two years. As far as information can be disclosed it looks as if only a fraction of the created SEs conducts significant business activities.

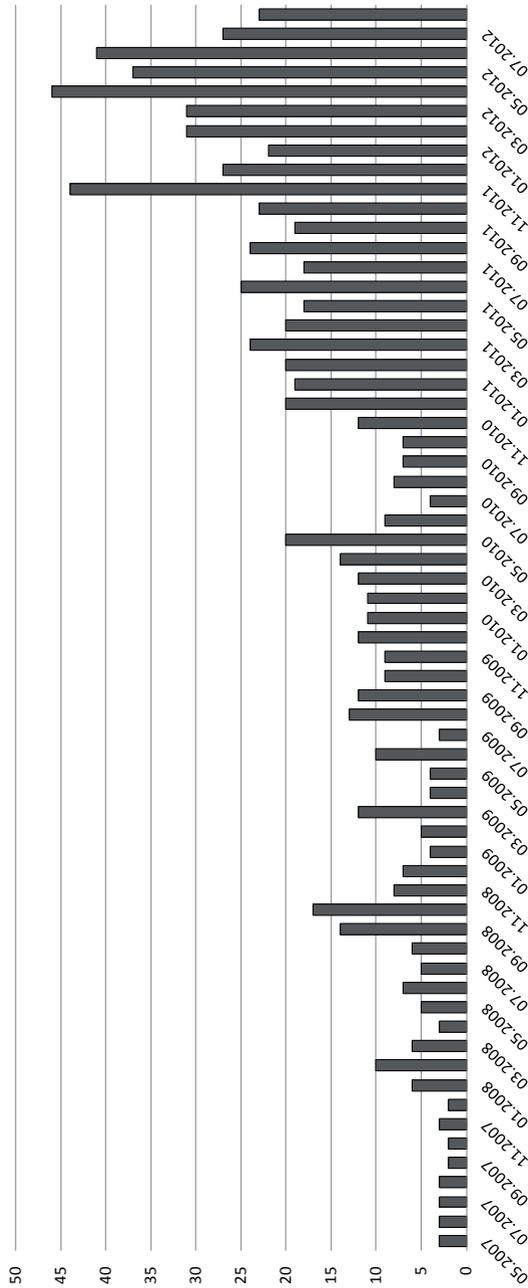
Figure 1 gives an overview of the creation of SEs in the Czech Republic.

3. The shelf SE and its traders

The overall number of SEs created in the Czech Republic is very high, but the figures need further explanation. In the category UFO SEs in the ECDB database the Czech Republic accounts for almost 80 per cent of total SEs with no information, evidence or signs of operations and workforce. The creation of so-called shelf SEs as a commercial activity, set up by a specialised company in order to be sold later, is not widespread over most other countries. And while the commercial companies (mainly business and company law consultancies) that sell ready-made companies, in countries such as Germany show only moderate activities the Czech traders remain very active. The Czech Republic is special although it looks as if some Slovak traders have started to copy their sales strategy. Overall, it seems that there is a (relatively small, but steady) market for this product. The acquisition of a ready-made SE saves time: it can be bought within hours. The business with ready-made SEs is quite simple; the formation of an original SE is rather an exception with almost all Czech SEs formed as subsidiaries of existing ‘mother’ SEs in accordance with Article 3, Paragraph 2 of the SE Regulation in the form of ready-made companies (Štrauch 2008). Figure 3 in Chapter 1 demonstrates clearly how the creation is organised. The sole shareholder of the shelf SE is a professional provider who pursues commercial activities in the field of company law and offers SEs (along with other national company forms) for sale.

If an SE available ‘on the shelf’ is old, the provider usually creates a new SE for sale. Information on activation is difficult to track (Kelemen 2012). The practice of shelf companies (also with domestic corporate forms) is quite usual in the Czech Republic, but in case of the SE it represents a variation of the original purpose, which was supposed to lead to intensification of cross-border cooperation. The ‘mother’ SE is a passive SE that is used as the incubator for the production of subsidiary SEs. These subsidiary SEs are not subject to transnational requirements and are empty at the time of founding. Most established shelf companies

Figure 1 SEs in the Czech Republic (number of entities registered each month)



Source: ETUI (2012).

do not have any links to other foreign constituencies; in fact one of the explicit political aims of the introduction of the SE corporate form. Subsidiary SEs established in accordance with Article 3.2 of the Regulation were originally supposed to be only a secondary way of establishing SEs.

Štrauch has listed five characteristics:

- (i) Establishment of the company in accordance with Article 3.2 of the Regulation;
- (ii) The company's activity is labelled 'property management', which is not subject to trade law;
- (iii) No employees, which allows application of the standard regulations of the Act on the European Company;
- (iv) Adoption of the two-tier system of corporate governance with only one member in both directorate and supervisory board;
- (v) The capital is refunded at the minimal legal amount and stock certificates are in the name of the owner.

With no employees at the moment of foundation negotiations on workers' involvement cannot be implemented, and the standard rules are applied.

Of course, traders in ready-made companies can also offer to found a subsidiary SE under the name and conditions of a potential and interested buyer. The price of a shelf SE was estimated (by Glück in 2009) in a range of 94,000 to 200,000 CZK (4,000 to 8,500 euros), which was said to be very competitive. In a recent web survey by the SEEurope factsheet team at least 10 incubators were found with approximately 50 SEs for sale with prices (mid-March 2012) varying from 79,000 to 175,000 CZK (3250 to 7150 euros).

Besides, everyone can purchase a ready-made SE. Also persons that are not entitled to form an SE in the normal way for operations with one unified company in several European Member States, for instance due to their lacking cross-border relations, can use the SE company through this track, which gives their undertaking a certain European image.

For foreign buyers it is easy to purchase an SE in the Czech Republic. The traders are very active on the worldwide web and most of the information is available in English. The SE provides foreign companies with the possibility to acquire a one-tier structure, if this is preferred, and

the commercial register is transparent and accessible online. The lean composition of the internal structure, with few people involved closely in the firm, guarantees higher anonymity. But it must be said that foreign undertakings that are looking for mobile corporate forms have a broad choice of national corporate forms all over Europe, with no specific attraction on the part of the Czech SE. The scarce evidence that there is suggests that customers are mainly individuals of Czech origin with business intentions or tasks that are described in very general terms and firms that are only active in the Czech market (Štrauch 2008).

4. Workers' involvement and the Czech SE

According to the SE rules formulated in Art. 12 (2) of the Regulation 2157/2001 an SE may not be registered unless an arrangement for employee involvement pursuant to Article 4 of Directive 2001/86/EC has been concluded. Thus, an agreement on information, consultation and, if applicable, participation rights for employees of all involved Member States has to be negotiated before an SE is founded. Article 3 of the Directive prescribes the procedure and the conditions under which the negotiations take place or can be terminated. Article 5 states that an SE may be registered without an agreement if the period for negotiations (six months, with a possibility to extend by the partners to one year) has expired. Act No. 627 transposed the SE Directive into Czech law on 11 November 2004.³

In the earlier sections the creation of ready-made SEs as a business activity was described. It was noted that almost all Czech SEs are formed as subsidiaries of existing 'mother' SEs. These SEs become legal entities, but it is unclear whether these entities pursue activities or operations, and/or if there are any employees. Due to the specific constitution of these ready-made SEs, several problems could arise with regard to the workers' rights enshrined in the SE Directive.

Glück notes that it is controversial whether SEs without employees can be established at all. Since neither mother SEs nor subsidiary SEs have any employees at the time of foundation, a special negotiating body cannot

3. Download in English and Czech on the Commission website: http://ec.europa.eu/employment_social/labour_law/documentation_en.htm#11, section 10 on the European Company Statute.

be set up and involved in the founding procedure. However, ready-made SEs without employees are registered, not only in the Czech Republic, but also in other Member States. A second remark is that it is not determined by law how regulations on worker involvement are to be adopted in ready-made SEs when no employees exist to form a negotiating body. An examination of the legal statutes of ready-made SEs in the Czech Republic made clear that all shelf SEs apply the standard rules for information and consultation (§55–62 of the Czech transposition law⁴) on the basis of the SE Directive. In some cases general provisions on participation are also included (§63 transposition law). The standard rules are applied without negotiations; instead, the management of the mother SE decides to apply these rules in the foundation process. According to §59(2) of the transposition law, the employee's committee then has the right to decide after four years whether to renew negotiations on worker involvement. One could conclude that 'worker involvement rights at least to the extent of the standard rules are secured' (Glück 2009).

The statutes of some ready-made SEs include the duty of the management to implement its rules according to the actual situation of the SE and thus respect the involvement regulations when workers are employed.⁵ Several authors have signalled that no information exists on whether activated shelf SEs respect the rules with regard to negotiations on workers involvement. There is no evidence that activated shelf SEs have set up employees' committees according to the rules that can be derived from the SE Directive. The activated SEs tend to be, by their nature, of small size with few activities and a small workforce.

The next overview with a list of activated SEs (in the period end of 2011–early 2012) provides some proxy evidence of the small size (see Table 1). Only one company has a workforce above 25 workers (source: <http://ecdb.worker-participation.eu>).

Activated companies probably have only a few employees and it is in practice impossible to trace the empty or shelf SEs that can be bought

4. Czech transposition law, No. 627, Act of 11 November 2004 on the European Company; English version: http://ec.europa.eu/employment_social/labour_law/docs/se-czechrepublic_en.pdf; Czech version: http://ec.europa.eu/employment_social/labour_law/docs/se-czechrepublic_cs.pdf

5. Petr Štrauch, Masaryk-University Brno, December 2008, p.44: http://is.muni.cz/th/108065/pravf_m/?lang=en

Table 1 Activated SEs in the Czech Republic, end 2011–early 2012

Company	Sector	Form of establishment	Corporate governance structure	Number of employees / year	Registration date
IVF Cube SE	Other services	Subsidiary	Two-tier	10-19 (2011)	26/10/2010
FIIBII, SE	Services - finance	Subsidiary	Two-tier	6-9 (2011)	13/07/2011
CheMont Engineering SE	Building, woodwork	Subsidiary	Two-tier	6-9 (2011)	25/03/2009
R. JELINEK GROUP SE	Services - finance	Subsidiary	Two-tier	169 (2011)	15/09/2009
ABL Investment SE	Services - commerce	Subsidiary	Two-tier	6-9 (2012)	02/11/2009
BESNERO SE	n/a	Subsidiary	Two-tier	6-9 (2012)	02/02/2011
JANDA&SYN COMPANY, SE	n/a	Subsidiary	Two-tier	10-19 (2012)	27/04/2011
LANGERONE SE	Other services	Subsidiary	Two-tier	6-9 (2012)	15/07/2009
OK Green SE (former Huronel, SE)	n/a	Subsidiary	Two-tier	20-24 (2012)	15/03/2011
RENTIRO SE	n/a	Subsidiary	Two-tier	6-9 (2012)	23/04/2010

Source: ETUI (2012).

via commercial company traders. In case of activation an agreement on the involvement of employees is no necessity for registration. On top of this the few employees involved are not easy to trace and might be unaware of their rights. Therefore, compliance with the rules on workers involvement in the case of activation can be questioned. The chain production of SEs by a ‘mother’ SE can further complicate compliance. Research shows that the relations between SEs and companies further down in a network are manifold. Sometimes companies are owned by the same people, sometimes the SE owns 100 per cent of a Czech company and sometimes a Czech company owns 100 per cent of an SE (Glück 2009).

The SE has become an attractive alternative to the domestic corporate form (for a certain segment of Czech companies) because of the simplified structure, with one board member and one managing director. The chain production has led to a profitable business for ready-made SEs. Often this is combined with no cross-border or European dimensions, as

the created SEs are only active in the Czech Republic. Thus, it is possible that an activated SE only employs people in the Czech Republic. In the transposition law implementing part 2 (a) of the standard rules in the annex of the Directive (§59.1 of the transposition law) it is written that the ‘competence of the employees committee exclusively applies to matters which concern the European company as a whole, its subsidiaries, or the organisational components of an undertaking on the territory of another Member State, or which exceed the powers of the decision-making bodies in a Member State’ (Glück 2009). The question is whether the employees’ representatives can derive any competences from the SE Directive in a sole Czech SE, or whether all information and consultation rights are simply governed by Czech provisions.

5. Negotiations on workers’ participation in practice

It has already been mentioned that there is no clarity about the activation of SEs, although in principle negotiations have to be caught up once the company starts carrying out activities and engaging a workforce (Recital 18 SE Directive). Notably, the provision of workers’ participation rights in activated ready-made SEs is not guaranteed. According to Glück, the practice of shelf SEs constitutes a threat to worker participation. Based on the Czech transposition law the management of mother SEs can include general provisions on participation rights in the SE statutes; §63 prescribes ‘Under the conditions laid down by this act, the employees of a European company shall be entitled to influence the composition of the organs of a European company in the manner and in the scope appointed in the statutes of the European company, based on the outcome of negotiations on the involvement of the employees of the European company. The provisions of §64 shall apply only if the agreement on the manner and scope of involvement of employees of a European company or this Act so decrees’. §64 provides standard rules on participation. Related to this question is what happens when a ready-made shelf SE is activated by incorporating or buying companies that have previously had worker participation rights. In the Czech context this can happen if a former Czech public limited company (a.s.) is merged into/bought by an SE, since employees of an a.s. with more than 50 employees possess the right to elect one-third of the supervisory board members. The basic question here is whether structural changes can justify new negotiations. But the notion of structural change does not figure in the Czech transposition law and therefore no claims can be derived.

The practice of shelf SEs constitutes a possible threat to worker participation as the mandatory negotiations between employees and management can be circumvented. According to the company statutes the SE only has to implement information and consultation rights. In SEs founded the normal way, there is no evidence of reducing or minimising participation rights. However, even there a circumvention of participation rights is in theory possible, or rather avoidance of future obligatory rights based on the growth of the workforce, since worker participation is not obligatory in SEs in contrast to Czech public limited companies (a.s.) in which one-third of the members of the supervisory board have to be elected by employees in companies with more than 50 employees. The figures available show that as most created SEs are at least in the beginning relatively small (below 50) this cannot be seen as an explanation of the high incidence of SEs.

Therefore, we can conclude that circumvention of worker rights as such is not a driver, a conclusion that is backed up by some empirical evidence coming out of an inquiry among 88 SE users. The respondents were asked to assign six motives with a value ranging from 0 (not important) to 5 (most important). They named brand management (average 3.4) and simplification of the internal structure (average 3.4) as the main motives. Employee participation had the lowest outcome (average 0.5). As some of the respondents might assign to one variable a higher value than other respondents, even though in fact the importance of the given motive was pretty much the same the findings were adjusted by focusing on individual respondents. It was examined in how many instances a particular variable was the most important factor in the process of incorporation under the form of an SE or for purchasing an SE. The results showed that simplification of the internal structure was named as the most important motive in choosing the SE corporate form in 51 out of 88 cases, followed by the image of the SE (37 out of 88 cases). Employee participation was mentioned only once (Eidenmüller and Lasák 2011).

A final issue is negotiation practice. Based on the scarce empirical material, authors have concluded that workers' representatives are often hardly heard in SE negotiations (Glass 2009). It can happen that agreements are signed on the same day that negotiations have been opened, that employees in normally founded SEs agree to terminate or not to open negotiations or that information and consultation rights are restricted to the national regulations of the involved countries (Demonta Trade SE, NH-Trans SE, Omnia Holding SE, cited by Štrauch 2009).

In the E&Y report it was concluded that the extensive rules under which a Czech SE may be established and the rules of employee participation are very restrictive in comparison with a national limited-liability company and make the use of the entire legislation on SEs difficult to capitalise and apply in practice, and also expensive (as legal advice is definitely needed). The stringent rules that E&Y refers to are the fact that under the domestic Commercial Code, the employees are entitled to have representatives in the Supervisory Board only if the company employs at least 50 employees, while no limitation applies to the European company. If a domestic public company (a.s.) employs more than 50 employees, Article 200 of the Commercial Code prescribes that one-third of the supervisory board members must be elected by employees. This is of course regarded as a very important worker's right.⁶

Most of the biggest employers in the Czech Republic operate as public companies and therefore this form of workers representation on board level is wide-spread. There are no important signs of a shift towards the SE in these larger companies. Besides, the overwhelming majority of created SEs are very small starters according to the available figures. In line with the E&Y reasoning one would expect that these SMEs (with less than 50 employees) would rather have opted for the domestic form. This is one of the many contradictions in the E&Y report.

Based on the available empirical evidence it can be concluded that this threshold of 50 workers is irrelevant. Therefore, it cannot be confirmed that the main driver for buying a ready-made SE company is the intention of having no employees.

6. An unintended side effect or the result of domestic competitive legal pluralism?

Inactive SEs with no workforce at the moment of registration and foundation can be registered without the need to negotiate an agreement on employee involvement. In principle, however, once the SE is activated

6. The planned modification of the Czech company law seems to question rights to workers' involvement. The revised Companies Act, said to enter into force January 1, 2014 merely abolishes the obligation for companies to include employee representatives in their supervisory board. The planned legislation has been sharply criticized by the trade unions.

and starts to engage a workforce the negotiations have to be initiated. It is not clear whether this basic principle is respected in the Czech Republic. The activated companies may have only a few employees and it is in practice impossible to trace the empty or shelf SEs that can be bought via commercial traders. Out of the total of 864 SEs established in the Czech Republic only 44 can be identified with certainty as normal SEs (this is less than 5 per cent). In countries such as Germany, where there are also traders active that produce ready-made companies on the shelf, the percentage of identifiable normal SEs is around 50 per cent of the total.

The Czech puzzle has led to several hypotheses. But it looks as if in fact the SE is first and foremost a domestic solution for small companies that do not want to comply with the obligations of the Czech corporate forms. The fact that it is possible to create a company with a very simple internal structure under which the legal entity has only one management board member and one member of the supervisory board seems to be a key explanation of the high incidence. The SE is an alternative to the domestic public limited company. There is a clear preference for a legal form that is very much like the national joint stock company, two-tier but simplified in its management composition. Several authors confirm this:

- E&Y label the possibility of having a board of directors and a supervisory board each with only one member as the perceived ‘main driver for having an SE instead of a national public limited-liability company’ (E&Y 2009).
- The SEs that have been established share certain characteristics; one of these characteristics is the choice of the usual two-tier corporate form with one member in the directorate and one board member (Štrauch 2008).
- Glück supports the conclusion that all ready-made SEs have a two-tier structure with one member in the management, one member in the supervisory board (2009).
- In an inquiry with 88 respondents from created Czech SEs, 59 stated that they had chosen the SE form because of the possibility to opt for an internal structure with the classical two-tier form and only one management board member and one supervisory board member. Only one respondent had opted for the one-tier form (Eidenmüller and Lasák 2011).

Also, in the ECDB data only a handful of SEs are to be found that changed from two-tier to one-tier. Most created companies are probably by their

nature of a small size with few activities and a small workforce. These alternatives to the national corporate forms take the shape of SMEs that are not very active in a cross-border context. The majority of Czech SEs are set up by a mother SE according to Art. 3.2 of the Regulation. These SEs do not need a European dimension any more, in other words, the involvement of companies from at least two EEA countries is not necessary. Instead, they are offered for sale as ready-made firms and can then conduct business as under a normal Czech company statute without European dimension. A second aspect, the steady production of new SEs, is a consequence of the popularity of this domestic form. Although the overall demand is not overwhelming, there is constant selling on the market. Officially, the requirement minimum registered capital is higher (120,000 euros) than for the national public limited company (less than 80,000 euros). But there is neither capital control nor obligatory audit of the actual operations once an SE is created and registered SEs can be created by the same person(s) in a chain without high capital requirements.⁷

Besides, the minimum required capital is guaranteed by the mother SE that acts as the sole shareholder. This is probably the reason why the same person(s), related to a commercial provider, figures in the records. In this respect the conclusion of E&Y cannot be confirmed that ‘Since a vast majority of SEs are set up/acquired in the Czech Republic by small and medium enterprises or individuals for the purpose of having a vehicle with no need of enormous staffing of the corporate organs and the related expenses, the prescribed minimum level of the registered capital seems to be inadequate and discouraging’. Given the high figures of SEs there is evidence neither for discouragement nor for the existence of a financial barrier in practice.

Finally, a limited part of the Czech SEs has a cross-border or transnational character, and we have no evidence (yet) that the market behav-

7. In 2009 the provision was introduced to pay only 30% of the required capital at the start. This provision is relevant also for companies with registered capital that goes beyond the minimum. In an in-depth SEEurope analysis of 712 SEs registered in the Czech Republic the most important finding was that a payment of only 30% is often made. In total, 271 of the investigated SEs were not fully paid up at the time of founding but only to a certain percentage (most often 30%). 265 only paid up 30% and 6 companies paid in a range of up to 55% (ETUI, 2012 - research by Anders Carlson). During an SEEurope meeting serious violations of the restrictions on payments in cash were reported (Lasák 2012, presentation SEEurope Prague).

four of these SEs is different from the SE established elsewhere. The owner is interested in the possible transfer of seats, legal restructuring or European image, or the creation is simply the result of a contact with a (Czech) consultancy that has advised this corporate form.

Participation rights are not obligatory and no hard evidence can be found that the absence of employees or their participation rights are among the key drivers. The presumption formulated by E&Y – that the concept of the SE is so popular in the Czech Republic in comparison with the other Member States because of the fact that one can buy a ready-made SE company with the intention of having no employees – does not hold water. In the available research this aspect is only present at the margins, far behind the image, the simplification or the mobility aspects. The SE is attractive at home, but not necessarily for foreign companies.

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