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## ACTING OF LEGAL PERSONS AND SUPRANATIONAL BUSINESS FORMS (CONFLICT OF USED THEORETICAL CONCEPTS)

(Діяльність юридичних осіб і наднаціональних господарських форм  
(конфлікт використання теоретичних концепцій))

### *Resume*

*The primary purpose of this article is to analyse the legal enactment of acting of supranational business forms in EC / EU law and the other European legal orders in view of conception of legal subjectivity of legal person. The article makes the confrontation of legal enactment of the legal acting forms of legal person and especially supranational business forms and mentions the differences between used the conception of legal subjectivity of legal person and their influence on common market EC / EU.*

### 1. INTRODUCTION

The European integration is primarily based on the principles, from the outset pursued the objectives set by the Treaty establishing the EC / EU, currently developed in Treaty of Lisbon, which had gradual introduction of increasing and maintaining economic strength and ensure a balance of Member States and thereby increase living standards, economic and social security and quality of life of their citizens.

One of the primary instruments through which the Treaty establishing the European Community envisages achieving the objectives is to establish a common internal market, which Treaty establishing the European Communities defines in Article 14 as 'the internal market comprises an area without internal frontiers, which is in accordance with the provisions of this Treaty, free movement of goods, persons, services and capital. "

Securing of the four fundamental freedoms of the internal market, ie free movement of goods, persons, services and capital occurs and provides mainly by harmonizing national laws, developing common principles and gradual removal of obstacles and restrictions on the internal market so that economic activity of natural and legal persons was capable of crossing borders between Member States.

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## **2. SUPRANATIONAL FORM OF ENTERPRISE AS AN INTERNAL MARKET INSTRUMENT**

Supranational form of business is an abstract legal concept, which includes operators to set up which directly empowers the EC / EU law, through their own mandatory standards.

European company law currently allows the creation of supranational forms of business the following:

1. European Economic Interest Grouping (European Economic Interest Grouping), pursuant to Council Regulation (EEC), 2137/85 of 25 July 1985
2. European company (Societas Europea), according to Council Regulation (EC), 2157/2001 on the Statute for a European company,
3. European Cooperative Society (European cooperative society, SCE), according to Council Regulation (EC), 1435/2003 on the Statute for a European Cooperative Society, while still in draft stage to form a new legal form of business, a European private company (European Private Company, EPC).

As is clear from the introductory assessments of each of the abovementioned Regulations, the actual implementation of the internal market and the development of economic and social status of the European Community is in addition to removing obstacles to the internal market and the necessary expansion of production and commercial structures throughout the range of community, which should take place mainly through mergers and association activities of business entities from Member States at Community level and through the creation of any legally enshrined supranational forms of business.

## **3. ACTION BY SUPRANATIONAL FORMS OF BUSINESS UNDER EC / ES (LEGAL PERSONALITY OF LEGAL PERSONS)**

Subject of further considerations is especially the extent and nature of the legal status of legal persons, which they are granted by the legislature in the Member States in relation to the nature of legal personality by supranational forms of business entities as a special subjects of law granted by the EC / EU law.

Legislature in constructing of the legal personality of a legal person, as an artificially created legal entity may potentially be based on two fundamental theoretical concepts.

Under the first approach, the legal person granted only capacity to the rights and obligations without legal capacity, arguing that the legal person as a fictive structure cannot directly express their will. In accordance with the following, understood theoretical foundation, the will may show only a natural person who is qualified and eligible entities to act in legal relations. It is therefore essential that a legal person, which creates will internally, has delegated its practical implementation on a natural person, directly of law or legal action (attorney, founding documents). Natural person has then the position of the statutory representative of legal entity that is separated from independent legal person entities manifesting the will of the legal person apparently in relation to third parties.

The second approach, known as a Fictional theory of Sauvigny gives a legal entity, full legal personality character including the rights and obligations, the legal capacity and the criminal responsibility. A legal person is acting outside its statutory authority, which is not a separate entity, but under a specific mandate represents a legal entity in legal

relationships with third parties as the body of the legal person. Statutory body is legally part of the legal person and his conduct is conduct of a legal person. (Pelikanová, 1993)

Between the laws of individual Member States may happen the conflict of mentioned concepts. Legislature in the Slovak Commercial Code amendment no. 432/2004 Z.z. admitted to the supranational forms of business in § 56 article 2 equal position with companies based in the Commercial Code. It is therefore the legal form with which our legal system calculates, and whose actual operation is tailored to our legal terms of the principles underlying the Slovak commercial law and widely the whole private law. Similar legislation determines the Czech Commercial Code.

National law of most countries in continental Europe, however, establishes the concept of corporate legal personality, which excludes the direct action of a legal person, ie confers legal person legal capacity and strictly requires that a legal person must act by the statutory representative. Perceived solution to the status and nature of the legal person took over the EC / EU law, both generally in company law in the directives adopted in order to harmonize the laws of the Member States, as well as the regulations that implement supranational form of business. (eg Council Regulation EEC says in Art. 47 expressly for "the right to represent" European legal team in relations with third parties).

#### **4. CONFLICT OF CONCEPTIONS OF LEGAL PERSONALITY OF LEGAL PERSONS**

Distinction of concepts of legal personality of legal persons applied in the legal environments in continental Europe and the EC / EU law may cause some legal problems. Conflict of concepts is more pronounced in the case of a conflict of entities from different Member States which have different perception and opinion on the status of legal persons, and to more specific subjects, such as supranational form of business, as well as potential exceeded the powers of persons acting on their behalf. From this perspective may be different enactment of concepts of acting of legal person in the legal systems of Member States themselves, as well as the laws of Member States and the EC / EU, seen as a barrier and limit of the internal market in terms of equality and acting entities.

Issue of the legal status of a legal person in general, omitted by the Slovak legislature during the harmonization of the Slovak legal system with EC / EU law, although it has had is the primary problem, which should have priority to the resolution, because at its basis raising new questions, connections and problems that have already undergone through the harmonization, but any change in the concept, which is expected in connection with the planned re-codification of private law in Slovakia and the Czech Republic, will be re-involved, necessarily open and dealt with, which does not contribute to the perception of our legal system as a stable law, providing legal certainty.

If as a result of the recodification of the Czech and Slovak private law come to the adoption of an European scale perpetuated concept of exclusion of the primary action of the legal person (as expected), can be noted in the following advantages of the new nature of perception of legal status of legal persons:1. Harmonization and unification of legislation in the analyzed area with the legislation of most Member States and the EC / EU law.

2. Establishment of the internal logic and consistency of national legislation, however this considers a legal person as a fictitious entity by which is constitute by law, but such a fictitious construction grants full legal personality.

3. Enhance the protection of legal persons with regard to the potential excesses of a person acting on its behalf and conduct of persons in the competitive position of the statutory representatives of the legal person.

## 5. CONCLUSION

Introduction of supranational forms of business are generally considered to be an instrument to deepen and widen the internal market through the connection of activities of business entities from different Member States in connection with the removal of interstate barriers in the exchange of particular goods, services and capital at Community level. The systematic harmonization of the Slovak national legal adjustments of the legal personality of legal persons with the legislation of most Member States the EC / EU, as well as own EC / EU law, ensures a wider apply of the individual freedoms which create the internal market and eliminate the restrictions on the internal market.

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