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Abstract

In time, there have been attempts in the European Union to harmonize regulations in corporate law matters. In present days, the European company forms are added to the national company forms of organization, which continue to exist in a great diversity, given the fact that from the multiple types of European companies only the European Company (Societas Europaea) gained some sort of success. Therefore, we cannot help but wonder: European corporate law – where to?

In an attempt to give a reasoned suggestion for an answer, we will analyze – in a synthetical manner – the past and the present of European corporate law. We will try to identify the influencing factors and – based on those factors – to outline the tendencies in European corporate law evolution.

Keywords:

European corporate law; comparative corporate law.

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1. *Presentation of the problem.* Over time, the European Union (EU) tried to harmonize regulations related to companies.

In order to identify the directions in which European company law will evolve, we will analyse - in a synthetic manner - the past and its present. European corporate law did not emerge in a legal vacuum but grappled with a legal and socio-economic background in which we find both elements of the civil law system (in countries like France, Germany, Romania, etc.) and the common law system (in the UK, the United States, and Canada) [1: 4].

Once we have established the *status* of European corporate law, we will identify factors of influence on it as EU law (including society) does not have an isolated existence but is cohabiting with other systems of law - such as the one in the United States. We will then try to outline trends in the evolution of European corporate law.

2. *Diversity or unification of companies?* The following forms of companies are now enshrined in European company law: European (Public) Limited Company (SE), European Cooperative Society (SCE), European Economic Interest Grouping (EEIG), European Private Company (SPE), Unitary Society (*societas unius personae*) (SUP) [2: 147-223].

They coexist with national forms of society that continue to exist in a great variety of forms. For example, there are five forms of "commercial" companies in Romania: the collective company, the limited partnership, the limited partnership, the joint stock company, the limited liability company [3: 29-35]. In number, they are comparable to those in France, Germany - countries from *civil law* - and much more numerous than those from *common law*, where in principle there are only two forms, which are sufficient in our view. As stated in the doctrine [4: 302], the Romanian legislature is refractory to the modernization of the legal forms of companies, while maintaining the regulation of almost non-existent forms in the business environment: the collective society, the simple partnership.

European Company Law does not oppose the simplification of corporate forms. In general, it refers to capital companies, which contain few regulations that apply only to limited liability companies. As a consequence, a unification process will be more likely to succeed in countries where joint-stock companies (capital companies) are frequently used (as in the case of Great Britain or France) as opposed to the countries that are used less frequently to this form of society (it is the situation of Germany, Belgium, Romania).

3. *European companies - a success?* Council Regulation (EC) 2157/2001 on European Society (SE) introduced European Society (SE) [5] as a form of company specific to European law. At the time of its adoption, the Regulation was a factor for the harmonization of national rights because, by introducing European company law into national law, Member States were obliged to adopt other changes in domestic law concerning joint stock companies. For example, one of the important points of harmonization required by the Regulation was the introduction of a choice between the monist system and the dual system of direction and control of joint-stock companies [6: 95, 3: 373].

However, we can say that European company was a modest success. Regulation 2157/2001 requires the participation of employees in the decision-making and control bodies of the European company, for which reason it was not agreed with businessmen, causing them to avoid this form of company. The lack of success is also due to the silence that the Regulation maintains on the tax regime applicable to European company; without a European tax dictum of European company, it is subject to the same treatment as a multinational.

Other European forms of corporate status, which have legal personality - the European Cooperative Society (SCE), the European Economic Interest Grouping (EEIG), the European Private Company (SPE) - are rarely used in the business environment, can we say they failed [6: 99].

This being the present, we are asking ourselves what will be the future of European corporate law. At the moment, companies carry out their work under the sign of economic and cultural globalization, which can be left with no legal consequences.

5. *At economic level.* On a planetary level, it can be noticed that, in general, economic models centred on employees or the state have failed in the face of the capitalist model focused on the shareholder [7: 443].

It can also be seen that international economic organizations (World Trade Organization, World Bank, International Monetary Fund, etc.) sometimes have a strong influence that generates changes in national laws. For example, through the issuance of the Corporate Governance Principles, the Organization for Economic Cooperation and Development (OECD) exercised a strong influence on the adoption by the EU Member States of

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their own codes of corporate governance, which helped to blur the boundaries between the *civil law* and the *common law* systems.

And the conclusion of bilateral agreements, especially those to which EU is part, exerts a direct pressure on the national and European legislators. This is the case the Global Economic and Trade Agreement between the United States and Canada in 2016.

6. *At cultural level.* Between culture and law there is a direct relationship [8] that can be presented in two variants: on the one hand legal differences diminish with cultural globalization; on the other hand, cultural differences are opposed to the uniformity of legal rules.

The actors of world economic life come to the great European cities where a cosmopolitan culture, consumerism-oriented, is formed, so today we could talk about a "*corporate culture*". It is easy to see that today, in business, cultural differences are less important.

7. The manifestation of globalization in the field of European law of pure societies conveys a possible question mark over the actual separation of the two large legal families - *common law* and *civil law*.

The analysis of this issue differs according to the angle you look at: for Westerners, the traditional view is that there is still a significant distinction between the two major legal families, both in terms of positive law and legal cultures. The structure of the comparative law treaties demonstrates this view: they include the comparative analysis of the two families, other legal systems being reserved for a separate place [9]. On the other hand, from the perspective of others, the Japanese, for example, things are different. They appreciate, argued, that there is a convergence of legal cultures between *common law* and *civil law* sufficiently tight to be able to speak of a "Western legal culture", and a "Western law" [10].

There are several arguments for which the invoked division may be considered to be no longer up to date or at least separation to fade away.

a. It is not capable of explaining some important differences that exist between the regulations applicable to companies in countries belonging to the same legal family. For example, between France and Germany - representative *civil law* countries - there are profound differences in the field of company law and financial law.

b. The approximation between *common law* and *civil law* is also revealed by the changes that occur in the hierarchy of law sources.

In company law, the law, in a broad sense, is currently undergoing a codification process not only in *civil law* countries but also in common law countries. In this respect, the European institutions are even discussing a possible codification of the main directives in the field of social law in order to facilitate their understanding.

As a result of the emergence of the EU, jurisprudence occupies an increasingly important place in continental Member States, becoming a source of law in *civil law* countries. Just an example: decisions of the Court of Justice of the European Union are binding *erga omnes* from their publication in the Official Journal of the European Union [1: 19-20]. Conversely, English law has been profoundly altered by the increasingly important role accorded to law to the detriment of jurisprudence.

Soft law with its rapid speed of multiplication and diversification [6: 263-264] is an important source of uniformity of legislation applicable to companies in the EU, with national corporate governance codes being a relevant example in this respect.

In business life, in practice, Anglo-American influence is on the rise. This increase is reflected either in the drafting of the contract - very detailed in English - either by choosing British or American law as the law applicable to the contract [11].

All this allows us to appreciate that at present, in the field of social law, there are still differences between the two large historical legal families, but they are rather hue than structure.

Conclusions. We appreciate that the regulations applicable to companies in the United States continue their evolution in the sense of greater harmonization, under the influence of the Anglo-American model, which seems to have generated more competitive companies worldwide.

The regulations applicable to European companies are influenced by globalization, which in legal terms leads to a diminution of the traditional division between the two major systems of law, *civil law* and *common law*, leaving room for a new division that better corresponds to the economic, legal, world cultural heritage in the 21st century.

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