

**EUROPEAN COMPANY LAW**

*MND. Ervis ÇELA,  
Lecturer,*

*Civil Department, Faculty of Law, University of Tirana.*

*erviscela@hotmail.com*

*co-author: LL.M Fleura KOLA*

*Head of department, General Directorate of Codification, Ministry of Justice*

*Fleura.kola@justice.gov.al*

**Abstract**

Company law is undergoing fundamental change in Europe. All European countries have undertaken extensive reform of their company legislation. Domestic reform has traditionally been driven by corporate failures or scandals. Initiatives to make corporate governance more effective are a feature of recent European law reform, as are measures to simplify and ease burdens on smaller and medium-sized businesses (SMEs). An increasing EU harmonisation is taking place through the Company Law Directives, and the free movement of companies is also facilitated by the case law of the European Court of Justice on the directives and the right to free movement and establishment in the EC Treaty. European company law, over the last five years, has developed thoroughly: with accounting now under IAS/IFRS, with prospectus, takeover, market abuse, transparency and cross-border merger directives, with the implementation of the European company and the European cooperative society into national laws and with the ECJ case law making cross-border mobility an overall reality. Consequently, European company law is fundamentally new. a comparative law discussion and policy aspects, namely law and economics. The whole organism of (limited liability) company law is thus covered. The overall description of European company law includes the organization, accounting, finance and capital market law, as well as the cornerstones of EC corporate tax and insolvency law. This article also includes a survey of the various company law instruments (both pre- and post-Action Plan) which together make up EC company law, and discusses the objectives of EC company law policy. Among the specific elements covered are the following:

the freedom of establishment for companies;

free movement of capital;

transfer of a company's seat;

cross-border conversions;

cross-border merger operations;

recognition of companies;

the breakthrough rule on takeover bids;

the mandatory bid;

shareholder rights;

minimum capital requirements;

Community legal forms of enterprise.

Key words: influence of macroeconomic police development of SME management economic increase of SME

management of enterprises human resource

**EUROPEAN COMPANY LAW**

The Council Directive 2001/86/EC for The Statute for a European company (practically European law for the commercial companies) was adopted in 08.10.2001. It contains rules for European public companies known as a European Society (SE). The European Society can be registered in any member state of the European Union, and the registration can be easily transferred to another member state. There is no EU wide register of SEs (an SE is registered on the national register of the member state in which it has its head office), but each registration is to be published in the Official Journal of the European Union. The Member States of the European Union have widely different company laws. This means that companies have to comply with many different regulatory systems, and merger of companies from different states is often complex and difficult.

The European Company can be created in following ways:  
By merger of national companies from different member states,

The creation of joint venture between companies (or other entities) in different member states.

By the creation of the European Companies subsidiary of a national company;

By the conversion of the national company into an European Company;

Formation by merger is available only to public limited companies from different Members States. Formation of an SE holding company is available to public and private limited companies with their registered offices in different Members States or having subsidiaries or branches in Member States other than that of their registered office. Formation of a joint subsidiary is available under the same circumstances to any legal entities governed by public or private law. The SE must have a minimum capital of EUR 120 000. Where a Member State requires a larger capital for companies, exist certain types of activity, the same requirement will also apply to an SE with its registered office in that Member State.

The registered office of the se designated in the statutes must be the place where it has its central administration, that is to say its true centre of operations. The SE can easily transfer its registered office within the Community without-as is the case at present- dissolving the company in one Member State in order to form a new one in another member state. The registration a completion of the liquidation of an SE must be disclosed for information purposes in the Official Journal of the European Communities. Every SE must be registered in the State where it has its registered office, in a register designated by the law of that State.

Small and medium-size enterprises, or SMEs, play a major role in the European economy. They represent 99.8% of all European enterprises and create two thirds of all jobs in the EU. However, unlike large companies, few small businesses decide to expand their activities beyond national markets. The costs and problems related to setting up and operating business in a foreign country, such as language barriers, cultural differences, national differences in company law as well as different tax and labor law regimes discourage entrepreneurs from expanding within the EU.

But the European Company form (SE), is designed for large companies and is too expensive for SMEs. It requires a Euro 120 000 start-capital and cannot be created from scratch. 4.1 A normative panoramic

### **1.1 Statutes and Management structure**

The statutes of the SE must provide as governing bodies the general meeting of shareholders and either a management board and supervisory board (Two-tier system) or an administrative board (one-tier system)

Under the Two-tier system the SE is managed by a management board. The member or members of the management board have the power to represent the company in dealings with third parties and in legal proceedings. They are appointed and removed by the supervisory board. No person may be a member of both the management board and the supervisory board of the same company at the same time.

However, the supervisory board may appoint one of its members to exercise the functions of a member of the management board if a vacancy arises. During such a period the function of the person concerned as a member of the supervisory board shall be suspended.

Under the single tier system, the SE is managed by an administrative board may delegate only the management to one or more of its members.

The following operations require the authorization of the supervisory board or the deliberation of the administrative board:

- any investment project requiring an amount more than the percentage of subscribed capital;
- the setting up, acquisition, disposal or closing down of undertakings, businesses or parts of businesses where the purchase price or disposal proceeds account for more than the percentage of subscribed capital;
- the raising or granting of loans, the issue of debt securities and the assumption of liabilities of a third party or surety ship for a third party where the total money value in each case is more than the percentage of subscribed capital;
- the conclusion of supply and performance contracts where the total turnover provided for therein is more than the percentage of turnover for the previous financial year;
- the percentage referred to above is to be determined by the Statutes of SE. It may not be less than 5% no more than 25%.

The SE must draw up annual accounts comprising the balance sheet, the profit and loss account and the notes to the accounts, and an annual report giving a fair of the

company's business and of its position; consolidated accounts may also be required.

### **1.2 Tax and Liquidation**

In tax matters, the SE is treated the same as any other multinational, it is subject to the tax regime of the national legislation applicable to the company and its subsidiaries. SEs is subject to taxes and charges in all Members States where their administrative centers are situated. Thus their tax status is not totally satisfactory as there is still no adequate harmonization at European level. Winding up, liquidation, insolvency and suspension of payments are ion large to be governed by national law. An SE which transfers its registered office outside the Community must be wound up on application by any person concerned or any competent authority.

### **1.3 Employee Participation**

"Employee participation" does not mean participation in day to day decisions, which are a matter for the management, but participation in the supervisory and strategic development of the company.

Several models of participation are possible:

firstly, a model in which the employees form part of the supervisory board or of the administrative board, as the case may be;

secondly, a model in which the employees are represented by a separate body;

Finally, other models to be agreed in those companies, the level of information and consultation being the same as in the case of the second model.

The general meeting may not approve the formation of an SE unless one of the models of participation defined in the Directive has been chosen.

The employees representatives must be provided with such office space, a set of standard principles set out in the Annex to the Directive becomes applicable.

With regard to a European company formed through a merger, the standard principles relating to worker participation will apply where at least 25% of the employees had the right to participate in decisions before the merger. Here a political agreement proved impossible until the Nice summit Member State not to apply the directive SEs formed from a merger, in which case could between the management and employees, or unless of its employees had the right of participation before its formation. Employment contracts and pensions are not covered by the directive (directive 2001/86/EC, entry in force 10.11.2001). With regard to occupational pensions schemes, SEs are covered by the provisions laid down in the proposal for a directive on institutions for the occupational schemes, presented by the commission in October 2000, in particular in connection with the possibility of introducing a single pension scheme for all their employees in the European Union. However although SES is already in the community form has recently noticed another trend in development of European legislation on business. And it is precisely the aspect that has to do with small and medium enterprises.

## **ALBANIAN FRAMEWORK**

### **2.1 Constitutional guarantees and Regulations.**

A legal panoramic for foreign investments in Albania was founded on the Constitution of 1998, setting out rights and fundamental freedoms. They also apply to foreigners and condemn any discrimination of race, ethnicity, language or economic conditions.

In 1993, Albania has approved a new foreign investment law that liberalized foreign investment and has provided some basic guarantees and protections for foreign investors. Law 7764, "On foreign investment" inspired by the World Bank guidelines governing the admission, treatment, expropriation and settlement of disputes relating to foreign direct investment. Under Law 7764, foreign investments are freely defined and treated on terms no less favorable than those applicable to domestic investment in similar circumstances, except ownership of the land, whose regime, as already indicated and is governed by a special law. The law n.7764-in line with the Constitution of 1998 - provides that foreign investment can't be expropriated or nationalized either directly or indirectly, except for public purposes expressly governed by law and upon payment of compensation equivalent to the value fair market of the expropriated assets. Moreover, Albania is member of the Convention of Multilateral Investment Guarantee Agency (MIGA) from October 1991. MIGA L15 provides investment guarantees against commercial risks, much to the benefit of foreign investors in the countries in the developing world. Together with the MIGA Convention, the Albania has also signed the New York Convention of 1995 on the Recognition and Enforcement of Foreign Arbitral Awards and the Geneva Convention on Enforcement of Arbitral Awards.

The law no. 9901 of 14.04.2008 "On enterprises and commercial companies", governs the companies, the establishment and management of companies, rights and obligations of its founders, members and shareholders, organization and liquidation. Under Albanian law, an investor can create various types of legal entities including commercial ones, partnership, limited partnership, limited liability companies and limited liability companies. Furthermore, and 'can be a branch of a foreign company. The law no.9901 and is a basic legal reference to commercial companies (This law was inspired to found in the laws governing commercial French, Italian, German and English). The principal objective is to promote and encourage the development of private companies in Albania, as well as the adaptation of Albanian legislation to that effect in the countries of the European Union. The law no.9901 isn't applied to nonprofit organizations to which is applied the law no. 8788 of 07.05.2001 "On the non-profit organizations" as shown below. The companies must keep the accounts, the indicated the annual accounts including the audit by auditors, so authorized by the legislation on accounting and financial statements. Unless otherwise provided, the Court with reference to this law will be the competent authority in accordance with Articles 334 to 336 of the Code of Civil Procedure. (Competence for adjudicating commercial disputes is the Courts of First

Instance where the company is headquartered or performs its activities).

The law n.9228 of 29.04.2004 "On accounting and financial statements" applies to all economic entities on profit, all business enterprises, despite of their legal form. This law also introduces rules and national and international accounting standards that are applied.

### **2.2 Commercial Companies**

#### **2.2.1 Entrepreneurship.**

The Entrepreneurship is the easiest way to conduct business in Albania. Before the creation of a commercial company first of all the foreign investor must be registered as an individual or a business name. This registration is obtained by submitting a request in which the investor presents his dates, address in Albania, and the type of the commercial activity that he wants to create and store the signature of the entrepreneur. The application with an identification document is presented by the investor at National Registration Center (NRC) the district in which the business will be initiated. Subsequently, the investor must be registered at the tax authorities. The entrepreneur has unlimited liability on the debts with his activity.

#### **2.2.2 General Partnership Company**

In partnerships, all partners are both jointly and severally liable, without limitation, for his share. Creditors of a general partnership have first right of action against the company as a whole and, if is not sufficient, may take actions against all members and request payment of their debts. There isn't a minimum capital for setting up a partnership company. The Albanian partnerships can be configured as an agency relationship reciprocal each member has the authority to bind the company towards third parties, without notice. Unless stated otherwise in the Statute deposited in NCR, all members are considered administrators. The company dissolves after the death, bankruptcy, expiration of term loss of business license or decision by shareholders. Nevertheless, there are circumstances in which continuity can be provided by its constitution. There is requirement of filing of the annual budgets.

#### **2.2.3 Limited Partnership Company**

The Limited Partnership is characterized by the coexistence of two categories of partners: general partners and limited partners.

In a limited partnership, general partners are liable for the debts only in proportion to their social participation, while limited partners have unlimited liability for all social obligations. The law no.9901 makes special provisions determining the rights and obligations of general partners. These provisions provide that the shareholders are entitled to the financial statements at least twice a year. However, the general partners may not participate in 'administration of the company. A general partner is a part of the management of the company and may incur unlimited liability for social obligations. In the articles of the constitution act of a limited partnership, you must specify the proportion or the total value of contributions of

individual members, as well as the share or contribution made by each partner and the percentage of profit participation of members of society. The death of a partner does not cause the immediate dissolution of the limited partnership.

#### **2.2.4 Limited Liability Company**

The limited liability company is the most common legal form chosen by foreign entrepreneurs who enter the Albanian market. And it is the type of company for a start-up market. To form a limited liability the minimum initial capital is 80 euro. It is formed by one or more members, individuals or legal, who will be liable only in proportion to the share capital. Contributions may be in cash or in any other activity, excluding contributions in services that are not allowed. Decisions on general administration of the company are carried out through the meeting of the company shareholders, and ongoing management to be appointed as such doesn't need to be members. The law requires the preparation of annual budgets for the limited liability company, with profits exceeding a certain limit, and is obligatory to appoint auditors, who will prepare annual budgets. The Limited liability Company can be transformed into an association or a corporation: the decision must be taken to 'general meeting by a majority of  $\frac{3}{4}$  and after approving of the budget of these two last years.

#### **2.2.5 Joint Stock Company**

The Joint Stock Company would be able to offer its shares on the market. A limited company must be incorporated with a minimum initial capital of 10 million lek (around 87.000 euro) where it intends to offer its shares on the market, otherwise with 2 million lek (equivalent 16.000 euro). Capital is divided into shares and shareholders are responsible for losses only to the extent of their participation. At least  $\frac{1}{4}$  of the nominal value of the shares representing contributions in cash and the total of contributions in kind must be paid at the time of the capital, the administrative body of the company will decide on the transfer of the remainder.

The main decisions are usually adopted by general meetings of shareholders, ordinary or extraordinary. Shareholders may amend the articles only with the extraordinary general meeting. The system of administration and management of a corporation may be in two types: monistic or dualistic. Companies that adopt the single-tier system of management have a board of directors and managers with management control functions. Instead, companies have opted for the two-tier system, in addition to the Board and administrators, including an oversight board, which has control functions. The Board takes charge of all strategic decisions for managing her company, in accordance with the provisions in the statute and acts under the supervision of the Board of Supervisors that may consist of 3 to 21 members. A limited company may issue different classes of shares, subject to the limitations that all shareholders must comply with regarding the right to vote in proportion to their shares, at meetings of the Assembly members.

#### **2.2.6 Office of Representation**

Apart from the types of companies referred to, a foreign investor may prefer to establish a branch or a representative office in Albania. Branches, those representative offices have the same legal personality of the parent company, sitting in the country of origin.

The subsidiaries are organized and managed separately carry out activities with third parties on behalf of the company. On the other hand, the aim of representative offices is not to create income, but the development of the company. Many foreign investors are operating successfully in Albania through subsidiaries. The formal procedures provided for the establishment of a branch or representative office has been long and hard, but now the new law "On Commercial companies" currently make it much easier. The branch or office of representation must be registered with the NRC, various documents must be submitted, is related to the branch or 'representative office itself or its parent company, as more fully detailed below. The office is managed just one legal representative authorized by the parent.

#### **2.2.7 Joint Venture**

The Albanian law does not deal specifically with joint ventures and private companies did. The joint ventures are provided by the Civil Code and the Albanian legislation uses the term "simple company." Joint ventures are established through a contract which is concluded between two or more individuals or corporations who agree to jointly pursue a company. The joint ventures have a legal personality: the two companies may decide to establish a new corporate entity and follow the registration. Alternatively, two companies may agree to a contract to launch a joint venture without making the recording or registering a new company, the business will be conducted through two entities, rather than through a new company. From a practical standpoint, those considering a joint venture with a local partner should assess in advance the expectations of the parties on the investment. It is also recommended that the foreign investor negotiates a mechanism for dispute resolution in a joint venture agreement.

#### **2.3 National Registration Center (NRC)**

The new Law on the National Centre for Business Registration approved in 2007 altered the form of registration of commercial companies, and is passed by a legal procedure under the administration of the court which took several days and numerous administrative steps, to a new administrative process streamlined, quick and easy. Starting a business and 'become much easier through online publication, reduction in registration costs and fiscal consolidation, health insurance, and registration of the work, all with a single application. Commercial companies are registered with the National Centre under the law of no.990112 03.05.2007 "On National Registration Centre" and no.972313 Act, as amended. Economic activities such as tourism, construction, telecommunications, trade in fuel, radio transmission, fisheries, trade in medicines etc...



Require an appropriate license to sell. The law n.10081 23.02.2009 "On licensing, authorizations and permits in the Republic of Albania", provide one-stop licensing which has profoundly facilitated the administrative procedures.

**2.3.1 Documentation required by the National Register of Companies**

The act of constitution and the statutes authenticated before a notary;

(This contains the company name, registered office, its objects, the initial capital, the duration of the company and the name of the member / s, administrators or directors; completed form and lodged by the legal representative of the company.)

Registration of a branch or representative office

In case of registration of a branch or representative office, the old National Enterprise in addition to documentation required:

Modulo completed and filed by the representative of the subsidiary or the parent or the person authorized attorney.

Act of constitution and statutes of the parent company.

Extract issued no more than 90 days before the Chamber of Commerce where the parent was recorded. This document must indicate that: the parent and 'registered with the Commercial Register, the parent is not subject to dissolution or bankruptcy, the composition of boards of management and parent;

Decision of the Board of Directors of the parent company decides whether to set up a representative office in Albania and appointing a legal representative or branch office.

Balance and related annual financial statements of 'last year of the parent company.

**2.4 General costs for the constitution of the company.**

According to the Albanian tax legislation when it is registered at the office of local taxes, should be considered for the new company:

-Tax profit: 10%

On-duty cleaning: 6.000-200.000 annual lek

-Fee environment: 5.000-440.000 annual lek

Sign-on fee: 1.000-3.000 annual lek

Property tax-variable lek/m2 to any property owned by the new company.

The new company must be held to 'employment office, the person or persons and used or about to become, and provided a service fee, as well as' registration with the Chamber of Commerce: 20000lek. Administrative costs and notary fees to establish the new company in the Commercial Register is about 17.000-20.000 leke.

Pro and Contra

From panoramic between the two systems can we observe that in many cases govern business rules that are same?

But in many other cases we have basic differences between legislations.

The most important changes appear in:

Start-Capital

European legislation provides for a minimum of capital in start-Euro 120.000.

If from one side the rate of the capital for SE may actually thought that represents only a small part of the investments

that the European Market requests, from the other side it brings obligations that impede, delay and force the new company to make considerable costs from the beginning. The New Albanian commercial law provides for a capital of only 100 lek (Almost Euro 1). The difference is obvious and it can be easily understood that start-capital provides maximum speed and reduces initial cost, giving more flexibility the new company.

Initial Registration

European legislation in this case is a subordinate legislation required by countries however members and registration must be published in the Official Gazette. This is an important procedural hurdle given that in this way the company should implement the legislative rate different from each other, the knowledge and application of which may require additional time and resources. The delays in this area will certainly load with cost the new company. The New Albanian commercial law (no. 9901) provides the other hand provides one-stop shop by means of the existence of the NRC, he did a rapid execution possible of the procedures that currently seem impossible in the European plan. Also the registration is done in a single window that allows the minimization of the cost.

In this case we have a fundamental difference is immediately noticeable. And it is resulting duality of management systems that can be seen in the SE, with: One-tier system and two-tier system, in the Albanian legislation we have only one-tier system. ListenRead phonetically

The first one tier system (which is practically estimated as normative by the Albanian law and the European Directives) provides the nomination from the part of general meeting of the shareholders to a board of directors which has the competence of the normal management of the company.

Directive 2001/86/ EC provides these representative powers:

The members of the board of directors shall represent the company collectively, unless otherwise provided by the by-laws.

the board of directors may delegate authority to one or several of his members to represent the company

The name of the authorized representatives shall be registered in the commercial register and published in the state gazette.

The board of directors shall consist of minimum three and maximum nine persons. It's the only organization which has the right to adopt its own rules of procedure and shall elect a chairman and vice chairman from among its members.

The board of directors meets regularly once every three months to discuss the company state of affairs and prospects for development. The management of the company shall be delegated by the board of directors to one or several directors, who shall be termed officers. The officers shall be a minority of the directors and may at any time be replaced. Officers are in any case obliged to inform the Chairman of the board for all aspects and problems that may encounter during the exercise of their functions. Is always the possibility and the right of every member of the

board to request the Chairman of the board meeting to discuss any problem that is associated with optimal functioning of the company. In the case of the board are determined norms which regulated the decision-making with a quorum and with a simple majority vote. For the protection of the interest of the shareholders art.240, provides and guarantee through a deposit (share, debentures) for the management of the affairs of the company in amount determined by the general meeting. Two tier-systems is the second model of the management. It consists of combined operation of two structures connected to each other: managing board and supervisory board.

### **3.3.1 The managing board**

The managing board shall act under the control of a supervisory board and the members of the managing board shall be appointed by the supervisory board, which shall determine their remuneration and shall have the right to recall them at any moment. It's prohibited for the same person being part of the supervisory board and the managing board at the same company. The number of members of the managing board shall be determined by the by-laws, but may not exceed nine. In any case the rule of procedure of the managing board shall be approved by the supervisory board.

#### **Supervisory Board**

The supervisory board may not take part in the management of the company. The supervisory board shall represent the company only in its relationship with the managing board. The members of the supervisory board normally are in the number from three to seven persons. They shall be appointed by the general meeting (ART. 242) and they shall adopt its own rules of procedure for the best function of the system. The members of the supervisory board appoint a chairman and vice chairman from themselves. The chairman shall call meetings of the supervisory board on his own initiative, as well as upon request by the members of the supervisory or the members of the managing board. Normally the managing board shall report on its activity to the supervisory board at least once every three months. The managing board has the obligation to inform immediately the chairman of the supervisory board of the all circumstances which have arisen which are material to the company. The chairman and the other members of the supervisory board may, at any time require that the managing board provide information or a report on any matter concerning the company. In case of doubts or problems that arise during the management of the company, the supervisory board may carry out any necessary investigations in performance of its duties. For this purposes it may employ if is necessary the services of experts.

### **3.4 The transfer of shares**

Here we have one other change which stories make the procedures followed. In the case of European legislation, sufficient accord between the parties and the decision of

the assembly for transfer partners, who then recorded in the appropriate register. This procedure is very fast and simplifies the operations. And in the other side it creates big spaces for discussion and intervention by the juridical competent structures. While the Albanian legislation, although a case of Limited Liability Company is the most widely used legal form of doing business among Investors because of the minimum capital requirements and the simplicity of its corporate governance structure. However, by law, approval by a qualified majority is required for transfer of shares to third Parties and new shareholders, and unanimous approval is required for increase or Decrease of Registered Capital.

(1). an interest in a limited liability company may be transferred and inherited. The transfer parties shall be subject to the provisions for admitting new partners.

(2). an interest in a limited liability company shall be transferred with notarized signatures and shall be registered in the commercial register (law no. 9901) These rules may decrease the flexibility of the company's operations. This is a significant obstacle to the current stage of economic development, but given historical period and the development of trade relations in countries in transition, can say that these rules have managed to form from the beginning legal barriers, that in many cases a solution has given problems or violations, for which it looks like we lacked a specific period of instruments the necessary legal and procedural. Furthermore these rules "cross", play a very important role when it comes to guarantee foreign investments. By helping, we guarantee level, of relations of commercial partnership to shareholders.

The aim of the legislation in this case except the guarantee level, he has been the creation of a stability (even if this binding), in the exercise of commercial activity. In this way, in fact any movement or change in equity shares, actually turns into a real operation, not only financial but also legal, and thus avoid the maximum risk free controlled movement of funds and a telescopic optical with the risk of recycling suspicious funds.

#### **Accounts**

In this case for the SE, the account management and the preparation, filing, auditing and publication of accounts shall be subject to the national law. We should say that recently that almost all countries of European Community are adopting legislative norms approximated to the national laws as much with each other. But there are still fundamental differences between the legislation and procedures that are followed by different countries. On the other side, Albanian legislation in this case defines in detail the steps that follow (as we explained above), thus having an obvious advantage, in terms of clarity, speed of execution procedures to setting bodies competent for the implementation and calculating the exact costs.

### **3.6 Taxes**

The level of the tax for SE has the same handicap: shall be subject to the national law. This brings virtually the same procedural problems mentioned above for the Accounts, but these add the problems related to the fiscal burden.

The level of the tax is different for the countries of the EC; however the average is over 33%, higher than the level of taxation in Albania. According to the Albanian tax legislation when it is registered at the office of local taxes, should be considered for the new company:

-Tax profit: 10%

The figures are clearly and in this case we see the advantages of creating a limited liability company according the Albanian legislation.

#### Employee Participation

"Employee participation" does not mean participation in day-to-day decisions, which are matter for the management, but participation in the supervision and strategic development of the company. Several models of participations are possible: firstly, a model in which the employees form part of the supervisory board or of the administrative board, as the case may be; secondly, a model in which the employees are represented by a separate body; and finally, other models to be agreed between the management or administrative boards of the founder companies and the employees in those companies, the level of information and consultation being the same as in the case of the second model. The general meeting may not approve the formation of an SE unless one of the models of participation defined in the Directive has been chosen.

These norms can block the decision especially when it comes to changes and decisions that go against the policies of the country where the company is registered. For the Albanian commerce law the employment participation doesn't exist. The legislation has only provides norms for the participation of the shareholders in the decision making, to make this much faster and agile. This constitutes in an obvious advantages (from the perspective of the company owners), compared to SE.

#### CONCLUSIONS

As was seen from various points in the review were to determine the PRO and contro to the European Directives the part of European Company (SE) and to New Commercial Law of 04.14.2008 No .9901, there are a number of changes, especially between procedures and practical management of the company. These procedures, if ever appear in the family and guarantee such European Directives in the case of

management structure (one-vat system and TWO-vat system), in most other cases presented with simplified and practical in Albanian Commerce Law. This permits a great operatively, speed decision making and guarantees smaller management costs.

Even in those cases when the action seems slowed or complicated, example in the transfers of the shares that must be made by notarized signature; the advantages are huge given that in this way exist greatest guarantees for the company.

This is understandable because one of the point that is based the legislation for the creation of this law, was the desire to stimulate foreign investment. This appears not only in the spirit of this law but also in other laws (TAX, NRC.) which creates a comprehensive legal package, totally in favor of companies.

#### RECOMMENDATIONS

Based on the analysis of the top highlights several points emerge which should constitute the basis of the decision by the company shifted its activity to the European area and to define the main office is found. They are:

1. Legal guarantees
2. Positive climate for business
3. The level of fiscal burden
4. The maximum i exploitation of the advantages that gives Commercial Law or the European Directives in the creation of the company structure.
5. Establishment and management cost of the company.
6. Facilities possible relationships with employees.

These points should be considered in a broader context and being combined with other aspects less important. Our opinion and analysis of these points emerge two things:

a) Since the mechanisms that give New Commercial Law, legal packages associated with, and statutory structures widely used in the Limited Liability Company in Albania are a considerable advantage to confront the European Private Company in the area europeane.

b) That the investment climate in general, based on the tax unique and lower costs of start-capital, initial registration and the minimum length to make active society, is better in the Albanian reality. Therefore, our recommendation is the creation of a Limited Liability company in Albania for use as its headquarters and main base for spreading in Europe.

#### Bibliography:

European Company Law: organization, finance and capital markets (ius communitatis) [stefan grundmann](#) may 30, 2007

European Comparative Company Law [Paperback]

[Mads Andenas MA DPhil PhD](#) (Author), [Frank Wooldridge](#) (Author) September 13, 2012

Understanding European Union Law [Paperback]

[Karen Davies](#) (Author) November 18, 2010

European Union Law: Cases and Materials [Paperback]

[Damian Chalmers](#) (Author), [Gareth Davies](#) (Author), [Giorgio Monti](#) (Author) Publication Date: July 26, 2010

EU Law - Easy-to-Understand Information | [iiea.com](#)

[www.iiea.com/EULaw](#)

European Comparative Company Law [Mads Andenas](#), [Frank Wooldridge](#) Cambridge University Press, Jul 30, 2009

Modernization of European Company Law and Corporate Governance:

Some Considerations on Its Legal Limits [Kluwer Law International](#), Apr 30, 2010 [G. J. Vossestein](#)

