MASTER THESIS

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„The establishment of a Limited Liability Company according to EU Law and Azerbaijan Law – A comparative Analysis“

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LIST OF ABREVATION

- AR- Azerbaijan Republic
- EU- European Union
- UK-United Kingdom
- EEC- European Economic Community
- ECJ- European Court of Justice
- TFEU- Treaty of Functioning of European Union
- BCCI- Bank of Credit and Commerce International
- OECD- Organisation for Economic Co-operation and Development
- EEIG- European Economic Interst Grouping
- SE- Socieatas Europea
- SUP- Societas Unius Personae
- NJC- National Joint Council
- WKO- Wirtschaftskammer Österreich

LIST OF LEGISTLATIONS

- Treaty on the Functioning of the European Union;
- Treaty of Europen Union;
- EU Charter of Fundamental Rights;
- Constitution of Azerbaijan Republic;
- Civil Code of Azerbaijan Republic;
- Law on State Registration and the State Register of the Legal Entities;
- Hungarian Company Act;
- First Council Directive (68/151/EEC);
- Second Council Directive (77/91/EEC);
- Third Council Directive (78/855/EEC);
- Fourth Council Directive (78/660/EEC);
- Sixth Council Directive (82/891/EEC);
- Seventh Council Directive (83/349/EEC);
- Eighth Council Directive (84/253/EEC);
- Directive 2007/36/EC;
- Regulation (EEC) No 2137/85;
- Tenth Council Directive (2005/56/EC);
- Thirteenth Council Directive(2004/25/EC);
- R (Daily Mail and General Trust plc) v Treasury (1988) Case 81/87;
- Centros Ltd v Erhvervs- og Selskabsstyrelsen (1999) C-212/97;
- Salomon v A Salomon and Co Ltd [1897] AC22;
- Überseering BV v Nordic Construction Company Baumanagement GmbH, (2002) C-208/00, [2002] ECR I-9919;
- Hans Werner v Finanzamt Aachen-Innenstadt case, ECJ Case C-112/91;
- Metronome Musik GmbH v Music Point Hokamp GmbH,Case C-200/96;
- Sky Österreich, C-283/11;
- Alemo-Herron and Others v Parkwood Leisure Ltd ([2013] EUECJ C-426/11;
- COUNCIL REGULATION (EC) No 2157/2001;
- COUNCIL DIRECTIVE 2001/86/EC;
- SE Regulation.

ABSTRACT

Meine Masterarbeit konzentriert sich auf die gesellschaftsrechtlichen Fragen, insbesondere Grundsätze, Strukturen und die Registrierung der Gesellschaft mit beschränkter Haftun, Bestimmte Forschungsarbeiten sind nach der Methodik vergleichender Analysen geschrieben und könnten als "Handbuch" für Investoren und Unternehmer, die ein Unternehmen in einer bestimmten Unternehmensstruktur führen möchten und über rechtliche Verfahren und praktische Ansätze in der Gründungsphase wissen will, sein. Die Arbeit wird klaeren die Hauptthemen in den verschiedenen Gesetzgebungen - EU und Aserbaidschan. Analysen über die Corporate-Governance-Gesetzgebung nach EU-Recht, die genehmigten Richtlinien der Europäischen Kommission, das "Symbol" des EU-Gesellschaftsrechts Societas Europea und seine Vorteile und Besonderheiten als auch Eintragungen von Kommanditverbindlichkeiten und andere Gesellschaftsformen nach nationalem Recht werden die genaue rechtliche Kenntnisse über bestimmte Themen für die Leser schaffen. Die praktischen Probleme in beiden Gesetzgebungen und beste Lösungen für sie, als das gegenwärtige korporative Klima in Aserbaidschan werden besprochen.

My Master Thesis is focused on the Corporate Law issues, especially principles, structures and registration of the form Limited Liability Company. Certain research is written by the methodology of comparative analyses and could be evaluated as a “handbook” for investors and business owners who wish to run a business under certain corporate structure and be aware about legal procedures and practical approaches in the establishment stage. The thesis will clarify the main issues in the different legislations- EU and Azerbaijan Law. Analyses over the Corporate law governance according to EU law, the approved directives of European Commission, the “symbol” of the EU company law Societas Europea and its advantages and special characteristics, registrations of Limited Liabilities and other company forms according to national law systems will create exact legal knowledge about certain issues for the readers. Also the practical problems in both legislations and best solutions, the present corporative climate in Azerbaijan will be discussed.

INTRODUCTION

As it the century of globalization and corporation, the topic will be researched is quiet actual. It is obvious that organizations and companies, in general any business entities related to public audience have important impacts on the nation's economical and social growth, cultural integration process and governmental prosperity. Because of certain reason a lot of countries are focusing to organize and build their corporate governance as easy and flexible as possible to attract not only domestic, but also foreign investors and entrepreneurs to invest their assets, establish their legal presence and set up their businesses under their legislations in certain territories. Every country has various company forms, foundation procedures and requirements, so why it is important to be aware about the laws of the countries where businesses or companies will be established to avoid profit loss and to get maximum relevancy for their operation portfolios.

Corporate law is the one body of the law which legally practicing of the governance and foundation of companies, regulating the rights of persons, formation of businesses, organizations and companies. There are various forms and types of companies with different specifications and requirements. Master Thesis is intended to research the most used and actual form of Corporate Law -the Limited Liability Company in two territory's legislation - Europe and Azerbaijan. The research will be in comparative basis and the main fundamental rights- freedom of establishment and freedom of to conduct a business and right to property, starting-up and registering businesses, history of corporate law and limited liability company, the latest efforts in EU scale related to foundation of companies such as Societas Privata Europea and Societas Europea which are in a purpose of running cross-border companies in European Union and some necessary points of Civil Law of the Azerbaijan Republic will be included. The core elements of LLC's in certain areas as requirements to establishment, registration, capital shares, tax advantages, shareholder rights, flexibilities etc. and also the differences in national company laws within the framework of EU law will be covered.

Today a lot of start-up business owners, entrepreneurs and organizations are using structure of Limited Liability Company as it is more advantageous and flexible than the other ones, furthermore it provides limited liability protection to the possessors of companies as they are not becoming personally responsible for the company debts and there is no any legal right that someone can pursue the personal proprieties of the owners to pay business debts. The research will show practical and temporal problems of LLC and solutions for better and fertility business climate.

Comparative research method of the certain topic can be beneficial for understanding and clearing the details in both legislations. Opposing the advantages and disadvantages of foundation of recent company form and their specifications, analyzing legal structures, overviewing similarities and differences, finding better improvements for problematic procedural tools and also practical sides of corporate governance, especially of Limited Liability Company form in Europe and Azerbaijan can be profitable and helpful as a handbook to one who is going to start-up a business and found a company in certain territories.

CHAPTER 1

1.1 HISTORY OF CORPORATE/COMPANY LAW

The word of the "corporation" origins from the Latin word "corpus" which means body or corps of human. There is assumptions that the first corporation form in the history was used in the Ancient Roma and Greek, as the imperators was using certain found of formation to their municipalities, regions, specific territory's in purpose of controlling and keeping them under supervision. However, they were just assumptions of historians. However, in the beginning of the 16th century the modern company path started in the corporations world. In general, companies from the history was the economic acitivies which operated through ventures.

Documentation of corporate governance starts form Europe with the formation of trade companies in nation levels and emerging them as an international commerce. In 1553 to discovering new way to Asia, the company of Russia which established in England, assumed as a first business corporation in England[1]. However, Royal Charter delegetaed company members to establish a monopoly in specific territories. East India Company which founded by Queen Elisabeth in 1600 was a great example for such companies[2]. Members earned profits from certain company and in 1653 they became able to subscribe to the joint fund. With that join-stock institution established. From the end of 17th century, certain merchants started to create their permanent capitals which could be sold and transferred. To cover their actions under the law, in 1825 Bubble Act was accepted. Act covered provisions of facilitating join-stock companies. However, in 1844 and 1855 the new legal instuments over the shareholder liabilities was established.

After establishment of European Economic Comission the corporate governance started to its modern stage. In following years directives (will be discussed in following chapters) over the corporate law issues approved by Comission. Main aim was abolishment of the obstacles and hidden barriers related to freedom of establishment.

[1] The Globalization of Corporate Law: The End of History or A Never-Ending Story?, page 107, 2011
[2] https://www.theguardian.com/world/2015/mar/04/east-india-company-original-corporate-raiders (visited in 17.05.2018)

1.2 CORPORATE STRUCTURE OF COMPANY LAW

Corporative company law can be evaluated as a main booster in the globalization process of economical, social, political and cultural progression of the world countries. Especially in previous two decades company law became the most actual field in all jurisdictions and surplus stock of cross-border organizational relations proved the necessity of development of the corporate law in both in national and international scale. Despite of the fact that each country and legistlation have their own approach and policies in certain process, all of their strategies are intended to make corporate environment flexible and attractive. Because foreign and domestic investments, their assets, cross-border corporations and all kind of business related organizations can be considered as an enough serious issue in the growth of the country. Every country has it's own national company law and basic structures, however from the general view to all jurisdictions, it is obvious that fundamental company structures for the business entitis are similar. Foundation of the companies and business entities, must include the main charasteristics of company law. The core structurues[1]of the business corporations and organizations are five: (1) legal personality, (2) limited liability, (3) transferable shares, (4) centralized management under a board structure, and (5) shared ownership by contributors of capital[3]. Basically, countries with comprehensive jurisdictions and corporate-friendly climate are using certain structures as a statute for the establishment and foundation of business entities. The purpose of the main structures in legistlations is to provide formed entities with legal framework and create fertile corporation environment, which creates opportunities to start-up businesses and establishment of companies. Understanding of each core structure will made easy to interpret corporate structure of company law.

Legal Personality

Legal personality is one and important of the fundamental pillars of company law. The company or any legal entity is separate and fictional person, but not an individual or real excistence and has no dependence to it's share holders or owners despite the fact that

[3] The Anatomy of Corporate Law: A Comparative and Functional Approach, Edition 3, Oxford University Press 2017.

it established by natural persons. Company gets legal personality, rights and responsibilites with being registred. With they also specified under the theory of ‘nexus of contracts’ in financial literatures and it has pieces as a ‘puzzle’[4]. Main part of certain puzzle are shareholders, owner, members, directors, creditors, employees etc. Certain theory outlines the function of the firms as merging machine of contractual relations between individuals as owner, shareholder,members or other company related persons. The theory played important role on the development and modification period of company law. Till the establishment of new model of corporation in coporate law - Limited Liability Company, to getting limited liability most firms was using corporation form as it was the only choice. And ‘nexus of contracts’ theory was providing to the firms to coordinate its participants and independentenly manage the members of firm as a single contracting party. It was the usually and typically form for enterpreneurs or business entities who desired to run their corporation in a sucessful way with advantages of new corporation model.

Generally, legal personality is combined from two types of rights in company law. One is the patrimonial rights and second is extra-patrimonial rights. “Seperate patrimony” is the most important detail of the firms as a nexus of contracts[3]. The term of the partimony can be accepted as a synonym of property which is commonly used. İt means the assets of the firms having differentiations from the assets which owned by shareholders and through the managers firm has ownership over its resources as an individual and has rights over them which include to use, to sell and to enabling them to be attached by it’s creditors . In addition, primary objective of seperate patrimony is “entity shielding” which defines the protection of firm assest from the creditors of the members of the firm who has rights to regulate the assests[5]. In neoteric entities, entity shielding shows itself in three category: weak, strong and complete entity shielding which differs from each other in the legal freamewrok of the rights for the firm assets which can be claimed by the creditors of firm owners.

The doctrine of corporate personality (legal personality) was established with the English case of ‘Salomon v A Salomon & Company’[6] in 1892. In this case it was proven that company is seperate fictional and legal ‘person’ which has no physical or spiritaul

[4] Grant M. Hayden & Matthew T. Bodie, The Uncorporation and the Unraveling of 'Nexus of Contracts' Theory, 109 Mich. L. Rev. 1127 (2011).

[5] The Essential Elements Of Corporate Law: What Is Corporate Law?- John Armour, Henry Hansmann, Reinier Kraakman- 7/2009

[6]Salomon v A Salomon and Co Ltd [1897] AC22

excistence and it has it's own right, duties and specific functions in corporate law. The main facts of the case was that Mr.Solomon was the leather merchan who had his own business which making shoes in the form a sole proprietorship. Someafter, his sons wanted to become his business partnersHe established his business company named as "Solomon& Company" LTD. According to the requirements of Companies Act 1862 in the UK there had to be at least seven shareholders to establish a limited liability company and Mr.Salomon's family members- wife and five children took one share for each of them. Together they was seven shareholder and he was the the managing director of the founded company. The leather business costed 39,000₤, however it was not real number for such a business for that time, but Mr.Solomon's power and strong confidence was enough for overcoming certain price. He held 20.001of the company's 20.007 shares- but remining 6 shares divided between his family members. He loaned his company's money and secured it with the assets which owned by company. Then Salamons business went unsuccesfull and at the end failed, defaulting on its interest payments on the debentures. The company liquidator expressed that the floating charge[7] should not be honoured and argued that the Salamon should liable all the liability of the company's debt with his own and personal assets. However, House of Lords held that the company has a seperate legal entity distinct from it's members. Even Salomon was the substantial shareholder it doesn't mean that he can be liable for all debts. And concluded that Mr.Salomon did not breach the Company Act and should be compensated the balance. In certain case Lord Mcnaughten capitally expressed opinion that:

'The company is at law a different person altogether from the subscribers to the memorandum and, though it may be that after incorporation the business is precisely the same as it was before and same persons are managers, and same hand receive the profit, the company is not agent for subscriber or trustee for them. Nor are the subscribers as member liable, in any shape or form, except to the extent and manner prescribed by the Act"'[8].

It is obvious that the facts and the court decision in certain case, established the principle of seperate legal personality of the company law, which narrowing and

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[7] The "Floating charge" is same as charge and also a creation of equity. Created by a limited company over all it's assets. If bankrupcy company is being closed, the charge will be crystallized automatically because the license is subject to the condition implied that the company can continue its business

[8] Magaisa A, 'Corporate Groups and Victims of Corporate Torts – Towards a New Architecture of Corporate Law in a Dynamic Marketplace', Law, Social Justice & Global Development Journal (LGD) 2002 (1)

minimizing personal liability framework of the company shareholders in the case of entity insolveny. Also, the case regonised family owned companies and proved that secured creditor, even he is member or director of the company, will have preference over unsecured creditors.

In generally speaking, entity is a fictional "person" without spirit or physical excistence, however it has legal personality and own rights, responsibilites and specific functions . The "seperate legal entity" in the corporation law, can be accepted as a formula which provides three fumdamental rights of a firm in itself: according to the law legal entity is a person which has sufficient capasity to enter to the contract and posess property; it has power to entrust the administration to the members; it can sue and can be sued. All kind of organizational and corporative forms involving certain rules are described as "legal personality".

Limited liability

In corparate law limited liability term is taking very essential place. It is another fundamental pillar of company law. As the general understanding of certain means in any agreements between creditors and firm, creditors are out of the right to claim against the assets of the shareholders or firm owners in their property. They are limited to be able to claim only against the firm's properties and assets. At the present time limited liability is the extensive feature of company law.

Limited liability is the reverse understanding of "entity shielding", as it is a powerful method of "owner shielding". Furthermore, "entity shielding" is focused to protect legal personalities or firms' assets from the claims of firm proprietors' creditors, however limited liability protects company owners' assests from the claims of creditors of the firms. Certain understanding together establishing the method of "asset partitioning" regime which means legal entities' assests are settled as a security to the their creditors and legal entitiy owners' personal assests are reserved for their own creditors. This divison is very effective to expansion the value of the mortgaging and securing the assets of each businesses types (individual or organisational). Assest partitioning is mostly beneficial for the firms because they can obtain different category of credits with the help of creating various lines of businesses. For instance, with incoportation of subisidiaries, ventures or branches which assets are linked directly, can be pledged as a guarantee to the creditors who associated with them. The firm can share the risks of the transactions related to pledged assets with the help of asset partitioning. Especially, establishment of the corporations, branches or subsidies can be used as a tactic to transfer the certain risks especially when creditors who have more capasity to bear them and in higher position than the firm. Shifting the organisational and business risks from company owners to the creditors also can be very effective when creditors attracted as a monitors of the company managers where they can be more effective and performanced.

This important feature of the corporate forms effectively shown in contracts between entities and creditors as a term where the creditors have no or limited rights to claim against the propoerties or assets which owned by firm or compnay. Even it is guaranteed method to protect the members of entity, there is no obligation to have limited liability. There is also an option of “unlimited liability” where the contractual and legal liabailities of the members or shareholders are not limited. It commonly excist in the company forms of sole proprietorships and general partnerships. To be more clear, if in the business entity or company accrues debt or insolvency, each owners or share holders of the firm are equally liable to repayment of certain debts with their personal assests or properties.

Transferable Shares

Transferable shares is another essential feature of corporate law which distincts corporations from other typical and standart entity forms. Transerability of the shares ables the entity to run a business continuiously even in the situation of changing the identity of firm owners and making easy to any shareholder to withdraw from the business. This issues boosting the interest liquidity of the company shareholders and making it flexible and easier to manage and to protect assets within the firm’s balance. Being transferable of the shares does not means that it is always freely tradable[9]. Even there is freely transferable shares, they may be only frameworked to be transferred among limited group of persons or shareholders.

Tranferring of shares can be different regards to the type of business corporation forms. Every firm must own their own agreements which covers all the provisions about

[9] The Essential Elements Of Corporate Law: Kraakman- 7/2009

managment of the entity and intructions about the transferring of the shares. Certain agreements are basically signing between members or shareholders of an company and also accepting as a guidance for the procedures of the transfers. Entity must evaluate the shares with realistic value if there is no any shareholder or managing agreements contracted before. Transferring the shares are done by transferring form and request which includes informations such as company details, the sharing method and value, list of shareholders and all necessary details. From general view, is strongly linked with the safety of liquidation which founds future of legal personality and limited liability.

Centralized management under a board structure

A centralized management under a board structure is a tool/ setup which gives to the shareholders or firm leader to control the entity under a broad management and give most decisive and important decisions about the firm. Certain structure is very useful for the organisations as it gathers whole responsibilities and obligations of entity to the central "headquarter". Corporate law usually gives main authority of such kind of central management to the board of directors or similar group of body which is elected by the shareholders of the company/firm. Mostly in such csertain groups important and fundamental decisions and rulings are accepting by the unanimity. Usually in most of the corporation forms decision making and authority powers are delegated to the entity's directors boards. Such kind of boards have four features which can be determinated[10].

First issue is that board of directors must be accepted as a different pillar of the company than management or operational team groups. The important decisions can be also by the operational managers with the approval of directors. In this case business decisions done by hired officers must be monitored and ratified by the board of directors. That separation can be accepted as a useful tool in the quality of controlling and decision-making fuctions of coporation.

Second issue is that boards of directors are elected by the shareholders of company. This functions mostly serves to ensure that board remains compassionate

[10] TEEOCL: Kraakman- 7/2009

to the company owner's interests, who usually takes the expences, costs and also benefits of the company decisions and whose interests are not completetly shilded by contract.

Third feature is even the most authority of the entities are choosen from the shareholders, board is distinctive from them by the formality. This division is economizes on the values of making important decisions with the avoding the requirement to inform the owners of the firm and getting their consent for all and most necessary issues related with the firm.

Fourth issue is that usually boards have multiple member specificated with different category of responsibilities. For example some of them can be liable for monitoring-checking, however, other can be mostly focused on management and decision making. Some business running companies are choosing single director or board which consists of one person with the principle that he as a shareholders representative can be take liabilities and legal functions of the board can be discharged more effective with the single director who is also the manager of the entity.

Shared ownership by contributors of capital

Till the nineteenth century investor and consumer owned firms was founded under a single coporation form. However afterwards, simplification of investor ownership corporations became as a useful feature in the model of corporate form. Under certain title two main specification can be separated to make the clear the term "ownership"- first is the right to manage and operate the entity, second is the right to get the net earnings from the firm's income. From general approach, coporate law is designed to streamline corporations of the firms where the owners invested and which is picking up together both type of right shown above. In the statutes of the business entities assignment of control and earnings must be provided as a default rule.

In corporate law there are also other forms of ownerships are playing necessary role in business environment and economies. As an example I can show corporative corporation statutes which provide all four specification of corporate forms but only with exception of transferable shares and usually offering it as an additional option. Sometimes law in itself avoids from the credibility of investor ownership to permit or demand that the individuals other than the capital owner to participate in the controlling or in earnings or in both sides of the firms. In shared ownerships the investors of the capitals are not arranging only the potential profits and earning, also the losses which can be happen in any stage of the businesses.

The legal structure of the corporation is an important factor in process of foundation of entities. Being aware of the specification of each formation type can take great role in the successful development of start-ups. There are several business structure forms of corporate law which provides a lot of varieties to the businesses with different requirements. Structures and foundation requierements such as initial capital, registration and other related procedures can be various depending on national corporate law systems. I will show some “traditional” legal structures to organizing firms or companies:

- Sole proprietorship: this legal structure is easy and simple to established and operated. In most countries there is no any minimum capital requirements for certain structure. In this structre owner of the company must report responsible authoritires about profit or loss on his own tax return statements. However, owner of the company is liable for the business depts with his own assets.
- General partnership: establishment of structure is inexpensive and quiet simple. Owners or patners of the entity must show their share of profits and loss on their tax returns. Here also they are directly personal liable for the company debts.
- Limited partnership: General owners can increase the cash investment without bringing any other investors in the management of the entity and limited partners. Limited personal liable for the company debts as they are not participating in the management of firm.
- Regular corporation: Owners are limited personally liable for company debts. Usually for the payment of less taxes, shareholders can split profits of company among each other and corporation.
- Non-profit coporations: certain category of legal structures are free from paying the taxes. They are founded most for the charity purposes. Tax free advantages are avaible to the specific category of groups such as research, educational, religious and etc.
- Limited Liability company: this structure is the most used one in all over the world especially by the start-up businesses. Some countries present tax advantages or credits to the owners of such businesses to increase economical

development of countries and attract investments. Owners are limited personally liable only if they are participating in operation of business. More deeply will be discussed in next chapters.

- Public limited company: it can be accepted as a kind of limited liability company that has offered shares to the public and owns limited liability for business depts. This kinf of companies can increase their capital by issuing public shares and can be obtained by anyone.
- Limited Liability partnerships: in practice such partnerships are mostly focused on partners from exact professions as law, medicine, construction, accounting, etc. Owners are not liable for each others debts of liabilities, however, depending on jurisdiction and the type of the business they are liable for creditors, lenders in specific issues[11].

[11] Which Legal Form Is Best for Your Business?, Incorporation Article https://www.inc.com/articles/2000/06/19438.html (visited in 06/23/2018)

CHAPTER 2

2.1 CORPORATE GOVERNANCE FRAMEWORK IN EUROPE

The European Economic Community is the main point of the European Union. It was established in 1957 by the Treaty of Rome in a purpose of establishing common market for all member states. Afterwards certain market developed and increased its power and in 1986 the Single European Act accepted and it ensured the principle of "market without internal frontiers in which the free movement of goods, persons, services and capital". Certain market called "Internal Market" at mostly operated between two category of people groups: consumers and businesses. In Article 26(1,2) TFEU certain issue shown as:

"1. The Union shall adopt measures with the aim of establishing or ensuring the functioning of the internal market, in accordance with the relevant provisions of the Treaties.

2. The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties."[12]

In such business climate establishment of the companies and organizations which stayed under the jurisdiction of corporate law became much more important and actual in European Union. Since that time several directives and regulations, strong developments have seen in corporate law systems of member states. Continuous progress in certain field still on-going and every year the scale of cross-border cooperations and business activities are tremendously increasing.

Today corporate is a most discussed law field, as there was several institutions who's point of views was quietly different from each other. Most conflicts was going over the topics such as coporate genesises, separation ownership from the management of corporation and etc. However at the present time, through the decades corporate goveranance developed and became as a comprehensive systems with principles, requirements, tools, etc. Certain system is considered as a one of the fundamental pillars of economical, cultural, social integration and development processes in member states. It is supporting to the completeness of the capital market. Unsuitable facility and use of corporate governance can result with the serious problems and fincancial crisis. I can give

[12] Treaty on the Functioning of the European Union, Article 26

example to such situations the fall of the BCCI (Bank of Credit and Commerce International), the fall of Enron (known as: The collapse of a Wall Street darling or Enron Scandal), the Asian crisis and etc.[13] This kind of global scandals and collapses attracted experts attention to the corporate law and proved the necessity of founding strong rules and principles which can be accepted globally. In 2004 OECD (Organisation for Economic Co-operation and Development) published explanation for corporate governance:

"a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined"[14]

According to certain interpretation corporate governance is about effective boards, protection of shareholder' interests and accepting them as stake holders, transparency and respect. Many companies in Europe adopted the OECD principles and implemented them to their fundamental statues. Another opinions about corporate governance was expressed by the Schleifer and Vishny who were the well-known economists of America:

"Corporate governance deals with the ways in which suppliers of finance to corporations assure themselves of getting a return on their investment".[15]

Modern theory of corporate governance is directly related with the business corporations. Because they are the main figures who implementing the principles. Not only in national, but also in international markets the fundamental principles are same. Research showing that the main principles require protection of shareholders' interests, non-discrimination and equal approach to domestic and foreign partners, disclosure of information which publicly required, operative boards and similar issues that can affect to the high performance of corporations. Principally, there are two flows in European Corporate governance: one of them is the flow which driven by the economical, political and social traditions of national systems, another flow that is defined by the European legal framework such as regulations, directives, commentaries or recommendations. [16] Disclosure issues have been put in two reports in a year.

[13] ''Corporate Collapse: Regulatory, Accounting and Ethical Failure'' (Cambridge University Press) 2003, Chapter 2, Frank Clarke and Graeme Dean.
[14] OECD Principles of Corporate Governance, OECD Publications Service- 2004
[15] The Journal of Finance, Shleifer and Vishny [1997, page 737].
[16] Corporate Governance and Its European Dimensions: Current Trends and Perspectives by Bistra Boeva (Economic Alternatives, Issue 1, 2014)

For understanding of certain flows let's clarify the both issues. The traditions from the national are quietly affecting to the EU corporate governance system. According to the anglo-saxon law system, there is especial ownership factors and necessity of the capital markets for economy is the main issues in The United Kingdom. Most "gigant" companies are established by the board of directors via separate and non-executive directors. This factors bringing the UK as one of trend setters in coporate law within EU. Between shown fact, there are some member states that main base of financing are the banks rather than capital markets. This specification of the ownerships are creating new conflicts between the shareholders (especially between majority and minority shareholders). Main topic of conflicts arises from the point that "because the interests of
controlling and minority shareholders arenot aligned"[17]. According to the "continental model" of corporate governance the main powers of organisations are divided among the owners of companies as boards of directors (supervisory board) and boards of managers (operational board). Such systems mostly functions in member states as Germany, Austria, Netherlands. The national approach to corporate law is constantly changing. Irrespective of any national corporate law, harmonization process in EU gradually removes the variety between two model- anglo saxon and continental. Since last decade, developments on the system of corporations, the harmonization of national law systems to the accepted directives and reshaping of old and hindering components to the new and flexible ones, reducing hidden barriers to the cross-border corporational business relations can be example for the importance of certain legal framework in EU.

The scope of European company law mostly covers all the issues related with corporation and management, as mentioned before, especially interests of shareholders, protection of the capital if public limited companies, branches disclosure, mergers and acquisition, minimum requirements for single-member private limited-liability companies and rights of their shareholders, the existing legal forms of companies as the European Cooperative Society, European economic interest grouping and the European Company.[18] *(for more details see: page 31)*

Development of European Company law can be reviewed from the aspect of Directives and Regulations . First developments began between the years of 1968 when the

[17] Corporate Governance Reforms in Continental Europe, Journal of Economic Perspectives, Vol. 21, No. 1, Winter 2007

[18] European Company Law And Corporate Governance- A Modern Legal Framework for More Engaged Shareholders and Suitable Companies (Com/2012/0740 Final)

First Directive accepted and 1989 when the Twelfth Directive was approved. Between this period (in twenty-one years) one regulation accepted and twelve directive accepted and publicated. The legal framework of Company law especially set-up in certain years. The establishment of companies in all member states was increasing the competition level, and national lawmakers was lowering the requirements and formalities in the way of foundations of corporations which could attract more investors and foreign businesses to their country. In this situation minority shareholders and creditors was gradually stepping to the back stage and becoming unprotected. Reviewing all the situation in Union, in 1968 first movements begun and First Council Directive 68/151/EEC. This directive mostly focused on three issues: coordinating the issues related with publicity and disclosure of companies, representation of organs in entities, the nullity of the companies under the structure of Limited Liability[19]. However, after nine years European Union prepeared new rule. In 1977 The Second Council Directive 77/91/EEC accepted and covered other essential issues. This Directive regulates national provisions and procedures on the incorporation of public limited companies, minimum requirements on the share capital and capital (protection, rising, lowering and etc.). This capital trying to ensure the fact that company capitals are protected to the towards of creditors' interests[20]. After that, European law making authorities boosting the steps towards opening new paths. One year later Third Council Directive 78/855/EEC accepted. It harmonizes the rules related with mergers of public limited companies under same national legislation[21]. In same year, the Fourth Council Directive 78/660/EEC[22] was approved which focuses on the rules related to presentation and content of the annual accounts in limited liabilities by shares or guarantee, valuation methods and their publications procedures. After four years, Council regulates revers procedures through Sixth Council Directive 82/891/EEC which can be specified with the rules over the division of public Limited Liability companies from the same countries (Member states). Three types of division introduced: Division by acquisitions; division by the incorporating of new companies; division under the regulatory of judicial authority.[23] Directives bring to the quiet noticeable benefits to the corporate law field of European Union. However, in a purpose of developing and improving procedure and provision, in following next two years two more Directives approved. In the year of 1983,

[19] EUR-Lex; First Council Directive (68/151/EEC);
[20] EUR-Lex; Second Council Directive (77/91/EEC);
[21] EUR-Lex; Third Council Directive (78/855/EEC);
[22] EUR-Lex; Fourth Council Directive (78/660/EEC);
[23] EUR-Lex; Sixth Council Directive (82/891/EEC)

Seventh Council Directive 83/349/EEC approved. It coordinates the law systems of Member States in consolidated accounts. With the Fourth Directive which specified on the annual accounts of the firms with structure public limited company, they are creating the group of “accounting directives”[24]. In same year also the Eighth Council Directive 84/253/EEC accepted. It was intended to complete and overall the directives related to company accounts, defining responsibilities and rights of person who carrying the documentation of statutory audits.[25]

I can strongly express that the comprehensive and main forward step of European Company Law was done in 1985 with the European Economic Interest Grouping (EEIG). With new legal form the Regulation 2137/85 was confirmed. It introduced new and instructial legal tool at Europe level. New form of corporation designed to reduce the difficulties on the grounds of legal, fiscal and psychological fields, that individuals, corporations, business organizations and other important bodies of company law facing in cross-border corporation procedures[26]. All-together, previous directives were constructed over the freedom of the establishment. There was requirement of changing some legal basisses. So Council used the comprehensive power of Article 235(current: Article 352 TFEU) of the Treaty Establishing the European Economic Community.[27]

In year of 1989, two more Directives approved. With them, first stage completed. The Eleventh Council Directive 89/666/EEC concerning requirements of disclosure which imposed in Member States where the subsidies or branches of the companies founded by the jurisdiction of another Member State. The goal of certain directive is mainly to ensure the equalent protection standards for shareholders and third parties with no matter of in where companies are operating. Twelfth Council Directive 89/667/EEC ables the foundation of single-member limited liability companies through the Community. Significant developments on the legislations of company law has important impacts in national law systems of Member States. Approved Directives and Regulations are moving forward and modernizing domestic company laws.

1990’s can be accepted as a stagnant decade which crisis started in European Company law. Even though, at that time, some problematic topics and weak points discussed briefly. The internationalization process of the trades, refusal of the Member

[24] EUR-Lex; Seventh Council Directive (83/349/EEC);
[25] EUR-Lex; Eighth Council Directive (84/253/EEC);
[26] EUR-Lex; Regulation (EEC) No 2137/85 the European Economic Interest Grouping;
[27] The evolution of EU Company Law (Conference Paper), September 2010 by Carlos Gorriz

States to the directive proposals, the change in economical context of Europe made difficulties to the Union in the process of harmonizing domestic laws and especially focusing to the improvement of national company laws. In 1988, a Ninth Directive which focused on formation and running groups of companies, Tenth Council Directive (2005/56/EC)[28], with the issues of cross-border mergers of limited liability companies, Thirteenth Council Directive(2004/25/EC)[29] on the grounds of achievement of legal confidence over the takeover bids, in same while protection of interests of company shareholders, creditors and other parties and a Fourteenth Directive which intended to regulate situations over the transfer of company seats between Member States have not succeed as planned. The drafting Statute for a European Company also have not achieved any strong results in that decade.

After the year 1999 till 2011, there were developments and progress on the legislation of company law. The cases on the grounds of the freedom of establishment boosted the processes to open new gaps and fields on corporate law which had not interpreted before. As an example I can show some important cases:

Daily Mail Case[30]:

Daily Mail was the newspaper company which established and registered in the United Kingdom and was the residence. It wanted transfer it's head office (real seat) to the Netherlands because of more favorable tax environment and set up branch or subsidiary in the UK. UK Treasury Department refused permission for the transfer of seat, which is necessary under UK law. The UK Treasury Department refused to give consent to the transfer of de facto office. In this situation, there was need to interpretation to the Article 43 and 48 EC Treaty. The European Court of Justice concluded that The UK refusal falls outside of the framework of the Treaty provisions.

Centros case[31]:

Case (C-212/97) facts was on the grounds of freedom of establishment. Danish couple incorporated a business company with the registered office in the United Kingdom. Their share capitals was about 100 GBP (which was unpaid). They were also the resident of Denmark and because of that they wanted to establishment the branch of their UK originated company in Denmark to run their business through of it. However, Danimark

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[28] EUR-Lex; Tenth Council Directive (2005/56/EC);
[29] EUR-Lex ; Thirteenth Council Directive(2004/25/EC);
[30] R (Daily Mail and General Trust plc) v Treasury (1988) Case 81/87;
[31] Centros Ltd v Erhvervs- og Selskabsstyrelsen (1999) C-212/97;

authorities refused the registration of branch with showing the reason that they must pay their minimum capital according to Danish legistlation to be able to open their office here. The European Court of Justice held that a Danish couple can establish a business corporation in the United Kingdom and create a branch in Denmark to carry out all their business related economic activities without any restrictions.

The ratification of the Statue for a European Company (Socieatas Europea) also played important role the evolution process of European Company Law. It is the comprehensive company type which is the "symbol" of corporations in Europe. (SE will be discussed in following chapters). The future of Company Law can be predicted from three aspects. First is the issue which demands to simplify the content of the Company law which can reduce the legal burdens and responsibilities of enterprises. The working over the telematics technologies, considered as an necessary point in the modernization process of the law by the Comission. Second issue is the protection company shareholders and creditors interests. It is reviewed essential to increase the level of their protection which can be advantageous to attract foreign investors to rely on EU companies. Certain process is also favorable to growing up the competitiveness level in Internal Market. Third issue is mobility of the borders within the European territories. It should available to companies to move freely between Member States and run their businesses in an easy and flexible way[32].

Taking all the shown facts to the account, European Union is not avoiding the amendment of the old directives if there is any provisions or rules are under the doubt. First approved Directives are changed in this way, to be more precise The First Directive which accepted in 1968 turned into the Directive 2009/101/EC15, the Second Directive amended to the Directive 2012/30/UE16; and the Third Directive became the Directive 2011/35/EU17. Furthermore, in 2007 the Directive 2007/36/EC[33] with the issues of exercising of shareholders' voting rights was adopted. The purpose of directive is to precise the minimum rights for shareholders in across Europe regards to listed companies. Certain Directive is the great example to the Commision Action Plan on the evolution and modernizing of European Corporate governance framework.

At the present time Member States are working on their national corporate law systems to comply and harmonise their provisions with the accepted directives and regulations. The codification process of company law is partly completed with the

[32] The evolution of EU Company Law (Conference Paper), September 2010 by Carlos Gorriz;
[33] EUR-Lex ; Directive 2007/36/EC;

acceptance of the Directive (EU) 2017/1132. This Directive is also the result of the Action Plan which started in 2012. It gathered six previous Directives together which Comission had methodological concerns about some issus over them. Codified Directives are shown below:

- Sixth Council Directive concerning the division of public limited liability companies (82/891/EEC)
- Eleventh Council Directive concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State (89/666/EEC)
- Directive 2005/56/EC of the European Parliament and of the Council on cross-border mergers of limited liability companies
- Directive 2009/101/EC of the European Parliament and of the Council on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent
- Directive 2011/35/EU of the European Parliament and of the Council concerning mergers of public limited liability companies
- Directive 2012/30/EU of the European Parliament and of the Council on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital[34].

However there are some drawbacks related with new codification which can must be reviewed. There are some weak points which can be improved in future codifications. For example: 1) the amendments are not over the essential context aspect nor interpretation of important doubtfull issues, but over the formal requirements and some techniqual issues; 2) as I described before it is "partial" codifications and not covering other necessary directives; 3) it is not establishing any legal instrument or tool in European Company law nor there is no any transposition requirements to the Member States. Nevertheless, we must not forget that it is an first step on the way of codification of whole legistlation and it can

[34] Blogs.uab.cat- Development of Company Law in the EU, 10.07. 2017 by Carles Górriz López(visit on 22.06.2018)

be evaluated as an important effort towards development and unification of European Company Law. Altogether, European corporate law is going on the right path and has already been achieved to the comprehensive corporation system.[35]

2.2 Freedom of Establishment (TFEU), Freedom to conduct a business and right to property (Charter of Fundamental Rights of the European Union)

Freedom of Establishment (TFEU)

The fact that the main "heart" of the company law lays on the fundamental freedoms and rights, it can be beneficial to understand their legal background. Freedom of establishment is denifed by the Article 49 Treaty of Functioning of the European Union which delegates natural and legal persons to establish their agencies, companies, branches, subsidies and etc. Without any prohibition and restrictions. It follows in TFEU as:

"Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 54, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital[36]"

This freedom have crucial role on the competitivenes and completenes of the internal market. The changing of the business environments, modernization and globalization processes pushed forward legal authorities to use of certain principle in a

[35] Blaurock, Uwe (1998) "Steps toward a Uniform Corporate Law in the European Union," Cornell International Law Journal: Vol. 31: Iss.2, Article 4
[36] TFEU, Article 49, Official Journal 115 , 09/05/2008 P. 0067 – 0067;

flexible way than it was before. This process gained economic value of Europen Union and brought over than hundred thouthands of big companies to internal market to conduct their business .But the question arises, what is the legal person, firm or company? In the Article 54 of the TFEU the concept defined as:

"Companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Union shall, for the purposes of this Chapter, be treated in the same way as natural persons who are nationals of Member States.

'Companies or firms' means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making[37]"

Legal system treating the legal persons-companies, entities and etc. in the same manner as with individuals or natural persons in relation to the freedoms. The ECJ expressed the opinion with the earlier cases that individuals has "direct effect" concession. "Direct effect" institution describes that any individual in order to avoid all kind of discriminatory restrictions can directly invoke and use his rights. In general companies are using the freedom from two category of establishments: primary and secondary. A registered company may have seat and legally registered its one Member State with the options that to transfer it to another Member State *(Look: Daily Mail case, p18)*. In this case company will run business only with primary establishment. However, with keeping home office (legal seat) in one Member State and establish it's branch, subsidy, office etc. in another Member States can be example to secondary establishment.

The general theory of incorporation is always to choose the more favourable legistlation and conduct the businesses through it. But, European Court of Justice introduced some restriction to the right of establishment, based on legitimate interests of public. In the Agrement of European Economic Area several type of exepmtions are shown which are out from the scope of the freedom of establishment. This exemptions cover the activites which are especially related to the working in offical authorities. Third-country nationals can also be out from the scope on the basis of public policy, public health and public sevurity. According to case law conclusions, certain exemptions can be allowed if

[37] Consolidated version of the Treaty on the Functioning of the European Union/Title IV: Free Movement of Persons, Services and Capital, Article 49;

coporations fulfilling four criterias: non-discrimination, suitability, capacity to get appointed goals and aim and the most important one proportionality[38]. For example:

Überseeringcase[39]:

Überseering BV, was a limited liability Dutch company which founded by two German shareholders in Netherlands, but main businesses was operated in Germany. The company moved it's headquarter to Germany. The company hired another German-NCC company due to renovate builded plant in Dusseldorf. The NCC made a complete mass and Überseering BV wanted open a claim against harm and damages caused by them in German Tribunal. However, they was denied with the reason non-national companies has no right to claim against a German company. The interpretation of the topic went through Federal Court of Justice to the European Court of Justice[40]. ECJ's was based on the freedom of establishment and the precedent of fighting (from Central's case). In final decision the court held that the refusal of legal capacity of the companies which legally established and registered in another Member States must be accepted as a abusment of the fundamental rights and is against the freedom of establishment. Overall, all the companies and the firms founded in one Member State has same right and legal power with other national companies in all European territory.

The freedom of establishment is not only avaible only for firms or companies who want to conduct cross-border business, also to the persons or employees who wants to be self-employed in cross-border scale. This kind of issues can be seen from Werner case.

Werner case[41]:

Mr.Werner was a dentist from the Germany, who obtained his education and workplace in Germany, also was the resident of Netherlands. He changed his employment from employee to the self-employment. And with that reason he stayed outside from the framework of the guidance for employees of DTC which conducted between the Germany and the Netherlands that delegating unlimited tax advantages to the state where the activity is processing. In order to gain his financial situation, he wanted his personal situations to be considered in the taxation process by German authorities which was called as "splitting

[38] Transfer of Seat and Freedom of Establishment in European Company Law by Enrico Vaccaro (King's College London, 2004)

[39] Überseering BV v Nordic Construction Company Baumanagement GmbH, (2002) C-208/00, [2002] ECR I-9919

[40] Certain process called "premilinary ruling procedure"- it is considered necessary in a case when national courts requesting interpretation of EU Law from the European Court of Justice (EUR-Lex, Preliminary ruling proceedings — recommendations to national courts Article 267 European Union (TFEU))

[41] Hans Werner v Finanzamt Aachen-Innenstadt case, ECJ Case C-112/91;

tariff'. In usual circumstances such kind of issues are called discrimination. However, in certain situations, ECJ held a decision that Werner had no any financial or economical contact with the another member state, so from that point there is no any discrimination and fundamental freedoms can not be applied for this case.

Freedom to conduct a business

The individuals, business owner, natural persons and other business related company parties are free to do all kind of economic activities (except some forbidden speheres by national laws), compete with the opponents and other companies in European market without any restrictions and discriminations and enjoy the right to contract independently by their own wills. Such kind of rights protected by the freedom to conduct a business which is the one of from most important provisions in Charter of Fundamental Rights of EU. In Article 16 certain freedom defined as:

'The freedom to conduct a business in accordance with Community law and national laws and practices is recognised[42]'

Certain article is strongly connected with the right to the property (Article 17) because of the business and property relationship. Developments and discussion over certain right started from the 1970. However, in 2009 EU Charter of Fundamental Rights became legally binding with the entry into force of the Lisbon treaty and got the equal legal "power" with the treaties and freedom to conduct business gained it's capacity and broaded it competence[43]. This right acquired from the European Court of Justice case judgements[44].

Metronome Musik GmbH case[45]:

Metronome Musik was a compact disct producer company in Germany. Compact discs was called "Planet Punk". In same time there was a company named Music Point Hokamp which was running a business of rentals of compact discs and also was copying the Planet Punk cd's for earning profits. With the acceptance of the Council Directive 92/100/EEC which requires from the Member States to present the right over the copyright works with the issues of prohibiting or authorising rentals. So following the intructions, Germany implemented the directive to the law with the provision that rental of copyrighted works

[42] EU Charter of Fundamental Rights, Article 16

[43] Fra - European Union Agency for Fundamental Rights, Freedom to conduct a business (Luxembourg: Publications Office of the European Union, 2015)

[44] (for example, CJEU Eridania case-1979, CJEU Procureur de la République v. Association de défense des brûleurs d'huiles usagées case- 1985; CJEU Metronome Musik GmbH case-1988)

[45] eur-lex.europa.eu; Metronome Musik GmbH v Music Point Hokamp GmbH,Case C-200/96, 28 April 1998

can be used only with the consent of rightholder. Relying on certain provision, Metronome Musik claimed against Music Point Hokamp on the grounds of illegal renting of compact disks. Not only from the aspect of the Directive on the basis of Intellectual Property rights over rental and renting right, also from the Community law view on the basis of principles of an exclusive copyrights, no any exhaustion can be seen in the sale of original or rented copy. Court held that, there is no any issue wich can be affect to the validity of provision of Council Directive 92/100/EEC's in certain case.

"...entrepreneurial freedom of individuals or undertakings specialising in the commercial rental of sound recordings, the consequences of introducing an exclusive rental right cannot be regarded as disproportionate and intolerable."

According to the case of Sky Österreich, the European Court of Justice defined the righ to conduct a business with covering four specifications[46]:

a) the freedom to exercise an economic or commercial activity;

b) the freedom of contract;

c) free competition.

Also relying on the certain case law, the right not absolute and must be reviewed over the links of its social function. The differences between freedom to conduct a business and right of establishment is, mostly latter avoiding restrictions and protecting the freedom to move for business starters or individuals who wants to transfer from one to another Member State in a purpose of establishment, however, former one can enforced over the all kind of situations no matter if there is cross-border elements or not[47]. The mutual point of both of them -the right of establishment and freedom to conduct a business has strong connections also with other freedoms which defined in Charter. Practical approaches showing that they must be balanced to each other to get the benefits from the freedom with the help of right interpratation. To be more clear we can review the relation between worker rights and freedom to conduct a business. Both of them can be accepted as a complex issues which is intented to increase and protect flexibility of European labour market. For instance, approaching to the employees as "independent contractor" which is shown in some national legistlations such as "zero-hour contracts"[48] in the UK can be example of certain balance responsibility between freedom and right. From the Alemo-Herron v Parkwood Leisure Ltd case we can understand certain issue:

[46] Eur-Lex; Sky Österreich, C-283/11,22 January 2013;
[47] Fra - EUAFR, Freedom to conduct a business (Luxembourg: 2015)
[48] http://www.acas.org.uk/index.aspx?articleid=4468 (visited in 19.06.2018)

Alemo-Herron case[49]*:*

The Mark Alemo-Herron and 23 other people were previosly was working for the local authority. Since 2002 they employment was transferred from the public sector to private. They employment contract included the clause about their payments and conditions, where it was shown that they will be negotiated NJC (National Joint Council for Local Government Services). However, the private company could not take a in shown body nor could participate there over such kind of negotiations. Nevertheless, they paid salaries till 2004. But from that year, Parkwood Leisure Ltd (employer private company) expressed that it will not comply with requirements of NJC for future contracts and refused to increasment of pays. Alemo-Herron and others disputed certain actions of Parkwood Leisure Ltd in the court and argued that the company must comply with the guidance of NJC. European Court of Justice held the decision that, the freedom of conduct a business and workes rights must be reviewed balanced. If the transferee have not ability or opportunity to attend in the negotiations related to a collective agreement which which signed after the date of transfer, the results of certain processes shoud not bind the transferee. Under the facts of certain case, Parkwood Leisure LTD. Is not obliged to pay increased salaries set which appointed in the NTC collective agreement, which concluded after 2004. However, ECJ also showed that, the Acquired Rights Directive[50] must be reviewed under the balanced approach with the provisions related to the freedom to conduct a business in the Charter of Fundamental Rights of European Union, because certain freedoms requiring that both of the contracting parties must be able to put their interests in the negotiations over the contract.

The certain improvements in EU law, especially which is related to the fundamental rights such as freedom to conduct a business, have showed it's positive results. In member states, desired business climates every passing year are getting more attractive and fertily. However, there are still several problems excist. The hidden obstacles, to be more precise, long and difficult corportaive procedures, time consuming govremental reports and hinders to the acces to credits are the main examples for the problems which enterpreneurs are facing in our days. Futhermore, troubles such as gender stereotypes in society, unbalanced family and worklife support towards women, high start-up costs, difficulties in the protection of start-up's financial capital must be improved. Nowadays, the problems in the

[49] Alemo-Herron and Others v Parkwood Leisure Ltd ([2013] EUECJ C-426/11);

[50] The Transfers of Undertakings (The Acquired Rights Directive) 2001/23/EC, is a instrument of EU law which protects the rights of ther transferred workers between business owners.

field of migration created problems to the migrants. Cultural differencies, language barriers, restrictied knowledge about legal requirements about start-ups, difficulties in recognisig of the qualifications are the essential points.[51] The Member States, the EU authorities should improve corporate problems in order to remove obstacles while creating easy and flexible measures to the start-up businesses. Further options on the improvement of the problems shown above, analyses and etc. will be discussed broadly in the Chapter 4.2.

2.3 COMPANY FORMS IN EU AND IN SOME EU COUNTRIES

Nevertheless**,** European Union is single market, it is the biggest business zone in the world and it holds the most largest economy in the world (GDP per head €25,000). 500 million customer are operating in certain market. Union is partner with the countries more than 80 and ranks first over the scale of international invetments. It can be accepted as "big boy" in global trade and taking serious role on the ecenomic processes of the world. Shown facts making it beneficial for the enterpreneurs, investors and other business organisations to run their businesses here. However, there are some varieties related to the foundation of the companies and requirements to start-ups can be seen between jurisdictions[52]. Because of that, everyone seeking the most flexible and tax favourable Member States of the Union to conduct their businesses. Choosing relevant jurisdiction is essential point to the success path of the business or company. The practical researches show that most investment friendly countries in Europe are the UK, Germany, Ireland, The Netherlands and Cyprus.

The most useful company types and some specific points about corporate law of the UK, Germany and Netherland are shown below:

The UK[53]

Sole Trader:

[51] FRA, Freedom to conduct a business: exploring the dimensions of a fundamental right;
Report Publication (based on report, August 2015);
[52] http://ec.europa.eu/trade/policy/eu-position-in-world-trade/ (visited 20.06.2018);
[53] https://www.gov.uk/government/publications/legal-forms-for-business-a-guide (visited 20.06.2018).

Easiest and simplest the way to set-up business. To be a Sole trader means to be careful about the business risks and liabilities. In certain form of corporation owner of the firm has unlimited personal liability against any kind of contractual obligations and claimsts again firm. The advantage is there is no requirement for any formal constitution or minimum capital.

Private Limited Company (LTD):

Limited companies are most useful ones as in other coutries and has a seperate legal personality. It means, as described in previous chapters, company can participate in contracts and operate the business in its own and seperate name. In the UK limited companies are corporating according to the Companies Act 2006 (at the present amended by the Corporation Tax Act 2009) requirements. For formation of certain structure two mains issues demanded:

1)Memorandum which shows intentions of the inital members of company that, they have wish to establish a company and they must clearly show their consents to becoming a member. Memorondum in any case can not be changed.

2)Articles of Association is the "consitution" of the company where the seperate bodies of the company and their frameworks are set-up. Here the members and company appointing legally binding rules and responsibilities.

There must be at least one managin director who is over 16 years old. A shareholders can operate company instead of directors. The shareholders have limited liability. The most advantegous side of UK legistlation is in that, there is no any minimum capital required to establish an Limited Company.

Public Limited Company (PLC):

Public Limited Companies practically are the companies which formed as LTDs before, however because of the increasement of the financial situations they are changed to the PLCs. Minimum two director and secretary is required.

Limited Liability Partnership (LLP):

Certain form is similar to the Limited companies which owns seperate legal personality. The difference from the normal partnership is that, shareholders or investors' liability is limited depend on the assests they invested to the company. LLPs must be registered and present the file accounts, annual return references and other essential documents to the Companies House of the UK. There must be minimum two members.

Community Interest Company (CIC):

This kind of companies are not intented to increase their profits or work only for the benefits of shareholders, but their intention is to spent that profits to the goods and development of the community which they are operating. The establishment of the company is quiet easy and fast.

Other company types in the UK: Unlimited companies; Industrial and provident society; Royal charters.

Germany[54]*:*

Limited liability company (Gesellschaft mit beschränkter Haftung (GmbH)):

The charactheristics of certain structure are similar with the UK. GmbHs are the companies with limited liability and seperate personalities which can be founded to run any kind of business.The minimum required share capital (Stammkapital) is 25,000 Euro. Establishment go through two stage: First with the accepting of company's article of associations (Gesellschaftsvertrag) between shareholders and company and second the registration of company with relevant name on competent authority. Typically as in the UK and other countries, also in Germany company must be managed at least by managing director (Geschäftsführer). However in their absence, shareholders can alternate them. Share holder meetings are the most important part and decision making body of the company. All kind of procedural and managment issues are discussed here.

Public Limited Company (Aktiengesellschaft (AG)):

As in GmbH, also in this company structure at least one shareholder required and the share capital must no be less than 50,000 Euro. Registration and formal procedures are same with Limited liability company. The functions of the shareholders meetings in Gmbh, are carried by the board of directors in certain form.

Limited Partnership (Kommanditgesellschaft (KG)):

Certain form is typical partnership where partners liabilities are limited on their behalf. There are two category of partners: General partner with unlimited liability and limited partner whose liability is depend only in the scope of his assets in company.

Mittelstand:

Mitelstand companies can be specified as national Germany business corporations. They are the most powerfull figures in domestic economy. The biggest firm which employing maximum 500 employess and with annual turnover up to 500 million Euro . The family

[54] www.gtai.de- Germany Trade and Invest (GTAI), Company Forms, 2018 (visited 20.06.2018).

owned firms with historical roots, the firms with strong regional binds and etc. can be examples for the Mittelstands[55].

Other company structures in Germany: General Partnership (Offene Handelsgesellschaft-OHG), Limited partnership with a limited liability company (GmbH & Co. KG), Subsidiaries, Branches (Zweigniederlassung)

The Netherlands[56]:

Private limited company (Besloten vennootschap (BV)):

The main principles are the same with the LTD in the UK and GmbH in Germany. Main beneficit of certain structure is that, there is no capital share requirement (min. €0.01) as in the UK. Till the registration of the company in the civil-law notary, shareholder is liable for the debts and liabilites of the company. If shareholder holds 5% of company shares, he is accepted as director or major shareholder and he is obliged to pay the income tax through his salary from company which can not be less that annual 44,000 Euro.

General Partnership (Vennootschap onder firma (VOF)):

General Partnership can be established by the other self-employed or business owned individuals. There is no minimum capital required. The main drawback of certain structure is if you are partner, you are liable for the debts and liabilities of the company even if certain debts caused by other partners. In that case creditors can claim to the assets of main responsible partner's assets, if it is not sufficent he has right to claim also against to your personal capitals. Patnerships must be registered in Chamber of Commerce (Kamer van Koophandel, KvK)

Association (vereniging):

Form of association is best choice for those who wish to make music or band, participate in sport events, improving some specific field of social life or art and etc. There must at minimum 2 member to be able to create certain form. The supervisory board is the meeting of the member (ledenvergadering). There is to type of associations: with full and limited legal capacity.

Other company forms in the Netherlands: Sole proprietor (eenmanszaak), Professional partnership (maatschap), Limited partnership (cv or commanditaire vennootschap), Public limited company (nv or naamloze vennootschap), Foundation (stichting).

[55] https://www.justlanded.at/english/Germany/Articles/Business/German-company-types (visited 20.06.2018).

[56]https://business.gov.nl/regulation/legal-forms-of-business - "Government support for entrepreneurs"

From the shown examples from different European countries with various corporate jurisdictions, I can tell that most of the company structures and rights are the similar. However, the main differences are in the initial minimum capital share requirements to be able to establish a company and in the formal registration procedures. On the other hand, beyond the local and national corporations there are more broader company concepts in the European Union corporate law. Most initiatives from the history towards to the establishment of uniform company structures within Europe was not successful. However, acurrently there are three type of company structure in Union scale:

1) European Economic Interest Grouping;
2) European Cooperative Society (Societas Cooperativa Europaea);
3) European Company (Societas Europaea);

European Economic Interest Grouping

It is a legal entity and personality structure in Europe. Certain form was established according to the European Community (EC) Council Regulation 2137/85[57] which focused on the regulating and managing the legal basics and rules of certain company type. From general view, it is can be par with the join venture or limited partnerships in most national jurisdictions. Company can be established between companies, legal entities, organisations, natural persons and all kind of legally established corporations from at least two member states of Europe. EEIG partners must run economic activity in minimum two member states and they have unlimited liability, moreover profits and losses must be divided equally between members. This structure makes member states and their entities to enjoy cross-border business relations easily and in flexible way. There is no any minimum capital requirement to establishment. A grouping must be registered in the state where it is official address excists. It can be created in any kind of businesses such as social, agricultural, legal, educational and etc.

European Cooperative Society (Societas Cooperativa Europaea)

This structure can be operated within the territory of European Economic Area. According to the regulation of the Statute for a European Cooperative Society (2003)[58],

[57] https://eur-lex.europa.eu, COUNCIL REGULATION (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG).
[58] https://eur-lex.europa.eu, COUNCIL REGULATION (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE);

certain form designated to improve the need to establishing of subsidiaries in Member States and take out obstacles on they way of cross-border corporate relations. With the help of Society, European citizens, companies, organisations can run their businesses or activities in Member States without registering or establishing new company with the requirements of their national legistlations. Owners will keep their legal personality in the Europe and can move their head offices among Member States without any hinder or time-consuming formalities. Society can be established by at least 5 European citizen, or at least 2 legal entities or by the combination of 5 or more companies and individual persons. To be able to establish a society 30,000 Euro minimum capital required. It must be registered there, where is head office situates. The authority body is general meeting which must take place at least one time in a year.

2.4 SOCIETAS EUROPAEA (SE) THE EUROPEAN COMPANY

The European Company is the public limited liability company in which can be founded and registered in all EU members. The first ideas to the foundation of such cross-border instrument turns back to the 20th century. To be more clear, in 1960 first debates begun over the establishment of European Company. As a result, in 1970, 1975, 1989 and 1991 proposals related to Regulation of European Company presented. But unfortunately they haven't achieved any significant result. However, despite of several efforts, none of them resulted successful[59]. In 2001 october 8, European Comission approved the Council Regulation (EC) No 2157/ 2001[60] which was the Statutory of the Societas Europea. The Regulation includes topics such as formation, requirements, procedures, structures and other important provision of SE. However, Regulation became completed with second annex- the Council Directive 2001/86/EC[61] on the grounds of employee involvement. In 2004, after three year of acceptance of Regulation, it came into force. It was very essential

[59] https://worker-participation.eu, 'History of the European Company statute (ECS) (visited in 24 June 2018);
[60] https://eur-lex.europa.eu; COUNCIL REGULATION (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE);
[61] https://eur-lex.europa.eu; COUNCIL DIRECTIVE 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees;

step in the development of European company law and employee's involvement in existing companies. The main purposes of the SE can be reviewed from three asptects:
1)Expanding of the cross-border business mobility; 2) Affecting to the social life and welfare of people; 3) Harmonization of certain instruments to the national law systems. SE took out many barriers and made economic activities between businesses more flexible and simple. Another important point and aim of certain structure is protection of the worker rights in high level. Because of that, separate directive approved by Commission: the Employees Involvement Directive. It's prove that, workers rights are in the main objective of the SE. As shown in directive:

"In order to promote the social objectives of the Community, special provisions have to be set, notably in the field of employee involvement, aimed at ensuring that the establishment of an SE does not entail the disappearance or reduction of practices of employee involvement existing within the companies participating in the establishment of an SE'. In other words, this directive is aimed at ensuring that scope of employees' rights, prior to incorporating as an SE, will not be reduced in a newly created European Company"[62]

Socieatas Europea is first transnational legal structure that, with establishing it in one Member State, owners of company can run a business through the branches in other Member States or can merge them to other corporations without any obstacles and certain issues are the main differences from typical public limited companies. According to the SE Statue, there are several ways of establish a European limited company:

1) *Merging* two or more national public companies from different Member States under the requirements of Regulation[63];
2) Formation of *joint ventures* between the companies (private or public; either created according to the national laws of another Member State or has subsidiary which governed by the legislation of another Member State which exists at least for 2 years)[64];
3) Establishing SE *subsidiary* with the subscribing it to the company shares[65];
4) Transforming a company established under national law into an European Company[66];

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[62] COUNCIL DIRECTIVE 2001/86/EC of 8 October 2001, preamble, paragraph 6;
[63] SE Regulation, Articles 2(1) and 17;
[64] SE Regulation, Articles 2(2) and 32;
[65] SE Regulation, Articles 2(3) and 35;
[66] SE Regulation, Articles 2(4) and 37;

The Statute also clarified several important managerial and administrative points. According to the Article 7 of SE Statutory, registered and head office of the formed SE company must be situated in same Member State. The minimum share capital to be able to form a company is 120,000 euro. In the comparison to the other Member States, required initial capital for SE is the highest in the European Union for formation of public limited companies.

The one more positive aspect of Regulation is that, companies have various choices in the opting their administrative structure. Furthermore, they can either refer one-tier or two-tier systems with supervisory and managerial boards. Also, as an another option, between the companies and employees, their involvement rights such as participation and consultation can be negotiated[67]. For more advantages I can show the right of free choosing of the jurisdiction. It means, SE owner, can look for the more favorable jurisdiction and Member State, in where he wants to register and govern his company under certain national law. Also registered companies, have right to change (transfer) their head offices or legal seats to another Member State without establishing of a new company[68]. Such advantages makes European Company structure much more attractive that other corporate forms. Having an single company in the Europe scale, makes companies more productive and simplifies their administration process because of central management point. Most time-consuming formalities and additional hidden expenses can be avoided.

Even certain benefits, flexibility of formation, European status and advantages makes certain legal structure attractive, there is also some problems and obstacles can be reviewed. As from my point of view, mostly certain structure stayed under “harmonization” tendency to the national legistlations, rather than operate it in European scale. In addition, even regulation provides general and importan provision and requirements, also Member States are setting-up their corporate law provisions over certain structure. Certain fact lowering its uniformity reputation and power[69]. Another fact is an SE can not be formed by an individual investors, because Statue requires at least to company which governed in different Member States and certain issue, usually can be evaluated as an negative aspect towards to single business owners.

[67] https://eur-lex.europa.eu; COUNCIL DIRECTIVE 2001/86/EC, Article 3 and 4;
[68] SE Regulation, Articles 8;

[69] Cite As: Kadi, S., (2012) Advantages and Disadvantages of the SE-Statute, Vol 1 LSEU, pp 113-121

Altogether, the Commission is still working on the development of specifications, weaknesses and features of the Socieata Europea. Making SE actual in whole European level, with no difference of size, type and establishment legistlation of certain companies, will increase their mobility and uniformity which can be a key of being useful not only for “gigant” companies, also for small and start-up businesses.

2.5. PROPOSED COMPANY FORM OF SOCIETAS UNIUS PERSONAE (SUP) SINGLE-MEMBER PRIVATE LIMITED LIABILITY COMPANIES

After withdrawn proposal on European Private Company in 2008, there was need for further measures. İn 2014, EU Comission presented a Proposal for a Directive of the European Parliament and of the Council on single-member private limited liability companies[70] which was aimed to make establishment and operation of cross-border single private limited entities easier and more effective. As Comission described it:

“*This proposal aims to make it easier and less costly to set up companies across the EU. In particular, it aims to encourage SMEs, including individual entrepreneurs, to carry out their activities in other Member States. At the same time, it should also benefit groups consisting of SMEs and larger companies by allowing them to set up single-member subsidiaries according to the same main requirements across the EU. Its particular focus is on subsidiaries (i.e. companies in which another company holds all or parts of the shares or a majority of the voting rights, or has the right to appoint/remove a majority of the board members, or over which another company has the right to exercise a dominant influence) as this is the most frequently chosen legal form of establishment abroad*[71]”

However, as it was important step on corporate law to establish such legal instrument in European scale, it required more development and discussions over the general provisions of SME. The legal backgrounds of the proposal shoul be laid on to the Article 352 of

[70] Proposal for a Directive of the European Parliament and of the Council on single-member private limited liability companies COM(2014) 212 final – 2014/0120 (COD);

[71] http://europa.eu/rapid/press-release_MEMO-14-274_en.htm; Proposal for a Directive on single-member private limited liability companies – frequently asked questions

TFEU[72] (flexibility clause). The planned structure's main objective was to simplify formation of limited liability company in European uniformed form and which can be reached by any size of business owners. According to the approved provisions, there is no any initial capital requirements to establish of SUPs (1 euro- obviously it is symbolic number). It could be great advantage for the start-up businesses and young entrepreneurs. And established company even limited liable, the creditors or customers of business activity or sale could require personal guaratnees from business owners.

The most difficult debates was over the registering proceduress of the SUPs. Some group of lawmakers argued that, interest of the entrepreneurs and investors are the main objective. Beacuse of that, to avoid formal and time consuming registration processes SUPs must benefit from online registration as it most quick way of it. However, other group of Comission members argued that, in the case of online registration SUPs can create serious problems and risks on European corporate law. They was reasoned this opinion with that, the formation of companies must go through the transperancy and owners identity must be checked carefully. Otherwise, with online registration a lot of 'fake' companies can be created and cause the widening of the money laundry facts between companies and frauds against consumers.

As I mentioned before, there are several matter which must be developed and concluded in the provisions. For example, one of them is taxation issues. The proposal is not included any regulatory rules over taxation of the SUPs, but they showed that certain issues will be governed by the national laws. Being controlled by the Member State legislation, means certain structure is not compeletely uniformed and it has no independence. There is lack of strength to be accepted as an cross-border corporate structure.

Other drawback is protection of the creditor. As i mentioned above, SUPs planned to be registered online and in quick way. However it will increase rights of shareholders and business owners, however on the other hand, it will restrict the safety of business partners and creditors (especially under the limited liability). Nevertheless of shown negative asptects of proposal, the beneficial points of SUP can boost economical and corporative fields in Europea in the case of directive will be accepted after final adoptation.

[72] Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council on single-member private limited liability companies (Brussels, 10 September 2014);

2.6. REGISTRATION AND STRUCTURE OF LLC’S IN EUROPEAN COUNTRIES

According to the practical experiences, Limited liability company is a legal entity which is a noncorporate and in general suits to the business owners who actively operating the business or have active role in the management of the company. The fundamental key of LLC is that, it provides limited liability to the owners and protecting them against creditor or company debts claims against their personal life or assets. Simply telling, your company have no any link with your personal life. Even if company goes to banckrupcy, owner will not be responsible for company debts or liabilities except his self-income taxes. Due to that, today LLC is widely spreaded in all over the world. There are various registration processes which regulated by the national law systems. The registration and establishment of LLCs in some Member States are shown below.

Austria:

In Austria Limited Liability Companies are called Gesellschaft mit beschränkter Haftung. The law related GmbH establishment is Limited Liability Companies Act (Gesetz über Gesellschaft mit beschränkter Haftung) which accepted in 6 March 1906. For registering company company owners firstly must fill the application and each director must sign certain document. Processes mainly going through the national notaries. There are several required informations which are essential for establishment: Company name, address of head office, description of business activity or planned strategy, personal informations of shareholders, owners or supervisory board members, the prove of required initial share capital. Articles of association (if one founder-decloration), instructions and calculations of the taxes and other fundamental documents must be presented in notary. The companies can run all kind of business activity or service which is not forbidden by the national law system. There are some kind of businesses in Austria that, you must have licences to have a right to do them, for example to do activites such an exporting and importing owner must get a trading license ("Handelsgewerbe") from the responsible authority Austrian Economic Chambers (WKO). The required share capital for GmbH is 35,000 euro and at least half of the money- 17,500 euro have to be paid to the contributions. Shareholder can be chosen from any individual or legal structure and there is no citizenship requirement. The foundation costs of the company can differ depend on the number of shareholders and directors. However average company establishment costs 500€.

Hungary:

In Hungary LLCs are called "Korlátolt Felelősségű Társaság" or KFT. They are governed by Article 4 of the Hungarian Company Law of 2006:

"Business associations may be established to engage in joint business operations for objectives other than for making profit (nonprofit business association). Nonprofit business associations may be established and operated in any corporate form. The corporate name of such business association shall contain the designation "nonprofit" with the corporate form[73]"

Certain structure is popular especially among the foreign investors, because they can posses 100% of the shares in a company. Different advantage is LLCs can be established through online registration which means low foundation costs in less time. Other crucial point in Hungary for LLCs is corporative income tax rate which is only 9%[74]. There is to method to registration: online method as I mentioned before and the basical application method which can be done by filling form by owners and directors with their personal informations and present them to the responsible authority. The former method is most useful one which costs approximately 172 euro, however later one mostly time consuming (1 week or more) and costs around 335 euro. The minimal required capital share is 10,000 euro.At least 300 euro contribution must be cash, however rest money can be fully paid in two years since company registered[75].

Poland:

As in other Member States, also in Poland limited liability companies are the most flexible company structure for the businesses. The company owners are enjoying the benefits of being liable with the limits of contribution of their capitals. LLC are called Spółka Z Ograniczona Odpowiedzialnością or Sp.zo.o[76]. Companies governed by the Polish Companies Code. For registration of the LLC it is required to fill application in

[73] Act IV of 2006 (Hungarian Company Act); Article 4 (1);
[74] Certain tax percentage is the most lowest one in Europe.
https://tradingeconomics.com/hungary/corporate-tax-rate (visited in 28 June 2018);
[75] https://www.offshorecompany.com/company/hungary-llc/ (visited in 28 June 2018);
[76] http://www.dudkowiak.com/company-incorporation-in-poland/polish-limited-liability-company.html; (visited in 28 June 2018);

public notaries. Also article of incorporation must be approved as a Notar Deed. The legal seat is required to be proven in Poland territory. Minimum required share capital is 1250 euro, which can be evaluated as one of most cheapest required capitals in EU. To corporative tax rate is 19%.

Slovakia:

In Slovakia Limited Liability companies are called “spoločnosť s ručením obmedzeným”. LLCs are governed by the Commercial Code of Slovakia (Act.513/1991 Coll.). Established business activity must be mentioned in Trade Licensing Act which regulates permissible business activites and exceptions. There is no any obstacles to the foreigners to invest and establish company without recidency. For foundation of company directors or shareholders must set down Foundation Agreement and each of them must sign on it. Whole documentation processes must be notarized. The required minimum share capital is 5,000 euro. If there is more than one owners establishing LLC, the capital contribution for each of them must be at least 750 euro. The authority powers of the entity are general meeting, supervisory board or boards of directors[77].As in Austria, also in Slovakia entrepreneurs must obtain trade licences which are relevant for their economic activities. Because of that they must register their businesses which is called “Zivnostensky register”. Certain process in general can take up to 7 days. There is no online registration process of LLCs in Slovakia and in establishment process attorney needed. Total registration costs are about 400 euro. The company tax rate of Slovakia is 21%.

[77] Legal Monitoring Futej and Partnersm, s.r.o- Establishing a limited liability company in Slovakia, 2018 Bratislava.

CHAPTER 3

3.1 RIGHT FOR BUSINESS ACTIVITY OF CONSTITUTION OF AZERBAIJAN REPUBLIC

By the history, world economical practices have proved that, in a competitive market of one country, without business activities of individuals or corporations success can not be achieved. Increasing foreign investments and investors are the key element of national development on the global level. Establishing flexible and flavourable business environment is main sought specifications for the entrepreneurs and corporations.Regards that countries are trying to amend their national law systems as suitable to the international trade practices. Taking certain issues to the account, in 1997 the ACT of the "support for small and medium sized businesses" started to be enforced. This act provided general rules for the government to help to the proprietors and business owners to develop their businesses without any obstacles or time consuming procedures under the governmental support.

Right for business activity is the fundamental principle which shown in Constitution of Azerbajan Republic. The freedom to conduct a business or right to establishment in EU Law can be understanded as a par for certain principle. In article 59 of the constitution Right for business activity defined as:

"Everyone may, using his/her possibilities, abilities and property, according to existing legislation, individually or together with other citizens, carry out business activity or other kinds of economic activity not prohibited by the law[78]."

This right clearifies that, without any discrimination on the grounds of sex, religious, nationality, ability or property every individual and legal entity has the right to business activity in a purpose to obtain economical profit. From general overview, legal system of Azerbaijan is roots from roman-german law system, and based on civil law. The legistlation takes international laws and norms as a highest power over the national law. The business market of Azerbaijan is quiet attractive for foreign investors. As an east Europe country, there is strong protection over the assets or properties. Not only for national business

[78] Constitution of Azerbaijan Republic, Article 59 (1995, Baku);

owners, but also for foreign investors government present high-level of safety. Certain process started from the acceptance of the Law on Protection of Foreign Investment dated 15 January 1992[79]. However, there are several business activities that foreign investors are not allowed to do them without partnership with state companies where the state plays a main controller of the company[80]. The examples for such activities are shown below:

- Military based products or services;
- Mining of precious stones;
- Golds;
- Manufacture and exploitation of gas, petrol and oil products;
- Manufacturing or import or sale of radioactive and explosive substances;
- Operating or import or sale of cosmic and satellite communication activities or products, secret communication devices and machines.

Above shown restricted activities and products can be understanded as an important measures related with the safety and welfare of the public security, public health and public services. Azerbaijan is main oil producer in Central Asia and possess strong powers over certain industry. Because of that, business relations over certain industries are controlled and operated directly by the governmental authorities. At the present time government working on the establishment of Free Trade Zone name Baku Sea Trade Port to increase the competitiveness of the market not only in national level, but also in interational scale. This initiative, can be take as the following developments of Silk Way concept in Central Asia.

All foreign companies which want to start-up in Azerbaijan firstly must register their businesses. Without fomal registration, creating bank accounts, appointing strategy of business and other fundamental procedures it is not allowed to do any activity or service. For simplifying certain processes and making flexible start-up environment in 2008 govrement introduced “One Stop Shop” concept to the natural persons and legal entities. Certain principle involves that, all kind of documentation can be operated from single “windows” which includes several govremental bodies as Ministry of Justice, Ministry of Taxation, Ministry of Internal Affairs and etc. With the help of it, any individual can establish legal entity from one place without need to visit all responsible bodies. Certain concept crucially affected to the Azerbaijan business market and increased economic profits from taxes.

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[79]Law on Protection of Foreign Investment of Azerbaijan Republic, 15.01.1992, Baku;
[80] The AR Presidential Decree, 28 March 2000, Baku.

3.2 COMPANY FORMS IN AZERBAIJAN REPUBLIC

According to the Civil Code of AR, there are several type of company structures can be established in certain territory. There are several company stuctures in Azerbaijan which can be established by national and foreign individuals without any obstacles. There are requirement to the founders' agreement if there is more than one owner of the company. Certain agreement regulates responsibilities, rights, duties and other main provisions related to the shareholders and management of the company. There following company forms:

- Join Stock Company;
- General Partnership;
- Limited Partnership;
- Limited Liability Company;
- Additional Liability Company;
- Branches/Subsidies;
- Foundations;
- Unions.

Join Stock Companies, JSC:

Two types: open and close. Open JSCs are the companies where is more than 50 shareholders, and the shares can be sold publicly without any restrictions. Minimum initial capital requirement is 4000 AZN (1,999 euro).

Close JSCs are the companies where is less than 50 shareholders, can shares are not sold publicly. The capitals of the company can be redistributed among its founders and shareholders.

General Partnership, GP:

To be able to establish certain structure, there must be at least two pshyical or legal persons. There is unlimited liability of shareholders of the company for the debts and obligations of the GP.

Limited Partnership, LP:

As in GPs,aslo in LPs there is requirement of more than two pshyical or legal persons to establish a company. But in this structure, at least one shareholder must be responsible for the company liabilities and bear unlimited liability. Certain person can not participate in the operational activites of the company.

Additional Limited Company (ALC):

Certain structure nature is the similar with the LLCs. However difference is, shareholders are liable for the company liabilities in the limits of their share values.

Bracnhes/ Subsidies:

Branch and subsidy institutions in Azerbaijan law is same with the International provisions. Any foreign corporation/organizations are able to establish their subsidies in Azerbaijanian territory, only registrating the company in Ministry of Justice.

Foundations:

Certain non-profit structure is aimed to develop or to participate in specific type of activies such as sport, charity, art or other social purposes. It can be created by individuals or legal entities. The management and operation of company must be determined in its charter.

Unions:

The unions can be profitable or non-profitable. It can be established only by the legal entites to promote specific business or economical activity. Owners of the union are equally responsible for the debts and obligations of the entity.

3.3 REGISTRATION AND STRUCTURE LLC'S ACCORDING TO AZERBAIJAN CIVIL LAW

As in European Union, also in Azerbaijan Limited Liability companies are the most registered and successful companies for the all kind business and trade activites. LLCs are registered according to the provisions of Civil Code of AR. In article 87, shown that, a limited liability company (LLC) is a legal entity which established by one or more individuals or legal entities who merging their pariticpatory interests to the charter capital. The Civil Code prohibits to be only participant in the LLC[81]. It defined as:

"A limited liability company means company established by one or more persons

[81] Civil Code of AR, article 88.2;

(natural persons and (or) legal entity), the charter capital of which is divided into shares, the sizes of which are specified by the charter. Participants in a limited liability company shall not be liable for its obligations and shall bear the risk of losses associated with the activity of the company to the extent of the value of their contributions. Company shall not bear responsibility for liabilities of its participants before third parties[82]"
Civil Code also shows that "the number of participants in a limited liability company shall not exceed the limit specified by the legislation. Otherwise, such enterprise shall be reorganized into a joint stock company within one year and, upon expiry of such term, it shall be liquidated by the court, unless the number of participants therein is not reduced to the limit specified by the law"[83]. However, there is no any provision about the maximum number of participants in LLCs. Because of certain issue, in 2000 Cabinet of Ministers of AR approvad resolutions, where defined that maximum number of participant can not exceed 50 inidividaul or legal entity[84]. The fundamental document of the LLCs is the charter of the founders. It contains main issues such as information with respect to the amount of the charter capital of the company, the participiants share sizes, the liability of the participants for breaches violation of obligations with respect to making contributions, the rules of the choosing of decision-making body and its operation and other important administrative procedures[85]. There is no any minimum capital share requirement to establish a company, however in Article 90.1 shown that the amount "may not be less than the amount, which secures interests of its creditors". But the practically analyses showing that there are a lot of companies can be found in registry which has capital share as low as 5 euro. It means that certain provision can be accepted as a symbolic.

The law provides that, entities can be registered both in paper-based or in electronically ways[86]. Paper-based way can be done through "one stop shop" concept as I mentioned above by the filling the document and completing all procedural work from single authority (Ministry of Taxation). The all documentations costs around 10 euro (20 AZN). The authority body of the company is the General Meeting of shareholders. According to the Civil Code, certain meetings must be at least one time in a year.[87] The

[82] Civil Code of AR, article 87(1);
[83] Civil Code of AR, article 88(1);
[84] The resolution of the Cabinet of Ministers of the Republic of Azerbaijan of December 23, 2000 No. 224;
[85] Civil Code of AR, article 47(2);
[86] Law on State Registration and the State Register of the Legal Entities, Article 5
[87] Civil Code of AR, article 91

management of the company can be under the responsibility of a single manager or a management body. Corporate tax rate of LLCs are 20%.

CHAPTER 4

4.1 COMPARATIVE ANALYS OF LEGISTLATIONS

Coparative analys of the legistlations are the most useful methodical research strategy. As we know that there is Civil law system in some of Member of Europe (Austira, Belgium, Demnark, etc.). Certain law sytems stems from Roman-German law system. Because of that, there are a lot of similarities in both legistlations. Even Azerbaijan is not a member of the European Union member, it joined to several international and European legistlative acts on the corporative law basis. From researched points, we saw that corporate systems and the structures of the companies are based on similar issues.

In general, company law is comprehensive and interesting law field. It contains several institutions such as limited liability, legal personality, shareholders rights, creditor protections and etc. When we are comparing European and Azerbaijan company law, we must know that, corporate law is new law field for Azerbaijan. In 26 december 1991, Azerbaijan declared its independence and got out from the Soviet Union. After certain decisive date, governmental authorities and law experts started to build new constitution. In 12 November 1995 the Constitution of Azerbaijan Republic was accepted, which can be evaluated as a main fundament for company law field. Constitution established several rights such as right to property, right to business which was the beginning of the corporate governance. At the present time, company law in Azerbaijan is in progress and development period. Every year a lot of provisions of legislation related to corporation amended by the government to integrate law system and harmonise it to the European standard. However, on the other hand European Union started to establish and develop its corporate governance as a strong system since 1957. From that time, several directives was accepted and more or less Union achieved to codification of corporate law under one legislation in 2017 with the Directive (EU) 2017/1132. From certain aspect of view, Azerbaijan following the steps of the European corporate law.

Republic of the Azerbaijan is the member of several international economic and social organisations which leads to grow it’s market and fertility in all kind of industries. The relations with European Union started from 1996 with the signing EU-Azerbaijan Partnership and Cooperation Agreement (PCA). Agreement was the assistance by EU to

Azerbaijan which provided broad corporation strategies in the trade, investment, economic and cultural areas. The most recently discussions of Azerbaijan and EU is over the new cooperation goals- Southern Gas Corridor on-going. It is the largest infrastructural project in Euroasia. Project is purposed to importing gas from Asia from the countries Turkey, Georgia and Azerbaijan to the Europe throw the Greece, Albania and Italy.

Shown facts are the examples of EU support to Azerbaijan to develop its not only from economical side, also from legistlative, cultural and social areas. Azeri legistlation taking EU legal instruments as an example to create its own strong legistlative authority with the EU framework.

4.2 PRESENT PRACTICAL PROBLEMS AND SOLUTIONS

There are several problems on the corporate law in both legislations. As Azerbaijan is integrating to the Europe and participating in globalization process, a lot of corporations and legal entities showing great efforts to operate in international level. In such situations, there is lack of corporate law experts who can be main key in the center of certain processes. International commercial agreements, export and import contracts, relations between national and foreign banks, creditor rights, cross-border company partnerships are most crucial fields where the lawyers trying to develop their skills.

Other problem, and maybe most crucial one is the lack of transperancy in corporate law. Every year from most prestigious and supervisory organisations of EU, experts working over the improvement of Azerbaijanian company law and take of the corruption situations and time consuming obstacles which sometimes faced by entrepreneurs.

The electronical registration of the entities, especially LLCs is important point for business owner, and in general business environment of the country. Because, electronical way is most fast and simple way to establish a company, than consuming long periods over paper-based establishment methods and it can be very effective for the transparency. General tendency in electronically ways is about that, there less or no any personal communication between business owners and governmental workers. In that way the increasing of transparency and abolishing corruption situations can be achieved.

When I am talking about the problems in company law in European Union, i would mostly focus to the practical approaches. Firstly, EU hasn’t integrated to the digital world completely. In some Members States there is no any electronical registration method of the companies. Relating to certain aspects EU partially codified its company law. Despite of the codification there is still lack of transperancy, hidden costs and procedural obstacles excists. Establishment of complete digital single market which will enable the whole continent to operate virtually, while protecting their rights, legal and cyber security[88]. EU commission is working over certain issues to increase flexibility of cross-border mergers.

The required high capital shares can be example for investor problems on company law. Establishing system with minimum or no initial capital costs for all member states can boost attractiveness of the continent for start-up business owners and be motivational step for further development.

Current economic crisis also affected to the corporate governance in EU. There is challenge between national company laws which requires strong legistlation in EU framework to be accepted as a uniform. Certain process also can help to protect minority shareholder and employers rights in company.

4.3 OVERALL

When comparing to corporate systems or legistlations, it is quiet difficult to express opinion that one is better than another. However, from the thesis, it is obvious that Corporate Governance of European Union, especially Limited Liability corporate structure is a legal model for the member states and third countries, which they can harmonize their legal systems and change their laws towards certain model. Also in my thesis I showed that European support and assistance to Azerbaijan, haven’t show itself only in industrial fields, also in legistlation. I, as a future corporate lawyer and business owner would like to develop

[88] EU Parlament, Upgrading EU Company Law for digital solutions and cross-border operations (visited in 01 July 2018)
http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2018)611014;

and bring corporate law to the new virtual era. Because, minimizing communication between people and governmental individual can maximize productivity and transperancy. I am taking also into the account also psyhogical aspects. Abolishing corruption, fighting against procrastination and bureaucracy in corporation, promoting investors, especially young star-ups is my main goals in this field.

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