

Conference
Legal reform and EU enlargement – Transfer of experiences
Maribor, February 14, 2014

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**HARMONISATION AND APPROXIMATION OF EU LAW –
CROATIA EXPERIENCE IN THE FIELD OF COMPANY LAW**

“The Parties recognize the importance of the approximation of Croatia's existing legislation to that of the Community. Croatia shall endeavor to ensure that its existing laws and future legislation will be gradually made compatible with the Community acquis.”

SOURCE:

Stabilization and Association Agreement (2001), Art. 69.

Part 1.

BASIC OVERVIEW OF EU COMPANY LAW

EU COMPANY LAW

What is EU Company Law?

- Rules provided by the institutions of EU regulating certain company law issues
- Aim is to ensure the functioning of internal market
 - Approximation of the national legal solutions
 - Making friendly legal environment for the entrepreneurs and investors from other MS

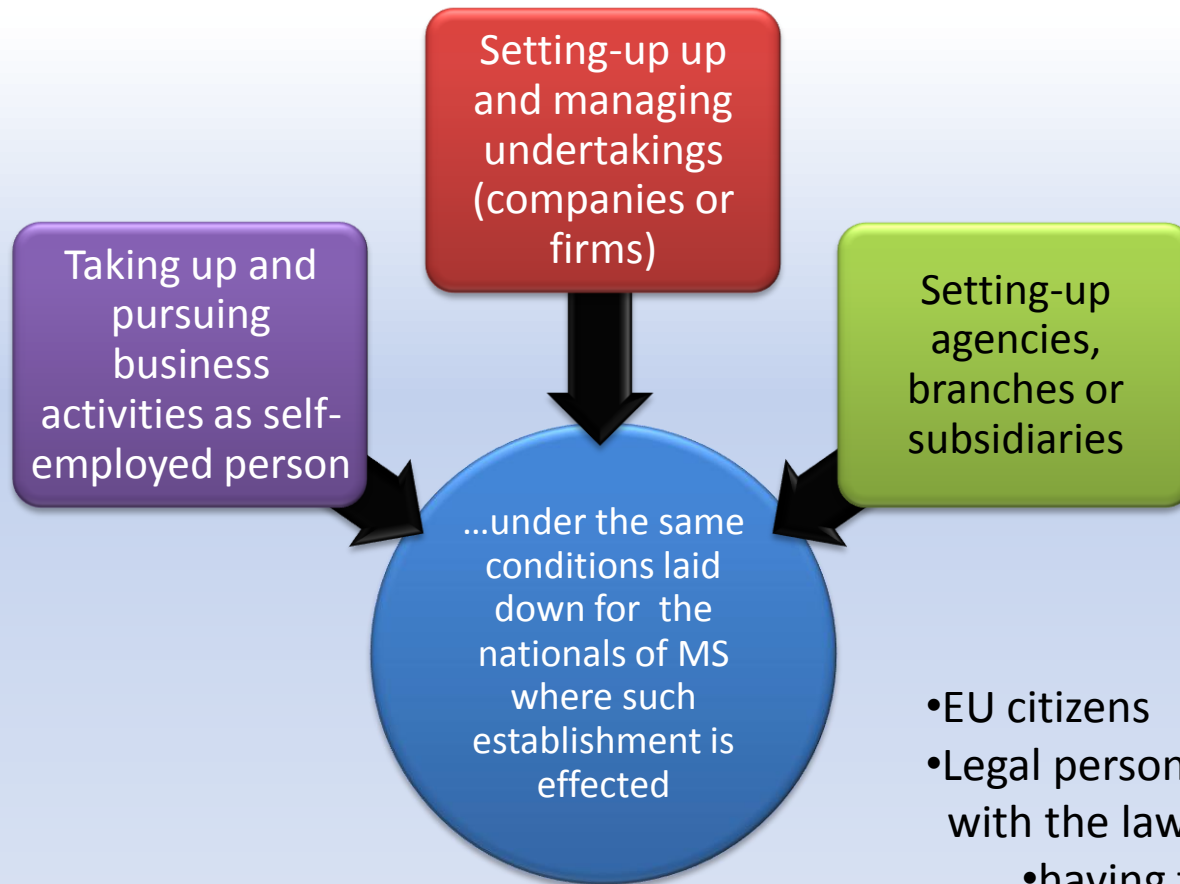
What EU Company Law isn't?

- The complete system of Company Law rules
- Replacement for the Company Law bodies of MS

SOURCES:

- Treaty provisions (Right of Establishment TFEU Art. 49-55.)
- Directives
- Regulations
- Recommendations
- ECJ Judgements

RIGHT OF ESTABLISHMENT



- EU citizens
- Legal persons formed in accordance with the law of a MS and
 - having their registered office,
 - central administration or
 - principal place of business within the EU

COMPANY LAW DIRECTIVES

- Disclosure
- Capital
- Mergers
- Cross border mergers
- Divisions
- Accounting
- Auditing
- Disclosure of subsidiaries
- Single member Private Limited liability companies
- Takeover bids
- Shareholder rights
- Business Registers
- Cross border divisions?
- Cross border transfer of the seat?

- **Approximation of certain issues of member states' company laws**
- **Binding with Indirect effect – implementation through the national legislation of the MS**
- **Leaving to the national authorities the choice of form and methods**
- **The result must be achieved!**



REGULATIONS

- Introducing supranational business forms
- The incorporation choice
 - 28 national legal systems
 - supranational EU forms
- EU forms
 - European Economic Interest Grouping (EEIG)
 - Societas Europaea (SE) ~ PLC
 - **Societas Privata Europaea (SPE) – proposal ~ Ltd.**
 - Societas Cooperativa Europaea (SCE) ~ Cooperative
 - **Fundatio Europaea (FE) – proposal ~ Foundation**



**BINDING &
DIRECTLY
APPLICABLE IN ALL
MS's**

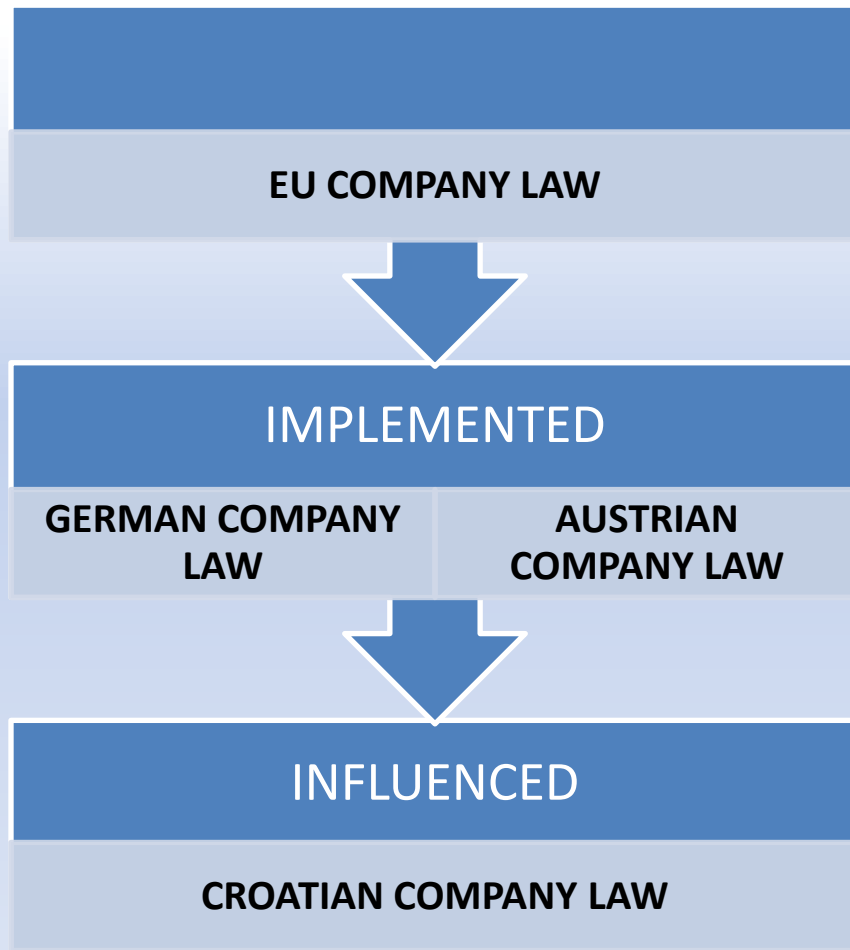
Part 2.

CROATIAN COMPANY LAW: THE DEVELOPMENT WITHIN THE EU COMPANY LAW FRAMEWORK

REBIRTH OF THE MODERN COMPANY LAW

- **1993 Companies Act** (*in force since 1995*)
 - Basic legal source of the Company Law in Croatia
 - Grossly influenced by German & Austrian Company Law traditions
 - Introducing modern types of business associations
 - Public Limited Company, Limited liability company
 - General & Limited partnership, Economic Interesting Grouping
 - Important revisions 2003, 2007, 2009, 2012
- Other relevant sources
 - **Court Registry Act**
 - **Accounting Act**
 - **Audit Act**
 - **Law on Takeover of the Public Limited Companies**
 - **Law on introduction of the European Company and European Economic Interesting Grouping**

INITIAL HARMONIZATION



- Harmonization started with adoption of the Companies Act
 - indirectly through the German and Austrian model legislation that already implemented company law directives
 - **First Council Directive 68/151/EEC** of 9 March 1968 on co-ordination 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 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community
 - **Third Council Directive 78/855/EEC** of 9 October 1978 based on Article 54 (3) (g) of the Treaty concerning mergers of public limited liability companies
- Economic interesting Grouping modeled on the EEIG
 - **Council regulation (EEC) 2137/85** of 25 July 1985 on the European Economic Interest Grouping (EEIG)
 - Side effect (influence of the EU company Law)

COMPANY ACT REVISIONS

- **Further harmonization**

- 2003 - **Sixth Council Directive 82/891/EEC** of 17 December 1982 based on Article 54 (3) (g) of the Treaty, concerning the division of public limited liability companies
- 2007 - **Directive 2005/56/EC** of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies
- 2009 - **Directive 2007/36/EC** of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies

- **Further modernization**

- Comply or explain principle/Corporate Governance Codes
- Squeez out

- **Further side effects**

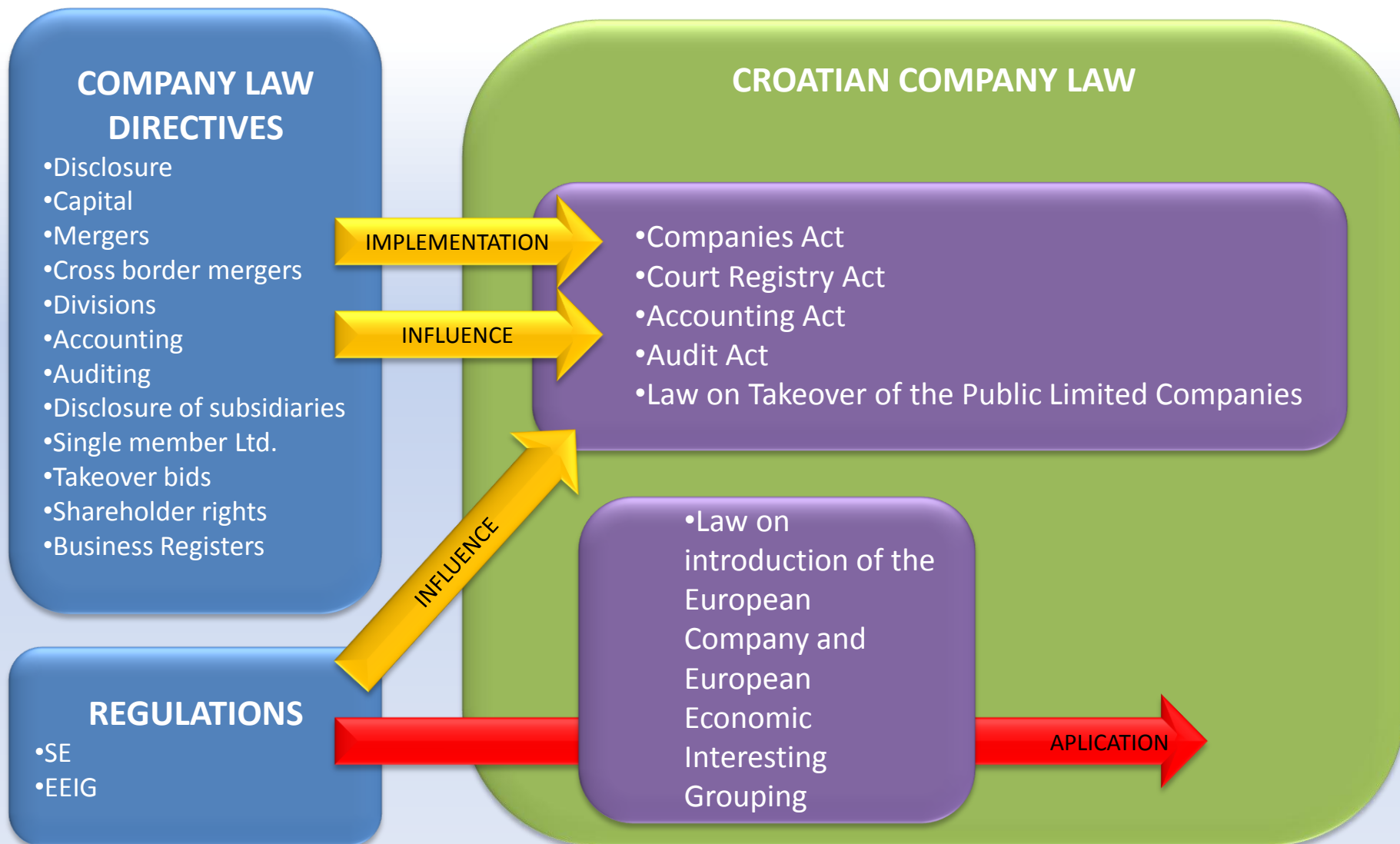
- Monistic vs. Dualistic system in PLC (influenced by solutions for SE)
- Simple Ltd. (answer to the regulatory competition caused by the internal market principles)

OVERNIGHT DEVELOPEMENT 1/7/13

New business forms available

- **Council regulation (EEC) 2137/85** of 25 July 1985 on the European Economic Interest Grouping (EEIG)
- **Council regulation (EC) 2157/2001** of 8.10.2001 on the Statute for a European company (SE)
- **Supportive legislation in force**
 - Law on introduction of the European Company and European Economic Interesting Grouping (2007)

OVERVIEW OF HARMONIZATION AND APROXIMATION



SIDE EFFECTS EXAMPLES

- EEIG was used as a model for Croatian EIG
- SE single/dual board alternative was accepted for Croatian PLC
- Merger directive which is aiming only PLC transactions is used to regulate Ltd. mergers
- The right of establishment → regulatory competition → Simple Ltd.

Part 3.

CONCLUSION: EVALUATION OF COMPANY LAW HARMONIZATION PROCESS

SUBSTANTIVE ASPECT

- **WRITTEN LAW**

- Directives are mostly implemented in the body of Law 😊

- **LIVING LAW**

- poor practice 😐
- courts are afraid to apply new and unfamiliar norms → legal uncertainty 😐
- complicated procedures leading to absurd 😐

METHODOLOGY

- coordination between legislators, judiciary and science 😊
- ex post analysis approach 😞
- misunderstood nature of directives 😞
- Nomotechnics 😐
- chain reaction 😐
- taking into account the legal tradition 😞

THANK YOU FOR YOUR ATTENTION!

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