

X.

SUMMARY

The purpose of this thesis is to describe and analyze one of many aspects of European company law- transfer of (registered and head) office of the company within the European Union.

Freedom of establishment (as an element of the free movement of persons) is one of the fundamental rights provided to all physical and legal entities in the common internal market by Articles 43 and 48 of the Treaty establishing the European Community.

Companies are thus entitled to move inside the European Union, set up subsidiaries, branches or agencies in another member state or carry on any economic activity in a stable and continuous way.

And even though companies are given many options in their business, such as international mergers, acquisitions of shares in the company of another member state or forming of international holding-type groups and supranational European companies, they still cannot transfer their registered office to another member state without winding up and dissolution of the company and re-incorporation in another member state with one serious consequence- losing their legal personality during the transfer. Transfer of the head office is possible in limited number of cases, depending on the theory (incorporation or real seat theory) applied by home and host member state.

First chapters of the thesis describe the content of freedom of establishment, general regulation of the European company law and meaning of „real seat“ and „registered seat“. They deal with motives to change the seat and advantages and disadvantages of principles concerning change of seat applied by member states.

Next chapter provides an outline of the most important decisions of European Court of Justice, defining borders of freedom of establishment and competences of member states in the field of legal regulation of the transfer of seat. Compliance of the Czech law with these court decisions and policies derived thereof is analyzed and confirmed in Chapter V.

Supranational companies (SE, SCE) are given a possibility to transfer their registered

office to another member state. The procedure and requirements for such transfer in the European Company (Societa Europea - SE) are depicted in Chapter VI.

Opinion of European Court of Justice and regulation of the supranational European companies are also inspiring for the institutions of the European Communities, especially for the Commission, which has recently been assigned to bring a proposal for a new directive on the cross-border transfer of the registered office. Therefore the following (and final) chapters describe the alternatives offered by the Commission, including the „no action“ option, and impact assessment on the Directive on the cross-border transfer of the registered office.

This thesis also provides some present solutions to the problem of cross-border seat transfer and suggestions for future development of the mobility of companies.