

SPECIFIC ASPECTS IN THE ACCOUNTING OF RESTRUCTURING EUROPEAN COMPANIES

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Abstract:

Determined by the law of the European country in which the company is incorporated, accounting is strongly influenced by the accounting rules and principles applied in the country of residence, and restructuring measures can be taken by the company's governing body and the competent courts in order to decide the initiation of the restructuring procedure for that European company. The restructuring process proposed by the European company's management considers strategies to reduce costs, staff and assets, respectively the separation of part of the business assets, income generation, mergers and acquisitions, as well as strategic alliances.

Key words: Accounting, the restructuring, European companies.

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1. INTRODUCTION

The adherence of Romania to the European Community has imposed the amendment of the trading companies' legislation, the Law no. 31/1990, by the issuance of the OUG no. 52/2008 as a result of the "article 249 provisions of the European Community institution Treaty which activates the obligation for Romania, in the capacity of member state of the European Union, to transcribe the community directives within the internal law, taking into consideration that the Directive 2005/56/CE of the European Parliament and Council from 26th October 2005, on the cross-border merger of the capitals' companies"¹

The European company has been created in order to improve the internal markets and implicitly, the economic and social situation within Community, the activity of these companies being unlimited for the satisfaction "of the mere local needs so that it may conceive and carry on the reorganization of the activities on the community scale."²

The Regulation on the European company statute CE 2157/2001, allows the incorporation and management of the European companies without the restraints derived from the disparity and limited territorial enforcement of the internal law regarding the trading companies.

One of the important provisions of this regulation is the fact that a European company SE is incorporated as a joint stock company considering it the type which best corresponds with both financing and managing the demands of a company carrying on its activity at the European level.

Therefore, it is deemed that a SE must be managed efficiently and must be supervised, at the level of the European Union being two different systems of managing the anonymous companies, with the possibility that SE choose the management system

¹ OUG no.52/2008-amendment of the law no.31/1990 privind soc. com. and law no. 26/1990 on the Trade Register

² Regulation (CE)no.2157/2001 of the Council from 8.10.2001 on the European company statute

it wants and provided that there is a clear delimitation between the responsibilities of those in charge with the management and those in charge with the supervision.

2. CHARACTERISTICS OF THE EUROPEAN COMPANIES WHICH REORGANIZE THEMSELVES

At the level of the European Union, **the accounting standardization** has been legislated by means of two fundamental instruments: the **Directives** which were incorporated in the legislation of the member states and the **Regulations** which become laws within EU without being assumed by the national legislations.

The most important directives which regulate accountancy in the European Union are the 4th Directive regarding the accounts and the 7th Directive to which has been added the Modernization Directive issued in 2003. By issuing the 4th Directive, there was intended the assurance of a coherence between the assessment rules at the European Union level, the format and publication of the financial statements so that the annual accounts shall comprise the balance sheet, the profit and loss account and the annex, all these documents creating an integer.

The annual accounts must offer a precise and true image of the assets, liabilities, financial statement and of the company profit or loss.

The object of the 7th Directive alludes to the consolidation of the accounts and harmonization of the relevant legislation in the member states, as opposed to the 4th Directive, within this directive there weren't so many conflict cases as the consolidated accounts are not subject to the tax/fiscal rules.

“The Modernization Directive removes certain contradictions among the accounting directives and IAS/IFRS allowing to certain entities which hold the accounting directives as reference legislation, to use the accounting options between IAS/IFRS.”³

In the event in which a SE has financial problems and gets restructured, the administration of the entity must take the following actions:

- cost reduction,
- personnel reduction;
- assets reduction;
- generation of incomes;
- SE reorientation towards new markets;
- focusing on the basic products;
- acquisitions and mergers;
- strategic alliances;

If the reduction of the costs usually involves actions that do not need new resources which entity doesn't have and can produce visible results, respectively improving the financial results in a relatively short period of time, the personnel reduction is applied at the level of a SE when there can be noticed, at the level of the European company, an excess of personnel, usually management personnel, by means of dismissing the less productive personnel, representing a method of reducing costs and increasing productivity.

Under the terms of the Directive 2001/86/EC on the supplementing the Statute for a European company with regard to the involvement of employees for the promotion of the community social goals, the enforcement of certain special orders referring to the employees' involvement, was necessary for the SE execution.

Due to the wide diversity of rules and practices in the member states regarding the way in which employees' representatives are involved in taking decisions at the level of a company, there isn't necessary the enforcement of a unique european model of the

³ Ristea Mihai, Olind Lavinia, Calu Daniela Artemisa - *Sisteme contabile comparate*, CECCAR Publishing House , 2006

employee involvement applicable to a SE. The employees' informing and advisory procedures at the transnational level must be clearly defined by an agreement to be concluded by the interested parties and in its absence, through a set of rules subsidiarily.

When a SE is extremely far away of the threshold or profitability „the only viable option for the improvement of the performances is a strategy of reducing the assets. Other findings may be added to this, such as the enterprises with a weak use of the production capacities shall be able to successfully apply a strategy of reducing the assets disposing thus of the physical resources it has in excess.”⁴

The assets reduction is perceived by the specialized literature as a disinvestment “option” “respectively an occasion to give over assets and production means and to allocate the resources, especially the financial ones. And inside the company for reaching a more economic effectiveness”⁵, and in this case dealing with disinvesting for reinvesting.

Usually, the assets reduction is used to obtain financial resources for the payment of the existing debts and to finance the current activity or to avoid the future financing of certain expenses associated to these assets.

The performance of the assets reduction may also be done by dislocating of a SE part according to the trading companies' law applicable to the states where SE has its headquarters, in the case of Romania, according to article 250 of the law on the trading companies under no. 31/199, republished as subsequently amended and supplemented.

Dislocating a part of a SE patrimony has the great disadvantage that it's a lasting operation due to the procedures provided by law, but represents a viable operation within the conditions of the current economic crisis in the absence of the buyers agreeable to pay an established price.

Another possibility of economic recovery is also met in the attempt of generating new incomes by the company, trying to make a focused move in order to increase the amount of sales, within the context of the existing activities and products, focusing on the increase of the labour productivity, a more complete use of the production capacities and the increase of the sold product number, on the marketing activity and advertising as well as the price reduction for the sold goods.

The reorientation over a new niche implies the reorientation of a SE towards market, towards customer needs and preferences through the identification as correct as possible and clarifying the market segment to which it addresses or follows to address.

The refocusing on the basic products consists in refocusing on the most profitable activities and products which the company knows best and to take real competition advantages.

The acquisitions and mergers have been regarded in the specialized practice as a measure taken by the companies with good performances which take this measure from the perspective of benefiting by the advantage of buying an enterprise with a low price; moreover there has been communicated the idea that the company in difficulty must be sold even before the attempt of restructuring in order to avoid the consumption of some resources and the degradation of the enterprise situation. In the current economic conjuncture, characterized mostly through an increased complexity and a vertiginous rhythm of change, many entities have understood that collaboration may more profitable than competition blurring therefore the competitive environment.

All these may be performed by putting together certain resources and competences, of certain companies which used to be rivals in the past, chances being bigger than those obtained by each SE separately.

⁴ D.Hambrick, S.Schechter, *Turnaround Strategies for Mature Industrial Product Business units*, in The Academy of Management Journal, vol 26 nr.2/1983, pag.23

⁵ Lupulescu Ana-Maria - *Reorganizarea societătilor comerciale in contextul integrării europene*, pag. 137

A special statute within this association is The European Economic Interest Group EEIG which represents an association between two or more natural or legal persons with the purposes of facilitating or developing the economic activity of its members as well as the improvement of the respective activity results.

Under the terms of the regulation on a European company incorporation, we meet two particular cases of the European company, namely that in which SE is registered on the territory of Romania and according to the European legislation it is regulated by the internal law and from the point of view of the accountancy, it enforces the accounting rules and principles of the Romanian accounting system, and the case in which SE is registered on the territory of the European Community it is ruled by the internal law and the accounting system belonging to the state in which it is registered.

Considering the plurality of accounting systems existent on the community territory due to the fact that currently, the European Union counts 27 member states, the incorporated European companies shall operate according to different accounting systems depending on the member state in which is carries on its activity.

At the level of the European Union, the standardization of accountancy by the public power is personal, especially at the level of the Central Europe countries where the accounting regulatory framework for the financial statements' elaboration is based on a trading code or an Accountancy Act which takes the European accounting directives and a General Accounting Plan which establishes the rules of applying and elaborating the financial statements.

A characteristic of the continental accountancy is the fact that it is strongly influenced by taxation and this influence of taxation most of the times causes the management resignation to search for the optimization methods of the accounting results.

The accounting plans are compulsory in many European countries such as France, Belgium, Greece, Portugal, Spain, Czech Republic, Romania or Russia, and the SE registered on the German territory may choose for the application of one of the two models of accounting plan, which they adapt to their specific needs, and in Poland the accounting plan is not compulsory.

The accounting plan "includes accounting rules usually elaborated by the rule of the historical cost accounting to which it is added a set of principles referring to the traditional structure of accounting in the perspective of continuing the activity and in the context of caution."⁶

If at the level of the European Union, the accountancy organization is acknowledged as a monist or dualist type, the accountancy organization in these two ways has an impact on the expenses collecting way. Therefore, in a monist accounting system, the expenses are collected due to their destination while in a dualist system these are collected in a dual way, respectively within the financial accountancy the expenses are registered according to their character, and within the management accountancy, the criterion of their destination is followed.

From the point of view of the income acknowledgement, the differences between the two systems also reside in their accounting recording technique and not in the moment of their acknowledgement. Income acknowledgement is performed in the course of three stages as they follow:

- normal acknowledgement;
- anticipated acknowledgement;
- subsequent acknowledgement.

Both the anticipated and the subsequent acknowledgement weren't provided by the Romanian accounting regulations; they could be applied at the level of some

⁶ Ristea Mihai, Olind Lavinia, Calu Daniela Artemisa - *Sisteme contabile comparate*, CECCAR Publishing House, 2006, pg 171

companies which perform services to the population and confronts with many debentures which shall not be chased in.

In comparison with the continental accounting system, the Anglo-Saxon accounting system is disconnected from the taxation and the influence of the accounting profession during the harmonization process is very important.

The source of the accounting standards is the private organism of accounting regulation: Accounting Standards Board (ASB), and the trading companies act (Companies Act) comprises a series of rules which have their rise from the European accounting directives.

Benefiting by an accounting system which is not connected to taxation, SE have the possibility of transferring themselves from states with a high taxation to member states of the community which are subject to a lower taxation and this being one of the restructuring measures which can be applied in the interest of their capital removal.

When the measures carried on by the administration bodies of a SE cannot recover it financially, on its request or a creditor's request, it can be submitted to the disposition of the competent authorities of the states where it has its headquarters for the beginning of their insolvency proceedings in the first stage of general procedure where on the grounds of a reorganization plan it shall start to reorganize its activity in order to get incomes following the payment of its creditors.

CONCLUSIONS

The formation of the European company has been a first stage towards the performance of trading operations on the community territory by any company without legal or competitive limitations.

The harmonization of the legislation: although the European companies subordinates to the internal law, all the member states enforce the European Directives and Regulations and the financial statements drawn up by them provide accounting information to all users.

The wage earners involvement in the European companies and implicitly the consultation of the employees by the entity administration

The possibility of a SE to transfer its headquarters in any state on the Community territory

Tax advantages, taking into consideration the possibility of choosing the headquarters and enforcement of the tax legislation on the chosen territory, and the fact that on the community territory there are states which do not apply accounting systems dependent on taxation.

The measures carried on by the administrations of the European companies when these are in difficulty, bring immediate results which are noticeable in the increase of the cash flow and the improvement of the financial performances.

Building strategic alliances can be a useful measure in the European company recovery taking into consideration that they may use material and financial resources of another entity and it not assumes the employment of other availabilities.

Selling the old technologies in order to be able to purchase others is a restructuring way which does not assume disinvestment in order to be able to invest, and to achieve new products and performances.

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