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BOOK REVIEW

The European Company – A Comparative Study with English and Maltese Law. – J. MICALLEF LL.D., Dr. Jur. [EUR]. Rotterdam University Press, 1975, LXVI + 649 pp. (appendices and index – 116 pp.) Paperback: £M7.50.

Dr. Joseph Micallef's recent studies in Rotterdam, London and Rome have produced their fruit in the form of one of the more enlightening works recently published on the European Company. This volume which is published in Holland surveys the draft Statute for a European Company published by the Commission of the European Economic Communities. The said Statute has been prepared by the Commission upon a first draft made by Pieter Sanders, Professor of Law at the Erasmus University of Rotterdam. The aim of the draft is that of providing for the creation of machinery to enable existing 'societies anonymes' from different member States of the EEC to merge and form joint holdings and similar arrangements without the difficulties at present existing under national

Company laws. When this draft sees the light of day, after overcoming the hurdles of a political nature at present being raised against its acceptance, the new addition to the existing corporate structures in Europe will, after a period of teething troubles find its proper place in the economic life of our continent and exert a profound influence thereon.

Dr. Micallef's work will at such future stage serve of great use to companies wishing to avail themselves of the European Company for expansion. This work covers the entire subject and contains a clear exposé of the methods, rules and formalities connected with the setting up of a European Company or *Societas Europaea* as the drafters of the Statute prefer to call the structure. The author solves problems relating to organization of Capital Management and Control, Meetings and Auditing, Rights of Shareholders and Employees and other provisions of the draft. It is truly a handbook on the S.E.

But this statement does not really do justice to this work. For one does not have to await the passing of time nor the enactment of the definitive Statute in order to assess Dr. Micallef's contribution to legal literature. In fact, as the title of the book itself shows, this is a comparative study. Here lies the central feature of the work. The work was undertaken in the year when Britain joined the Common Market and in this regard it has an immensely useful purpose. By constant reference to English and Maltese Company law, the author not only brings out the qualities and deficiencies of the draft Statute, but also offers a number of proposals for the updating and modernizing of English and Maltese Company Law. Against the backdrop of local Maltese Companies and their English similar counterparts, we are shown in a realistic way, what the formulators of the European Company, the S.E., are trying to bring about. The comparison is never unbalanced. Each chapter, and often even parts of chapters, are divided into three sections, one dealing with the S.E., a second with English Company law and a third with Maltese Company law, when this differs from English law. By this method, the author achieves a critical approach to existing laws together with academic insight into proposed EEC law. This is the original contribution which the author makes to the ever-growing EEC legal literature.

The introduction to the work covers, in a concise way, the evolution of the concept of a European Company spanning different countries and existing beyond any one national legal system. He

clearly outlines the development of the harmonization of national company laws of the EEC member States, by means of conventions and directives in the first place and by the proposed draft Statute in the second place. The contribution of Pieter Sanders to the scheme is given due prominence. The extent of the Statute is assessed and the reader can already see the need for a European Company and the broad outline of the scheme.

In Chapter one, on the character of the S.E., the comparative study between the draft Statute, English Company Law and Maltese Company Law comes to the fore and the author, amongst other questions, delves into the question of the nature of the founder members of an S.E. These, according to the Statute, are to be existing *societes anonymes* from different member States of the EEC. The distinction between *Societe Anonyme* and other types of companies is well known on the continent but not so in the U.K. There the only distinction made is that between a public and a private limited liability company. The author enters into the question of whether a private limited liability company can be considered a *societe anonyme* and, therefore, capable of being a founder of an S.E.

The second chapter deals with the actual formation of an S.E. Here the author presents the subject clearly. He analyses the different stages required both at the national and at the Community level for the setting up of any of the four types of S.E. In this part of the work it is not possible to discern the slightest lack of continuity in the subject matter, because of the fact that each of the four ways of setting up an S.E. are separated, the one from the other, by a comparative study of the relative English and Maltese law. One may tend to lose sight of the S.E. at moments, when the author enters into either the merger laws of the U.K. or the way of creating subsidiaries under Maltese law. However, the treatment of the subject is very thorough and an analysis of the titling in the table of contents will show how strictly the author adheres to the comparative approach. The work is not solely on the S.E., but is intended to compare the S.E. with English and Maltese companies. The last part of the chapter on companies with a single shareholder is very interesting.

The chapter on Capital constitutes, in my opinion, an outstanding contribution to Company law. Dr. Micallef draws upon the many distinctions in types of Capital in a limited liability company and contrasts these with the simpler system adopted by the draft Sta-

tute. The liabilities, rights and duties of shareholders, whether of preference or ordinary, nominative or bearer shares, are all given ample treatment. The position of debenture holders, who, in the proposed European System will be organized in a general body, without legal capacity but with a set of defined rights, is just one of the sophisticated novelties contained in the draft Statute. The author, throughout the work, is always ready to point out the better features of the Statute, though he also makes it his task to stress any deficiencies whenever these exist.

Chapters four and five constitute the cornerstone of this fine volume. They deal with the management structure and participation of workers, respectively. The two tier system of management has been the subject of many a legal debate on the continent. It has acquired more and more adherents and many European countries now make it mandatory upon companies of a certain size to adopt this system. The Board of Management is entrusted with the running of the enterprise while the Supervisory Board is to supervise and control all acts carried out by the Management. This system, which as the author points out, finds its historical source in post-war occupied Germany, is imposed as a *sine qua non* for the S.E. The rules adopted in the draft Statute offer a number of interesting solutions to the difficult situation which has been created by the passage of power from its traditional seat in the general body of shareholders to the management.

The excellence of this part of the book is sustained throughout the entire chapter. The author investigates the British position and finds that an analogy can be drawn between the two tier board system and the practice in limited liability companies. The distinction between the board of directors and general managers, as brought to light by the author, affords a very similar effect and accomplishes safeguards similar to those of the two boards required by the draft Statute. Thus a transition from the present position to the one advocated in Europe will not be too difficult to make. Much research has been made in this respect by Dr. Micallef and it is surprising to learn that advocates for the introduction of the two tier system into English company law have been numerous.

Maybe even more interesting is the fifth chapter on Mitbestimmung, also known as workers' participation. The evolution of the theory, which the author prefers to call Employees' Participation, and its application, whether through participation in management or participation in ownership, are dealt with. The study made on the

Maltese position is, probably, the first ever presentation of the legal aspects of the problem in Malta. We find that practice has preceded the enactment of any legal machinery and that, notwithstanding this, the firms which have chosen to apply the concept are functioning without undue difficulties.

The scope of *Mitbestimmung* on a larger scale in Europe and the U.K. is studied in a most scholarly way. Economic, legal and sociological questions are finely woven together to produce a most readable and learned discussion which throws feelers beyond the present day into the near future when, it is hoped, the relationship between shareholder, management and labour within the corporate structure will have found its proper balance. The author does not hesitate to suggest in his concluding comment that 'we must abandon old outlooks and embrace the new social philosophy on corporate bodies ...'

Chapter Six, on Accounts and Auditing, deals with one of the difficult problems of a transnational corporation such as the S.E. The various accounting systems and the unacceptability of accountants' qualifications outside their own national borders, do not readily allow for the harmonization of the laws on auditing. Yet the draft Statute attempts a uniform solution which is to be admired. The closing chapter on groups of companies tackles the requirements for publicity and the special rules of accounting whenever an existing S.E. joins or becomes part of a group. The notion of *Konzern*, or group of companies, is brought out and the need for legislation on such groups pointed out.

Dr. Micallef has also taken great care in compiling a very detailed index. In it he prints, in its entirety, the Maltese Ordinance X of 1962, thus allowing foreign students to have a reference which would otherwise be hard to obtain. The bibliography referred to by the author is extensive, as is the table of cases.

Dr. Micallef has produced a truly well balanced volume which will serve scholars, both in Malta and abroad, as a reference work on the *Societas Europaea*. For local readers it opens new vistas and challenges local enterprises and the legislature to attempt an updating of local corporate structure. For the law student in particular, it affords a ready comparison with English Company law and adds to the already existing literature on local Company law.

On the continent, this work will lay another stone on the edifice of Community legal literature. Its timely appearance after the publication of the Commission's draft and in the midst of the great

debate currently going on, will contribute to the final decision on the S.E. It will be hailed as one of the few comprehensive works on the future of international company law published in recent years.

For readers in the United Kingdom, it provides a number of practical answers for a modernization of Company law irrespective of the outcome of the current renegotiation of British membership in the EEC.

Finally, when the proposed Statute on the *Societas Europaea* enacted, this volume will probably be amongst the select works in the English language which every person, in the legal or business world should consult.

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