A COMPARATIVE STUDY OF THE LEGAL LIABILITY OF EXECUTIVES IN LLC IN THE CZECH REPUBLIC AND SOME OF OTHER EU MEMBER STATES

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Abstract: *The limited liability company (LLC) appears to be among the most popular forms for business conduct for small and medium sized enterprises (SME) in the EU. Due to the extreme competitiveness and challenging global market, there is a strong external, as well as internal, pressure on the executives of LLCs from various angles. Their challenging situation is projected within the legal framework of the status and the function of executives, and in particular in the regime of their legal liability. It is highly instructive to compare the Czech regime to regimes in other EU member states while focussing on the liability issue. Interestingly, there is a big diversity in modes of addressing this liability and, consequently, the very same problem of the business judgment rule and the liability coverage is resolved in a different manner. Ultimately, the insurance approach v. professional advice approach shows how the shifting of the liability of executives of LLCs is done in various legal systems and testifies about underlying concepts and particularities of conducting business in EU member states.*

Keywords: *Limited Liability Company (LLC), Statutory authority, Liability, Executive service agreement, Re-codification.*

JEL Classification: *K22, M12.*

Introduction

One of today's big challenges for individuals, businesses and society is sorting through an enormous amount of both relevant and irrelevant information, and assessing it during a time when, [15] the conventional concept of a society has undergone a re-assessment based on expectations presented by sociologists as well as economists [20]. The common denominator is the omnipresent integration [16] and the dependence upon information systems and information technologies (IS-IT) in a highly competitive environment [13]. In such a setting, having the optimal business form, with appropriate management, is indispensable for a competitive advantage and sustainable business success. The limited liability company (LLC) appears to be among the most popular forms for business conduct for small and medium sized enterprises (SME) in the EU and there are no indices about their decline in the near future. Almost 99% of all business entities in the EU are SMEs, accounting for over 70% of the jobs and producing 60% of the total gross domestic product [13]. Therefore, the understanding of the legal framework of an LLC, as the favourite form for SMEs, and its executives, is a must for business conduct in the EU. Boldly, the existence of a business organization, especially a LLC, and its success is influenced by outlined goals [2] and how these goals are reflected by LLC decision-makers, executives. Regardless, whether they have the employee status [19] or the free-lance status, these executives make more or less educated business decisions based on their perception of the LLC´s needs as well as their personal needs, including the need to reduce their legal liability.

1 Statement of a problem

Both LLCs and their executives are under tremendous pressure from many angles, as the current market imposes many demands on the competitiveness of enterprises [13]. The extreme competitiveness and challenging global market, divergent interests of the stockholders, variations of state policies, and many other factors generate complex tensions to which are exposed executives. The law tries to reflect this economic reality and provides an appropriate legal framework justly balancing legitimate expectations and setting correctly and justly the rights and duties of executives, i.e. their status and function, and, in particular, in the regime of their legal liability. The huge Czech re-codification of private law also impacted the LLC sphere and brought significant changes in the legal liability regime of executives, which needs to be approached in a scientific manner, described and critically assessed while comparatively examined with regimes in other EU member states. The very flexible SMEs in the EU [13] need a matching flexible form, LLC, with a responsible and appropriately liable executive. Not just candidates for the executive function should be assessed [19], but as well the function itself and its regime. This study and analysis culminates in a conclusion which should anchor the collected information and assist with the presentation of an ultimate evaluation and of recommendations.

2 Methods

This article has two fundamental goals – the first one deals with the new Czech legal liability regime for executives, the awareness about it and related consequences and the second deals with a brief presentation of similar regimes in other EU member states along with comparative comments. Since these goals are related but conceptually different, the methodology for each needs to be established and explained separately and independently. The first goal and the cornerstone of this article is to overview and analytically describe the new regulation of the liability of executives of LLCs, by the Act No. 90/2012 Coll., on Business Corporations (BCA), and to assess whether this new legal regulation will influence the status of the already appointed executives of the already created LLCs, and whether these executives are well informed about these changes and perceive their status as changed. The assessment will be based on a questionnaire investigation and its evaluation via a categorial data analysis.. The questionnaires were given to selected executives of already existing LLCs in the territory of the capital town, Prague. The questionnaire investigation was split into two parts. The 1st part was aimed at an assessment about whether the executives are sufficiently informed about the new legal regulation according to the BCA, particularly about their newly regulated liability. The 2nd part focused on an evaluation of whether these changes (as summarized, presented and explained) when taking into account the liability of executives, will influence the status of the current statutory authorities. The introductory hypotheses were set as follows: H1 – executives are sufficiently informed about their newly regulated liability; H2 – the newly regulated liability of the executives will have an influence on the status of the already existing executives. The introductory method was the literature research, which considered old legislation and also the new legislation. The analytic assessment of the LLC had a deductive nature and was closely linked to the preceding literate research. H1 and H2 were set based on the experimental investigation and the assessment of the questionnaire's investigation and analysis of categorical data. Since it is suggested that the best forecasting method for businesses, especially SMEs, is the scenario method instead of econometric and mathematical methods, the combination of a real direct data mining via a questionnaire,

complemented by published academic data, seems highly suitable to address H1 and H2 [2]. The second goal covers the descriptive analysis of the legal liability in selected EU member states and its comparison to the Czech regime, and thus requires the employment of both approaches, the quantitative and the qualitative approach. Quantitative research and analysis relies on mathematically measurable values and thus deals with countable data about the regime of the legal liability of executives in the selected EU member states. Quantitative analysis attempts to deductively determine and assess, based on the collected data, what, when, how much, and how likely a phenomenon occurs, but not why. The explanatory part of the research and study about the legal liability of executives abroad should be addressed by qualitative, comparative analysis, which rather inductively assumes a similarity and confronts with such assumptions the collected data and explains why and how the original theoretical assumption about the similarity should be modified, and what recommendations can be extracted.

The opposition between qualitative and quantitative methods should not be overplayed [21] and their dichotomy is only prima facia cannot reconcile. The statistical approach can be useful, but also is undeniably impaired by many inherent deficiencies [7]. Yet this is not to suggest that qualitative methods are intrinsically superior and that quantitative methods should be avoided [21]. On the contrary, the hallmark and key instrument of quantitative research, statistics, does not generate exclusively black-and-white results if properly worked with and if new approaches are employed. The Meta-Analysis methods geared to contrasting, combining and reconciling data and results from different studies in order to identify patterns, relations, and relationships are highly relevant for the study of the interaction and inter-play between business competition and intellectual property. The system of the legal liability of executives is in each jurisdiction unique, even if prima facia similar to systems in other European jurisdictions, and thus the Meta-Analysis should be fully employed in the comparative part of this article. It needs to be stressed that the second goal compares both legal and economic aspects, so it must include both deductive and inductive aspects of legal thinking [18] as legal theoretic orientation reflects the legal science which is not axiomatic but argumentative [11].

3 Legal liability of the executives in LLC in the Czech Republic

On January 1, 2014, the BCA became effective. It was enacted in relation with the significant re-codification of the Private law, which occurred through the new BCA, and further Act No. 89/2012 Coll., Civil Code (New Civil Code), which became effective as well on January 1, 2014. This statute replaced Act No. 513/1991 Coll., Commercial Code (Commercial Code). Further law questions related to the commercial law, such as, for example, the obligation law relationships, are, as of January 1, 2014, regulated only by the New Civil Code. The BCA covers only commercial companies and does not provide the entire complex regulation of all matters of commercial companies. Thus, a number of issues and elements regarding the commercial companies, and related to the commercial law, are directly regulated by the New Civil Code.

The LLC is one of the capital type companies, despite the fact that it demonstrates several features of personal type companies. The LLC associate members are jointly and severally liable for debts up to the amount of their unpaid deposit duty, as recorded in the Commercial Registry. Previously, the LLC was the most commonly used company legal form for business activities, i.e. during the validity of the Commercial Code. The LLCs, created under the aegis of the Commercial Code, had to adjust their foundational

documents and enter into new Executive service agreements before the end of June 2014. Further, the new regulation of the liability of the members of statutory authorities, including executives, during their decision making activity, can have an impact on executive's private proprietary sphere.

According to both the previously valid Commercial Code and the newly valid BCA, the liability of associate members ceases once they fully pay their deposit duty. However, the BCA creates major changes by setting significant liability elements with an impact into the private sphere of executives. Part of the professional public shares the opinion that the new legal regulation of the liability of executives is correct. New risks for these executives, able to be enforced against them if in breach of their duties according to the law, are represented specially by the duty to return any profits gained in relation to the breach of careful manager duty, the disqualification from the function of a member of a statutory authority, such as of the executive, the liability for debts of their LLC, the duty to return the profits for the last 2 years before the start of the insolvency proceedings and the unlimited liability of executives for the debts of their LLC in bankruptcy, which extends even unto executives which withdrew from their functions in the two years previous to the final court decision about the bankruptcy. All of these risks, generating the liability of the executives, including the return of financial and non-financial profits, are linked to the beginning of the insolvency proceedings according to Act No. 182/2006 Coll., on Insolvency Act (Insolvency Act). The requirement for the beginning of the insolvency proceedings is the bankruptcy of the commercial companies or, considering all circumstances, the clear threat of the bankruptcy of the commercial companies. In 2013, over 7000 applications were filed in insolvency courts in the Czech Republic, about half of them were linked to the bankruptcy issue of commercial corporations. In total, one half of all applications were filed by creditors and one half by debtors, though applications filed by creditors slightly prevail for cases of non commercial corporation bankruptcy issues, while applications filed by debtors (such as LLCs) slightly prevail in cases of commercial corporation bankruptcy issues [9]. The reason may be because executives of LLCs were not threatened by a preset action in the form of the liability of executives. In the future, the number of filed applications might decline, as executives will carry, based on their functions, the liability for behaviour in the LLCs with an impact on their private sphere.

The BCA brings a newly regulated duty of executives to act according to the business judgment rule, which emanates from the common law and should contribute to the protection of executives much better than the previously set duty of a careful manager [22]. The duty of a careful manager is a fundamental duty of the member of the statutory authorities, which is known already from the previous legal regulation of commercial corporations and which is now regulated by Art. 159 (1) New Civil Code. For the first time, the duty to act according to the business judgment rule is added to the duty of a careful manager.

Pursuant to Art. 51 BCA, diligently and with necessary knowledge acts the person who in good faith could reasonably assume in his business decision making that he acts in an informed manner and in a legitimate interest of the corporation. For the assessment whether the executive acted in accordance with the care of careful manager, the setting of the required standard is critical. This provision and standard are perceived by certain authors as a further developed old concept of the care of careful manager enriched by a new business judgment rule in *lege artis* manner [12]. Other authors argue that the direct en-block inclusion of the "American" business judgment rule in the Czech BCA was not

perfectly done and that it leads to perceiving the business judgment rule as a mere instrument to interpret the old concept of the care of careful manager [8]. The wording, interpretation, and application of Art. 51 raise several issues and the appropriate case-law is not yet developed. The case-law related to some elements from Art. 51 is available, such as e.g. good morals [17] and the old concept of the care of a diligent manager on both criminal, see 15 Tdo 294/2009, as well as civil, see 29 Cdo 3542/2011, level. But how this will be transposed to this new provision, allegedly unnecessarily creating a safe harbour [8], is unclear.

If it´s proven that the executive violated his fiduciary duty of a careful manager, together with the duty based on the business judgment rule, he must return to the LLC the profits which he or she earned in relation to such behaviour. According to Art. 3(2) BCA, he also has the duty to return all non-proprietary advantages which he obtained in re to the position of the executive of the LLC, including meal vouchers, use of a business vehicle, etc. The burden of proof is borne by the defendant.. In the case of LLC bankruptcy, current as well as past executives can be in the reach of this new regulation and the decision of the insolvency court can lead not only to their return of "all that they got from the LLC", but also to their disqualification to perform the executive function in another LLC in the next three years. If the executive breaches this prohibition, the prohibition to perform the function of the member of the statutory authority is extended to 10 years.

Does the Executive service agreement represent the Czech solution of the executive liability and business judgment rule? The BCA regulates by Art. 59 and following the Executive service agreement. The legislative goal was mostly to avoid duplicity of contractual documents when the executive was in the top management position and concurrently a mere employee of the LLC [6]. The new Executive service agreement is regulated only in a general manner and is always created when appointing the given executive, regardless whether this agreement was really entered into and this despite the fact that the statute directly requires a written form and a direct approval of the agreement as well as of its changes by the executive [5]. If the LLC reaches the point where it can't pay its obligations, thus satisfying requirements for the beginning of insolvency proceedings and insolvency proceedings begin, then the executive must, if the insolvency administration asks him or her for it, return any (!!!) profit obtained, based on the Executive service agreement. The active legitimacy to file such a complaint for return is entrusted to the insolvency administrator, provided several conditions are met: The insolvency application was filed by a creditor (i), the insolvency court decided about the bankruptcy (ii), the request by the insolvency administrator for the payment of the financial as well as non-financial benefit (iii). The court can decide that the current or prior executive is liable for the satisfaction of duties by the LLC, provided the bankruptcy of the LLC was declared or if it was declared that the current or prior executive knew or should and could have known about the threatening bankruptcy of the LLC and, in a breach of the duty of a careful manager, did not take any necessary and reasonably expected steps to avoid the bankruptcy. The insolvency administrator and creditors have active legitimacy to sue for payment up to the amount of the receivables identified in the insolvency proceedings. They can request the executive to pay the receivables of the insolvency proceedings, (being the difference between the receivables as identified and the actual paid amount from the insolvency assets). This is not an incidence dispute and the reverse burden of proof is applied, i.e. the defendant has to prove out that he did not commit the alleged acts.

Based on the questionnaire investigation and its assessment via categorical data analyses, it was researched if the new legal liability regulation is known to executives and has an influence on their status. The questionnaire investigation has two parts. The 1st questionnaire was formulated to discover whether the executives are sufficiently informed about the new legal regulation of their liability by the BCA. Next, they obtained the 2nd questionnaire for their evaluation of the new legal regulation of the liability and its potential impact on their status. Questionnaires were submitted to executives of already existing LLCs in Prague. No two respondents came from the same LLC. In total, 50 questionnaires were filled out by 50 respondents, who were informed about the consequences of the newly regulated liability of statutory authority and provided with the follow-up, second questionnaire. The collected data was assessed by the categorical data analysis using the computer program STATISTIKA. The importance level was set at α=0,05. For the assessment of the collected data the statistic method of the quantitative signs dependency pursuant Pearson´s chi-squared test was used. Conditions for the use of chi-squared test were met (n>40). Results of the questionnaire investigation: H1 – executives are sufficiently informed about their newly regulated liability; H0 – there is no dependency between indicated signs, i.e. executives are not sufficiently informed about their newly regulated liability.

Tab. 1: Contingency table of hypothesis No. 1

	Sufficiently informed	Insufficiently informed	Numbers
LLC with one executive	13	32	45
LLC with more executives	2	3	5
Total	15	35	50

Source: Author's own processing

The value of Pearson´s chi-squared test is X2 = 0.1057. The importance level is α=0,05 i.e. X2 0,05 (1) = 3,841. Considering that the value X2 < X2 0,05 (1), H0 – the zero hypothesis is confirmed and thus there is no dependency between indicated signs, i.e. executives are not sufficiently informed about their newly regulated liability. H2 – the newly regulated liability of the executives will have an influence on the status of the already existing executives; H0 – there is no dependency between indicated signs, i.e. the newly regulated liability of the statutory authorities will not have an influence on the status of already existing statutory authorities.

Tab. 2: Contingency table of hypothesis No. 2

	Influence on the status	Without influence on status	Number
Company with one executive	10	35	45
Company with more executives	1	4	5
Total	11	39	50

Source: Author's own processing

The value of Pearson´s chi-squared test is X2 = 0,0129. The importance level is α=0,05 i.e. X2 0,05 (1) = 3,841. Considering the value X2 < X2 0,05 (1), H0 – zero hypothesis is

confirmed and so there is no dependency between indicated signs, i.e. the newly regulated liability of the statutory authorities wont influence the status of already existing statutory authorities. Based on the performed questionnaire investigation and its assessment via the methods of dependency quantitative signs of Pearson´s chi-squared test, it is possible to conclude that executives are not sufficiently informed about their newly regulated liability according to the BCA. Executives are informed only on a very general level, and they do not possess detailed information about the possibility of a sanction through ordering the return of financial as well as non-financial profits, and the possibility for creditors or the insolvency administrator to file such complaints. Based on the questionnaire investigation, it was seen that the new legal regulation won´t have an influence on the status of the already existing executives in re to their newly regulated liability. One way to avoid the newly introduced liability of the executives is the situation when the executive proves that he or she performed individual steps with the care of a careful manager which can be proven especially through the qualified recommendation or pre-approval of these steps by experts specializing in this field. The respondents were informed about this option before the 2nd part. All these executives endorsed it, expressing their intention to actively use it and actively mentioning that they will consider using more "their external lawyers and auditors", i.e. they clearly expressed the preference to hire qualified experts. Experts carrying a special insurance, preferably a lawyer admitted to the Czech Bar or a certified auditor, who will provide them with information about important issues related to the management of a commercial company, thus avoiding the enforcement of claims against them and avoid their liability. Since an hourly fee for this type of service charged by lawyers oscillates around CZK 2 500 and by certified auditors around 1 500 CZK, a heavy use of this mechanism would generate significant costs represented by fees of these experts and it can be speculated whether companies will be economically strong enough so that this new trend does not in and of itself sink them into bankruptcy, which would be ironic. Naturally, it may be that they will try to convince lawyers to agree to work for less than normal and reflecting the Advocate Tariff, which sets a progressive hourly fee based on the value at the stake and already the value CZK 5 001 is assigned an hourly rate CZK 1 500! They may also consider hiring cheaper "other experts". Yet this would lower their security and they could risk totally losing the benefit of the responsibility shifting, if their "expert" is later on not recognized as a relevant expert for the given issue. Regarding other options, like insurance, respondents did not have any notion about it, and thus they could not be reminded of it, like "How can I have more tea when I haven't had ANY tea?" Establishment of a stable praxis will take several years, thereafter it will be possible to confirm or rule out this concern.

4 Legal liability of the executives in LLC in Germany, Austria and France – comparative comments

Czech law shares the continental law tradition based on Roman law and a robust codification and belongs to the same legal family as German, Austrian, and French law. Plus, these continental law countries are members of the EU and their national law observes the supremacy and direct effect of the EU law. The law of England and Wales as well as the USA federal and state laws belong to the common law legal family. Although SMEs via LLC are a popular flexible business form [13] on both sides of the Atlantic and differences in re the legal framework for LLCs and their executives are not widely different according to continental and common law systems, naturally it is more appropriate to compare the Czech legal liability of an executive to the German, Austrian and French regime and their

operation. Considering the observation of the same model, interestingly of a rather common law provenience, the executives of LLCs in Germany, France and Austria are liable for their actions, carry a fiduciary duty, their actions are scrutinized under the Business Judgment Rule and finally lead to a set of private and public law sanctions. There is a well established hypothesis of a similar, if not identical, system of the setting and operation of the legal liability of executives in these countries. Yet, a deeper assessment gives information about changes and a hard and fast observation shows that the practical consequences are strongly different from the results about the Czech Republic.

The German structure of the regulation of LLCs, GmbHs, and their executives Geschäftsführers matches the current Czech structure. Thus, the German Civil Code, Bürgerliches Gesetzbuch, gives a general framework and a more detailed regulation is in in the German Limited Liability Act, RGBl. S. 477 GmbH Gesetz 1892. The duty of loyalty, Treuepflicht, derives from the good faith provision incorporated in BGB, other duties with respect to executives, like the liability per se Geschäftsführer-Haftung, also the Business Judgment Rule are included in the German Limited Liability Act. This regulation is completed by rules set in the German Criminal Code, Strafgesetzbuch, in the Insolvency Order, Insolvenzverordning, Tax regulation, Cartel regulation, etc. It will be interesting to see how these laws are applied towards the many top-level executives involved in the VW company scandals about emission test rigging, leading to tens of billions of dollars in losses and lawsuits. Violating duties of executives, including acts not in compliance with the Business Judgment Rule, have sanctions in the Czech Republic that are similar to Germany. Plus, like the Czech Republic, the exoneration statement issued by the LLC or the termination of the executive function does not constitute, per se, the liberation of the executive. As established previously in this article, a typical Czech executive has a low awareness about the extent and consequences of his or her legal liability, but once informed, gladly embraces the option to get an official recommendation and thus shifts the responsibility onto third party advisors. On the contrary, the typical German solution is to take a special insurance, namely Directors & Officers Insurance, D&O Versicherung and so address the presumed severity linked to the application of the standard of care and the diligence of a good businessman [1]. Of course, the insurance is not absolute and in the academic, as well as in practical, life there has been developed a strategy to avoid the legal liability of executives, Haftungsvermeidungsstrategien, which includes four pillars Beschränkung der Innenhaftung through contracts entered into by the LLC and the executive, Freistellung von der Außenhaftung, a declaration issued by the LLC for the executive, the establishment and observance of the corporate compliance program plus last, but not least, the insurance, Versicherungsschutz D&O [3]. In Austria, the setting is similar and the lex specialis is the Austrian Limited Liability Act, RGBl. Nr. 58/1906 GmbH Gesetz and of course the lex generalis is the good old Austrian Civil Code, ABGB. If the executive cannot meet the threshold of a good businessman in the performance of its function, the classic sanctions emerge especially if the insolvency of the pertinent LLC occurs. In addition, the Austrian prescription is five, probably very long for the executive, years. Hence, the insurance, Versicherungsschutz D&O is at least worthy of consideration. Executives of LLCs in France, gérants de S.A.R.L., are exposed to legal liability and the breach of their duty, especially during insolvency, can include a negative impact in their personal financial sphere. The principal source of this regime is via provisions of French Commercial Code, namely L223-22 du Code de commerce and the prescription is 3 years, but if a criminal act, 10 years. Interestingly, the Insurance D&O is in France offered, due

to local specificities, often along with the unemployment insurance of the executive, assurance chômage.

In short, D&O Insurance is a part of the plan of addressing executive legal liability across the EU. Thus, there are about 50 insurance companies offering D&O Insurance in Germany, among those offering Managerhaftpflichtversicherungen are Allianz Versicherung AG, Chartis Euroope, Versicherungskammer Bayer, etc. These are serious business rivals so each insurance company tries to get clients via some „specials." For illustration, Table III shows the approximate prices for such insurance, but these prices change upon further circumstances related to the LLC and the executives, as well as to the offering insurance company itself.

Tab. 3: Insurance D&O - Data for Germany, Year 2013/2014

	The Annual Turnover of the LLC in EUR				
Insured Amount (Insured Coverage) in EUR	Up to 1 Mio.	Up to 2,5 Mio.	Up to 5 Mio.	Up to 10 Mio.	Up to 50 Mio.
250.000	602	633	666	741	898
500.000	802	845	889	988	1.198
1.000.000	1.124	1.182	1.245	1.383	1.677
1.500.000	1.348	1.419	1.494	1.659	2.012

Source: [14]

The Insurance D&O is not common in the Czech Republic and relevant data is difficult to locate. Nevertheless, the information collected from Websites of Renomia, AIG, AON suggests that e.g. the premium for the annual Insurance D&O A with a CZK 10 million indemnification limit begins around CZK 20 000 annually.

The cost of the D&O Insurance premiums needs to be compared with the hourly fee payable to a legal expert. Table III shows that the premium in Germany is between EUR 600 and EUR 3 783. According to the Juve portal, the average hourly rate charged by an attorney at law is EUR 238, but regarding commercial law lawyers, they seem to charge more, for an associate EUR 256 and a partner EUR 334 [10]. Considering that the expected number of hours to be charged for advising regarding transactions and various LLC issues would exceed ten, the „Czech" venue for addressing legal liability might appear ineffective and way too expensive as opposed to the German setting. Nevertheless, deeper research should be done to confirm this suggestion and especially the data from all key insurance companies, which is definitely not easy to get, needs to be analyzed. In the EU, the D&O Insurance, to address the issue of legal liability of LLC executives is far more often used than the responsibility shifting mechanism consisting of asking legal experts. To discuss reasons for that is beyond the scope of this paper, yet it can be suggested that the selection of the mechanism is influenced by the national law, its implementation and the use of controlling [13]. With a touch of exaggeration, the ultimate result is anyway similar, as the legal expert then takes the insurance, in this case malpractice insurance. But it looks similar only to unrelated and disinterested parties, i.e. for LLC associate members, and creditors of an LLC, it is who is liable and potentially covered by the insurance and how the insurance premium was paid and who carries the risk of an insufficiency of coverage.

Conclusion

The legislative goal of the Czech re-codification of the Private law was, among other considerations, to establish a modern and liberal form of a company which will reflect current conditions of the global economy and that will facilitate access to business by a larger group of natural persons, i.e., to more people than before. The new statute regulating the liability of executives of an LLC should function as a motivation for executives to act with the care of a reasonable manager and to make the same efforts when making decisions for their LLC as in their own affairs. The old Commercial Code did not deal with this and an intentional breach of payment ethics and behaviour towards creditors often occurred. The business management of LLCs then often led to the bankruptcy of these LLCs without satisfying creditors´ receivables. This often caused secondary payment incapacity of the harmed creditors and ultimately negatively impacted the entire society. This was one of the reasons why the Czech legislators decided to change the law. Now, it should be assessed if the Czech newly regulated liability of executives will not have, as a consequence, an exaggerated caution, a dampening effect, in the decision -making and managing of a LLC, which may lead to stagnation and increasing costs. The results of the questionnaire´s investigation suggest that Czech executives are not sufficiently informed about their newly regulated liability and they do not perceive their status as changed, but once informed, they are ready to adjust and make changes. The first indices, generated by the investigation inquiries, are that the preferred option for such an adjustment may be an (over)reliance on professional advice, especially as D&O Insurance remains a big unknown in the Czech Republic. The new Czech legislation approximated the Czech LLC regime, including the liability of executives, to regimes in other EU member states. Traditionally and historically, Czech law is very close to the Austrian, German and French law. Reviewing the legal liability of executives in these countries shows much similarity to the new Czech setting. Yet the strategy of how to address the uncertainty and danger of the (mis)employment of the concept of legal liability is very different in these countries from the Czech projected solution. They prefer using D&O Insurance, while the Czech preference is for external professional advice. The future will clarify this unclear and speculative arena, and will help to assess whether Czech significant legislative changes of the liability of executives are efficient and effective, and what practical impact they will generate. For the time being, comparative studies using a scenario method and a monitoring of the case law appears recommendable.

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