EIJI TAKAHASHI

ヨーロッパ会社法概説

[Principles of European Company Law]

Chūō Keizai-sha, Tōkyō, 2020, 362 pp., JPY 5,200
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This is the first book in Japanese to explore the entire structure of company law within the European Union (EU), written by Eiji TAKAHASHI, a leading scholar in German and EU company law. It is composed of five parts: 'Freedom of Establishment' and 'Free Movement of Capital' in the EU internal market (Parts 1 and 2), 'European Company Law Directives', showing how EU Directives are progressively harmonising the company law system (Part 3), 'European Model Companies Act', which functions as 'soft law' not just for EU Member States but also for non-members (Part 4), and 'Supranational Company Forms', which include the 'Socieatas Europaea' (Part 5).

EU Directives play a key role in establishing EU company law, thereby facilitating harmonisation among Member States' laws. TAKAHASHI devotes many pages in Part 3 to detailing how harmonisation has come about in fields such as disclosure, capital, accounts, conversion, merger and division, single-member private limited liability companies, takeover bids, corporate governance (especially regarding the exercise of shareholder rights) in listed companies, and corporate group or parent-subsidiary relations ('Konzern' in German). Harmonisation is not an easy process because coordinating the different company law systems and backgrounds of the EU Member States is always fraught with difficulties. Thus, although Directives surely set goals for all the EU members to achieve, they sometimes end in compromise due to conflicts deriving from the Member States' different legal contexts.

Meanwhile, the European Model Companies Act (EMCA), published in 2017, provides a model for the integration of company law forms across the EU, as TAKAHASHI explains in Part 4. For example, in 2019, Directive (EU) 2019/1151 revised the earlier Directive (EU) 2017/1132 and approved the online formation of companies, a process for which the EMCA had already made provision. Besides the online formation system, the EMCA encourages the use of digital tools for company procedures, especially in the area of shareholder meetings, in the form of an 'electronic meeting'. It also proffers comprehensive rules for corporate groups, which have not yet been reached by Directives. Additionally, it aims to enhance the protection of minority shareholders. As the EMCA fulfills all requirements of the Directives, the

more it is adopted by countries (both EU and non-EU members), the more the harmonisation of company laws is fostered.

TAKAHASHI casts light on the vital role of Directives in controlling the 'deregulation race' among the Member States, thereby securing the confidence of investors in companies established in the EU. The European Court of Justice adopts the 'incorporation principle', under which governing laws for companies should be rooted in countries where they are incorporated. Accordingly, entrepreneurs look for countries where the company regulations are loose and in which, presumably, they do not have their operating base. This could propel the EU Member States towards an eager deregulation of their company laws to attract more entrepreneurs. In reality, however, little has occurred in the way of a deregulation race regarding the public limited company laws of the Member States. This is because the Directives had already harmonised most of their schemes and left little room for deregulation. TAKAHASHI elucidates and demonstrates the role of Directives in Part 1 of the book with an example from Germany, where the 'Aktiengesetz' (AG) (German Stock Corporation Act) experienced less deregulation under the EU Directive, whereas the 'Gesetz betreffend die Gesellschaften mit beschränkter Haftung' (GmbHG) (Limited Liability Companies Act), which is beyond the reach of the Directive's control, was deregulated competitively to win the race against the United Kingdom (UK) by removing – in practice – any minimum capital requirements.

TAKAHASHI's explication of the EU schemes of company law reflects his expertise in German law and also presents critical observations on the shortcomings of the Japanese legal system. For example, protecting minority shareholder interests is one of the main priorities of Directive 2004/25/EC concerning takeover bids (amended by Regulation (EC) No219/2009 and Directive 2014/59/EC), an issue also stressed by the EMCA. German judicial precedents emphasise that this is a constitutional requirement for German companies. In Japan, by contrast, more weight is given to protecting the interests of parent companies and their shareholders rather than minority shareholders' interests. Furthermore, Japanese company law reform has been enacted in response to calls from Japanese business circles viewed from a short-term perspective. TAKAHASHI criticises this stance, insisting that the EU model should be taken into account because it is based upon a long-term perspective with a view to attracting more investors and keeping their confidence in the internal market.

The process of building EU company law has inevitably entailed conflicts due to the different principles and rules of the company law systems of Member States. Simultaneously, the process has also respected Member States' legal systems and, when necessary, adopted them. This EU attitude can be confirmed in such examples as the German 'Konzern' regime, to

which the EU referred in an effort to regulate corporate groups, and also in the UK rules, which influenced the EU Directive on takeover bids (2004/25/EC). Furthermore, the EMCA has adopted rules of both these States (and certainly other Member States). TAKAHASHI takes great pains, in various parts of the book, to reveal the interactions between the EU and its member countries. The references to other countries are sometimes rather light on details compared to his thorough exploration of Germany in particular. Nevertheless, his analysis is sufficiently supported by studies on German theories, judicial precedents, and interactions. The suggestions he makes, based on his preceding arguments, offer important insights on the future development of EU company law. Thus far it has been crafted through dialogue and an amalgamation of the distinctive mechanisms of the member countries, regardless of whether they are based on common law (including the UK) or civil law (including Germany). Hence, he contends that the EU should never stop learning from the UK law schemes even in the post-Brexit era. This claim also sends a significant message to the UK in considering its future attitude toward the EU.

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