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Selected Remarks Regarding Equal Treatment in Business Relationships in the European Union on the Example of Issues Concerning the Cross-Border Transfer of Companies Between Member States

Abstract: In this paper the author analyzes the free movement of companies between EU Member States, one of the most essential conditions enabling the freedom of business in the European Union. It is obvious that in every European country, the constitution and/or legal order guarantees the basic fundamental rights for the people and settles the exercise of power. In conducting the research it is very important to examine the appearance of the two fundamental freedoms which are the essence of present topic, the *freedom to provide services* and the *freedom of establishment*. Both rights are listed in the basic treaties of the European Union and their nature is explained herein through interpretation of the text of the treaties, and through the jurisdiction, by analyzing case law using the decisions of the Court of Justice of the European Union (CJEU). The research centres on the examination of the practical side of the freedom to provide services and freedom of business. The study is presented through analysis and evaluation of the decisions of the CJEU and the Hungarian national jurisdiction. The goal is to provide a general picture through the jurisdiction of the CJEU and to examine whether the rights mentioned truly emerge in real life. Older decisions have also been taken into consideration in this regard as they were fundamental to the founding principles of the freedoms discussed and their present regulation.
Keywords: freedom of establishment, company law, transfer of seat

1. Introduction

In the course of the end of the 20th and the beginning of the 21st century we have witnessed the emergence of three key trends in the field of company law. First, is the more detailed regulation of management activity, expertise and control of public limited liability companies, aimed primarily at protecting the interests of investors, minority shareholders and creditors. Second, are the efforts aimed at facilitating and

making it easier for small and medium-sized businesses to operate in the form of limited liability companies. Third, is the free movement of companies across national borders. The purpose of this study is to present the most important features of this third phenomenon, with a description of what legislators and judicial practices have achieved and what they are currently working towards.

The Treaty on the Functioning of the European Union (TFEU) provides regulations for the free establishment and free movement of companies between Member States. Restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State is prohibited. Such prohibition also applies to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State. Freedom of establishment includes the right to take up and pursue activities as companies or firms under the conditions laid down for its own nationals by the law of the country where such establishment is effected.[1] Companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Union shall be treated in the same way as natural persons who are nationals of Member States. In the usage of this regulation companies or firms mean companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making.[2]

2. Incorporation and real seat theories

There are two different approaches regarding the international private law of businesses which prevail in the national legislation of Member States: real seat theory and incorporation theory. According to real seat theory a company's legal positions must be judged based on where the actual administration is located, in other words the place from which the company's central and day-to-day administration is conducted.[3] The real seat principle is applied in domestic regulations for example in Austria, Germany, France, Italy, Belgium, Spain, Luxembourg, Greece and Portugal. According to advocates of real seat doctrine the company and its legal positions must be judged based on the law of the state in which the actual activity is carried out, since it is assumed that creditors, shareholders and employees also fall under the law of that state. Critics of the real seat principle argue that it is extremely difficult in today's globalised business world and amidst cross-border frameworks of business

1 Article 49 of TFEU.
2 Article 54 of TFEU.
3 For detailed analysis see T. Szabados, The Transfer of the Company Seat within the European Union, Budapest 2012; E. Wymeersch, The Transfer of the Company's Seat in European Company Law, Law Working Paper No. 08/2003, ECGI Working Paper Series in Law, pp. 3 ff.

relations, to determine where the real seat of a company is. Countries that follow the incorporation theory, such as the United Kingdom, the Netherlands, Denmark, Sweden and Ireland, maintain that a company should be judged based on where it is actually registered. Consequently, if a company is incorporated in a given state, from then on it becomes an existing entity which can carry out its activities in any other country, but company law issues must be examined based on the laws of the country in which it is incorporated. Articles 49 and 54 TFEU declare the right to establishment, and this is extended to include companies as well. At the same time, these rules do not give firm guidance in this context, essentially leaving it to the national laws of Member States to decide which doctrine they adopt.[4]

3. The rulings of the Court of Justice of the European Union (CJEU)

Many rulings of the CJEU have dealt with this issue. In the cited cases which follow, the author shows and summarises the *ratio decidendi* of the most important decisions taken.

3.1. The *Daily Mail* Case

In the *Daily Mail* case[5] a company registered in the United Kingdom wanted to move its head office to the Netherlands, but was refused permission to do so by the UK tax authority. The High Court of Justice in the UK referred the question to the CJEU and the Court of Justice (ECJ) concluded that this was an issue that could be resolved on the strength of national legislation. Cross-border relocations of company head offices cannot be judged based on EU law, and can only be resolved based on the

4 Cf. the latest additions to the massive amount of literature on this subject: N.K. Erk, The Cross-Border Transfer of Seat in European Company Law: A Deliberation about the Status Quo and the Fate of the Real State Doctrine, "European Business Law Review" 2010, vol. 21(3), pp. 345 ff; W.-G. Ringe, Company Law and Free Movement of Capital, "Cambridge Law Journal" 2010, vol. 69(2), pp. 378 ff; R.M. Buxbaum, Is There a Place for a European Delaware in the Corporate Conflict of Laws?, "Rabels Zeitschrift für ausländisches und internationales Privatrecht" 2010, vol. 74, pp. 1 ff; J.F. Bron, Niederlassungsfreiheit: Hinzurechnung außergewöhnlicher oder unentgeltlicher Vorteile, die einer auslandsansässigen verflochten Gesellschaft gewährt wurden, zu de Gewinnen der belgischen (Mutter-) Gesellschaft kann gerechtfertigt sein – "SGI", "Europäisches Wirtschafts- und Steuerrecht" 2010, vol. 3, pp. 80 ff; H. Hahn, Von kleinen Aktiengesellschaften, sociétés par actions simplifiées und anderen Raritäten – der Anwendungsbereich der Mutter-Tochter-Richtlinie nach "Gaz de France", "Europäisches Wirtschafts- und Steuerrecht" 2010, vol. 5, pp. 176 ff; U. Altinişik, Free Movement of Companies within the EU, "Ankara Bar Review" 2012, vol. 1, pp. 103 ff; H. Horak, K. Dumančič, Cross-Border Transfer of the Company Seat: One Step Forward, Few Steps Backward, "US-China Law Review" 2017, vol. 14, pp. 711 ff.

5 Case C-81/87, The Queen v H.M. Treasury and Commissioners of Inland Revenue ex parte Daily Mail and General Trust PLC (1988).

laws of the country in which it is incorporated and the laws of the country where the new seat is located.

3.2. The *Centros* Case

In the *Centros* case[6] a Danish couple wished to set up a small company in Denmark, but did not want to provide the minimum capital for the company required under Danish law; consequently they incorporated the business in the United Kingdom and then applied to register a branch in Denmark. The Danish court rejected the application because the company did not meet the minimum capital requirement. In this case the ECJ found the rejection of the branch registration application to be unlawful as it violated the freedom of establishment rule. The Court stated that in theory four conditions must be fulfilled for a national measure enabling a Member State to prevent a company registered in a different Member State from operating:

- it must not lead to discrimination,
- it must be in the public interest,
- the regulation must be suitable for securing the attainment of the public objective,
- the regulation must only contain objective provisions as required to the achieve the goal.

3.3. The *Überseering* Case

In the *Überseering* Case[7] a Dutch-based company acquired a piece of land in Düsseldorf, then two years later it entered into a contract with German firm Nordic Construction Company Baumanagement GmbH (NCC) to refurbish a garage and motel on the property. Überseering refused to accept the fulfilment of the contractual obligations but before taking any legal steps against the contractor, the owners of Überseering transferred all their shares to two German citizens resident in Düsseldorf. Two years later Überseering sued NCC for defective work. NCC alleged that Überseering's claim could not be judged in a German court because although the real seat was in Germany, the incorporation was not based on German law. The ECJ concluded that a German court cannot refuse to recognise the legal capacity of a company just because it was incorporated based on Dutch law and not on German law.

6 Case C-212/97, Centros Ltd. v Erhervsog Selskabsstyrelsen ECR (1999).

7 Case C-208/00, Überseering BV v Nordic Construction Company Baumanagement GmbH (NCC), ECR (2002) I-9919.

3.4. The *Inspire Art* Case

The preamble to the *Inspire Art* case[8] was that a law on formally foreign companies entered into force in the Netherlands on 1 January 1998, which prescribed that companies incorporated based on the laws of another state could only operate in the Netherlands if they were registered in the Dutch company register as a "formally foreign company". In addition, the given company has to comply with disclosure and minimum capital requirements, for which the managing directors are jointly and severally liable. Inspire Art Ltd. was incorporated in the United Kingdom in July 2000 and subsequently established a branch in Amsterdam in August of that year. The branch was registered in the Dutch company register, but not as a "formally foreign company". Consequently the Dutch Court of Registration launched legal action against the company for unlawful incorporation. In its ruling the ECJ concluded that the Dutch law contradicted European Union law since it violates the freedom of establishment.

We should also note that the ruling in the *Inspire Art* case significantly influenced the trend whereby more than 30,000 limited companies incorporated in the United Kingdom between 2003 and 2006 established branches in Germany and began actual operations there. Since 1 pound sterling is sufficient as start-up capital to launch a limited liability company in the United Kingdom, this represented a major advantage for German businesses given that German regulations used to demand EUR 25,000 to set up a GmbH. This is precisely why German entrepreneurs with a lack of capital set up limited companies in the United Kingdom and then established branches in Germany. It needs to be remarked, however, that after a time this solution become less attractive, especially when German legislators introduced a new form of limited liability company *(die Unternehmergesellschaft)* which *inter alia* addressed the startup capital issue.

3.5. The *Cartesio* Case

Cartesio Bt. is a company incorporated in Hungary which wanted to relocate its central administration to Italy, a request initially rejected by the Court of Company Registration in Hungary saying that this was not permitted under Hungarian law.[9] The opinion of the court was that Cartesio Bt. should first of all be wound up in Hungary by means of solvent liquidation, and then the owners could establish a new company in Italy. The Court of Appeal in Szeged referred the matter to the CJEU for guidance in its preliminary ruling, asking whether the Hungarian regulation violates the freedom of establishment. The ECJ concluded that Member States have a sovereign right to decide whether companies should be able to relocate their head

8 Case C-167/01, Kamer van Koophandel en Fabrieken voor Amsterdam v Inspire Art Ltd., ECR (2003) I-10155.

9 Case C-210/06, Cartesio Oktató és Szolgáltató Bt (2008).

offices to another Member State. Under current legislation this is only possible if the regulations in both the Member State of the company's head office and in the Member State of the new head office allow the cross-border relocation of head offices.

3.6. The *VALE* Case

The *VALE* case[10] is very similar to the Cartesio case. VALE Construzioni Srl was a company established under Italian law and the members of the company decided on the conversion of the company under Hungarian law and transfer the seat of the company to Budapest. The Italian laws allow companies to convert into a company under foreign law, while the Hungarian laws do not.

The most important details of the case were the followings. VALE Costruzioni Srl (a limited liability company governed by Italian law) was established and registered in the Rome commercial register in 2000. In 2006, VALE applied to be removed from that register on the ground that it intended to transfer its seat and its business to Hungary. In accordance with the application, VALE was deleted from the Italian company register. The articles of association of VALE were duly modified to meet the requirements of Hungarian company law. In 2007, a representative of VALE applied to the Budapest Metropolitan Court, acting as company court, to register the company in accordance with Hungarian law. In the application, the representative stated that VALE Costruzioni was the predecessor in law to VALE Építési. The application was rejected. VALE appealed to the Court of Appeal of Budapest, which upheld the order rejecting the registration. The reason for rejection, was that a company which was incorporated and registered in Italy cannot, by virtue of Hungarian company law, transfer its seat to Hungary and cannot obtain registration there in the form requested. VALE brought an appeal on a point of law before the Hungarian Supreme Court, seeking annulment of the order rejecting registration and an order that the company be entered in the commercial register. It submitted that the contested order infringes Articles 49 TFEU and 54 TFEU, which are directly applicable. In that regard, it states that the order fails to recognise the fundamental difference between the international transfer of the seat of a company without changing the national law which governs that company on the one hand and the international conversion of a company on the other. The Court clearly recognised that difference in the Cartesio Case.

The Hungarian Supreme Court required a preliminary ruling and the ECJ decided as follows:

"1. Articles 49 TFEU and 54 TFEU must be interpreted as precluding national legislation which enables companies established under national law to convert, but does not allow, in a general manner, companies governed by the law of another Member State to convert to companies governed by national law by incorporating such a company.

10 C-378/10, VALE Construzioni Srl (2012).

2. Articles 49 TFEU and 54 TFEU must be interpreted, in the context of cross-border company conversions, as meaning that the host Member State is entitled to determine the national law applicable to such operations and thus to apply the provisions of its national law on the conversion of national companies governing the incorporation and functioning of companies, such as the requirements relating to the drawing-up of lists of assets and liabilities and property inventories. However, the principles of equivalence and effectiveness, respectively, preclude the host Member State from:

– refusing, in relation to cross-border conversions, to record the company which has applied to convert as the 'predecessor in law', if such a record is made of the predecessor company in the commercial register for domestic conversions, and
– refusing to take due account, when examining a company's application for registration, of documents obtained from the authorities of the Member State of origin."

3.7. The *Polbud* Case

The decision in the *Polbud* Case was a mirror image of VALE.[11] Polbud Wynkonawstwo sp. z o.o. was a private limited liability company established in Lącko under Polish law. In 2011, the shareholders of the company decided to transfer the seat of the company to the Grand Duchy of Luxembourg. On the basis of the owners' decision the liquidation procedure in Poland was initiated and in 2013 the shareholders convened a meeting in Luxembourg to implement the transfer of the seat of the company. They decided that Polbud will continue its activity in Luxembourg under the name Consoil Geotechnik Sarl and the company was duly registered in Luxembourg under that name. Meanwhile, Polbud applied for the company to be deleted from the Polish company register with the remark that it had transferred its seat to Luxemburg. However, this was refused. Under Polish law it is not possible to transfer the seat of a company to another company without first liquiditating and deleting the company from the registry in Poland.[12]

3.8. Some remarks on the transfer of the seat of companies

As of now the laws of only 12 EU Member States allow the seat of a company to be transferred: Belgium, Cyprus, Denmark, France, Greece, Italy, Luxembourg, Malta, Portugal, Slovakia and Sweden.[13] Between 2013 and 2018 such transfers most often took place in Luxembourg, Germany, the Netherlands, Spain and Italy. It is

11 C-106/16, Polbud – Wykonawstwo sp. z o.o. (2017).
12 For detailed analysis see H. Horak and K. Dumančič, *op. cit.*, pp. 711 ff.
13 T. Biermeyer and M. Meyer, Cross-border Corporate Mobility in the EU. Empirical Findings 2018, ETUI 2018, p. 60.

noteworthy that Austria, Germany, the Netherlands and the United Kingdom do not have legislation covering the transfer of the seat of companies. In the light of current ECJ rulings, it can be said that for companies seated in other Member States this can result in relevant competition disadvantages.

4. The possible solution

In the United States of America people are free to decide which state they would like to set up their company in, and they can freely relocate the head office of that company to another state. This has resulted in 40% of companies listed on the New York stock exchange being incorporated in the state of Delaware for example. The emergence of the US *Delaware effect* in the European Union is hotly debated. Many support the efforts made to have a directive adopted in the European Union that enables the free relocation of head offices between Member States. Others remain sceptical since incorporation costs only represent minor revenue flows for Member States. The differences between national company laws in individual Member States are in fact narrowing thanks to EU company law directives, and linguistic barriers in Europe mean that a mass relocation of head offices is unlikely anyway.

4.1. The Directive on cross-border mergers

A significant step forward was the Directive on cross-border mergers of limited liability companies which the Directive facilitates.[14] Under its provisions, the laws of the Member States are to allow the cross-border merger of a national limited liability company with a limited liability company from another Member State if the national law of the relevant Member States permits mergers between such types of company. Each company taking part in a cross-border merger, and each third party concerned, remains subject to the provisions and formalities of the national law which would be applicable in the case of a national merger. None of the provisions and formalities of national law should introduce restrictions on freedom of establishment or on the free movement of capital, save where these can be justified in accordance with the case law of the Court of Justice and in particular by requirements of the general interest and are both necessary for, and proportionate to, the attainment of such over riding requirements.

On the basis of the Directive, Biermeyer and Meyer state that the United Kingdom for example has a "negative net balance", which means that more companies seem to have exited the UK between 2013 and 2018 than companies entering it through

14 Directive 2005/56/EC of the European Parliament and the Council of 26 October 2005 on cross-border mergers of limited liability companies (OJ L 310, 25.11.2005, p. 1), repealed by Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification) (OJ L 169, 30.06.2017, p. 46).

cross-border mergers.[15] This trend can of course be the result of Brexit. Overall, from their analysis between 2013 and 2018, some 1,936 cross border mergers took place in the European Union. German companies participated the most in such movement, while companies in the Netherlands, Luxemburg, Austria, Italy, the United Kingdom and France were also very active.[16]

4.2. The supranational companies

The real solution to the problem is supranational companies, which provide owners with an appropriate legal framework to manage their head offices, actual places of administration and operational areas in a flexible manner.

Besides the European Company (*Societas Europaea* – SE),[17] the European Cooperative Society[18] and the European Economic Interest Grouping,[19] an initiative was launched under the aegis of the European Union for a fourth supranational form of company, primarily to offer an appropriate legal framework for small and medium-sized businesses. 99% of companies in the European Union are small and medium-sized businesses; only 8% of them pursue any form of international trade and only 5% have subsidiaries or joint ventures abroad. At the same time, the standard regulation of company law throughout the European Union has clearly failed over the last 50 years, principally due to resistance against unifying the various regulatory models. In order to have a veritable single market within the European Union it is essential for companies to be able to move freely within the territory of the EU, be able to relocate their head office from one Member State to another and be subject to the same rules. Additionally, it is equally important in the context of small and medium-sized enterprises for it to be simple, inexpensive and flexible to set up a company. To this end, a draft regulation on regulating the Private European Company (*Societas Privata Europaea* – SPE) was created.[20] The SPE is largely similar to the SE, but does without all the administrative, bureaucratic and costly features, and therefore could make it ideal for becoming the most popular type of company in the European Union.

According to the draft regulation, an SPE could be established by one or more members with a minimum start-up capital of 1 euro. The statute provides a great deal of freedom for members in terms of shaping their articles of association as they

15 T. Biermeyer and M. Meyer, *op. cit.*, p. ii.
16 T. Biermeyer and M. Meyer, *op. cit.*, pp. 5 ff.
17 Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE).
18 Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE).
19 Regulation (EEC) No 2137/85 – the European Economic Interest Grouping.
20 Cf. S. Steiner, Societas Privata Europaea. Perspektiven einer neuen supranationalen Rechtsform, Frankfurt am Main 2009; K. Noussia, European Private Company ("Societas Privata Europaea"), "Business Law International" 2010, vol. 11(3), pp. 277 ff.

see fit; the incorporation and the company law regulations of a given Member State are subsidiary in nature. It would also be possible to convert existing companies into an SPE. The registered office of such a company could be freely relocated from one Member State to another. It will also be possible to issue ordinary shares and preference shares in the business. The transfer of shares and any restrictions must be regulated in the articles of association. With capital being low, rules to protect creditors and minority shareholders are ensured by the *balance sheet test*, based on which dividends may only be paid or own shares purchased if the balance sheet shows that this will not jeopardise the settlement of liabilities on time, and by the *solvency test*, which takes the company's cash flow into account in relation to income and outgoings.

The draft was debated by the European Parliament on 10 March 2009, but has yet to be adopted, largely on account of resistance from several Member States.

4.3. The need for the 14th Company Law Directive

Another solution would be the adoption of the 14th Company Law Directive.[21] The directive would allow companies to exercise their right of establishment by migrating to a host Member State without losing their legal personality but by being converted into a company governed by the law of the host Member State without first having to be wound up.[22] The basis of the movement would be a transfer plan approved by the general meeting of the company. The transfer should take effect on the date of registration in the host Member State, and it should not circumvent legal, social and fiscal conditions. From the date of registration in the host Member State, the company should be governed by the legislation of that State. The transfer should not affect the company's legal relationship with third parties and the transfer should be tax-neutral as well.

5. The Hungarian point of view

5.1. Freedom of establishment in Hungary

The Hungarian Civil Code (Act V of 2013 on the Civil Code) also guarantees freedom of establishment in the case of legal persons, including companies. According to paragraph (1) Section 4 of Book 3 of the Civil Code, persons shall have freedom of establishment of a legal person by means of a contract, charter document

21 See European Parliament resolution of 2 February 2012 with recommendations to the Commission on a 14th company law directive on the cross-border transfer of company seats (2011/2046(INI)) (2013/C 239 E/03).

22 In relation to this it is necessary to highlight the importance of the Commission's Company Law package. For details see: https://ec.europa.eu/info/publications/company-law-package_en (accessed 19.03.2019).

or articles of association (referred to collectively as "instrument of constitution"), and shall themselves decide on the legal person's organizational structure and operational arrangements.

Section 8 of Book 3 of the Civil Code, sets out the requirements on the activity or activities legal persons may carry out. Legal persons may engage in the pursuit of any activity that is not expressly prohibited or restricted by law.

Hungarian law, correspondingly with the general practice of many other Member States of the European Union, guarantees standards. It enables the full and free establishment of legal persons, with reasonable legal restrictions (concerning name, minimum capital requirements and the like) provided always that it's activity is not unlawful or otherwise restricted by the law.

5.2. Cross-border transfer of seats in Hungary

As previously discussed in connection with the Cartesio and VALE cases, the cross-border transfer of seats is not allowed under Hungarian law. There is no specific mechanism in the Hungarian legal system that enables legal entities to relocate their seat or main office in or from another country. If a legal person wishes to transfer its seat, then according to the statements of the Hungarian national courts, as in the Cartesio and VALE cases, the only way to achieve this is to remove the legal person from the registry of the state in which it was established, and establish a new legal entity under Hungarian law.

The legal situation in this regard was made clear in the Cartesio and VALE cases, the ECJ having concluded that Member States have a sovereign right to decide whether companies should be able to relocate their seat to another Member State. However, if only one participant Member State enables the transfer of seats, this by itself is insufficient. Both Member States involved need to allow the transfer of seats across borders for it to be possible.

Therefore, until such time as a change occurs in Hungarian law, it is not possible to relocate the head office of a legal person either out of Hungary into another Member State or into Hungary from another Member State.

5.3. Cross-Border Mergers of limited liability companies

Although the transfer of seats is not possible under Hungarian law, one way to change a seat in the case of limited liability companies, is to engage in a cross-border merger. Act CXL of 2007 on the Cross-Border Mergers of Limited Liability Companies, enables the merger of multiple legal entities registered in different Member States of the European Union. The Act contains provisions to govern the cross-border mergers of limited liability companies with a registered office in Hungary, and the incorporation of companies with a registered office in Hungary, by way of cross-border mergers. Moreover, it lays down the provisions for related company registration proceedings.

According to the Act, the term "limited liability company" means any private limited liability company, public limited liability company or European public limited liability company, and it is companies of this kind that are allowed to form mergers. The term "cross-border merger" means the merger of limited liability companies in accordance with the Hungarian Civil Code and Act CLXXVI of 2013 on the Transformation, Merger and Division of Legal Entities, where each company taking part in the merger has been formed in accordance with the law of a Member State of the European Union and has its registered office, central administration or principal place of business within a Member State of the European Union, provided that at least one of the merging parties is governed by the law of another Member State of the European Union.

Thus, to summarise the legal framework, although the establishment of legal entities is fully guaranteed by Hungarian law, the cross-border transfer of the seat of a legal person is not permitted, either by relocating the main office out of Hungary, or by relocating one into Hungary. This does not mean, however, that it is altogether impossible for a legal person to establish a seat within or outside of the country. This can be accomplished by way of a cross-border merger between limited liability companies which is permissible under Hungarian law.

6. Closing remarks

In the context of the limited liability form of company so popular with small and medium-sized enterprises, there is a clear international trend towards making entrepreneurial freedom as simple, as quick and as cost-effective as possible, while at the same time ensuring that changes can be made to such companies in as flexible a manner as possible.

Some thought should be given in the European Union to the sustainability of regulations in some Member States that are based on the real seat doctrine, taking into account the efforts made towards establishing cross-border branches and relocating registered offices. New legal acts planned by the European Union could resolve part of this problem, especially the possible introduction of the SPE or the 14th Company Law Directive.

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