

## **FREEDOM OF ESTABLISHMENT AND LEGAL PERSONS: SELECTED ISSUES**

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### **Abstract in original language**

Příspěvek se zabývá vztahem mezi legislativou EU a judikaturou SDEU a pravomocemi členských států týkající se úpravy právní subjektivity právnických osob a souvisejících otázek, jak v rovině kolizní, tak v rovině hmotněprávní. Pozornost bude věnována odlišení těchto rovin zejména vzhledem k tendenci v judikatuře SDEU naznačující směřování problematiky kolizní a hmotněprávní.

### **Key words in original language**

Svoboda usazování; právnické osoby; hraniční určovatel; Soudní dvůr EU; právní subjektivita.

### **Abstract**

The submission is focused on analysis of the interaction between the CJEU case law and EU legislation and competences of the member states in the area of legal personality of corporations. Both conflict of laws and substantive law issues shall be discussed with emphasis on distinguishing the former from the latter given the tendencies of the CJEU case law to use them interchangeably.

### **Key words**

Freedom of establishment; legal persons; connecting criterion; Cour of Justice of the EU; legal personality.

### **Introduction**

The focus of this submission shall be the power of the Member States to define connecting factors which are relevant to determination of law applicable on companies and their “nationality” or legal personality. Therefore, it includes dealing with the concepts of nationality, legal personality and determination of *lex societatis*/applicable law in the framework of national laws. The author firstly aims to outline the borderlines between the national substantive law and conflict of laws provisions. Secondly, an assessment of relevant provisions of the Treaty on Functioning of the European Union (hereinafter, the TFEU) on freedom of establishment will be a point of the analysis searching for the consistency in in the EU law scrutiny on the power of the Member States to define the concepts mentioned above.

## **Substantive and Private International Law of Member States, EU Law: Concepts of Nationality, Lex Societatis and Applicable Law**

Before considering the two main methods of private international law used to determine the law applicable to companies, it is important to bear in mind that the law applicable - *lex societatis* - and “nationality” of a company may not always refer to the same concept (even if they are often used interchangeably).<sup>1</sup> The attribution of nationality and legal personality depends on national substantive law, whilst the determination of the law applicable results from a conflict of law rule.<sup>2</sup> Theoretically, *lex societatis* of a company may be different from its “nationality”. Substantive law thus may impose dissolution and liquidation<sup>3</sup> of company (i. e. loss of its legal personality, nationality) independently on whether the application of a conflict of law rule leads to the change of *lex societatis*.<sup>4</sup> In this regard, companies are different from natural persons and may be treated in a different way to certain extent.<sup>5</sup>

*Lex societatis* is in general applicable to internal affairs of a company, i. e. it governs the formation, functioning, dissolution and liquidation of the company, and relations among its members/shareholders. However, *lex societatis* is not the only law applicable to the company. The connecting criteria used to determine *lex societatis* may be identical or similar to the criteria determining application of other than company laws to companies'

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<sup>1</sup> SIMONART, V., *La personnalité morale en droit privé comparé. L'unité du concept et ses applications pratiques – Allemagne, Angleterre, Belgique, Etats-Unis, France, Italie, Pays-Bas et Suisse*. Collection de la faculté de droit de l'Université libre de Bruxelles, Bruylant, Bruxelles, 1995, p. 152, hereinafter, SIMONART. See also F. GUILLAUME, *Lex societatis: principes de rattachement des sociétés et correctifs institués au bénéfice des tiers en droit international privé suisse*. Etudes suisses de droit international; vol. 116, Schulthess, Zürich, 2001, p. 82, 86, hereinafter, GUILLAUME. The author refers to roots of this approach as being result of two different concepts of a legal person: “*théorie de la fiction*” and “*théorie de la réalité*”, the latter assimilating legal persons to natural persons, Id.

<sup>2</sup> SIMONART, *supra* note 1, p. 154-155. GUILLAUME, *supra* note 1, p. 83. See also W. H. ROTH, “From Centros to Überseering: Free Movement of Companies, Private International Law, and Community Law”, (2003) 52 I.C.L.Q. 184.

<sup>3</sup> In order to avoid confusion related the concepts of dissolution, liquidation, winding-up when used outside of the English speaking countries, a brief definition shall be used. Dissolution is a “process whereby a company ceases to be a company, preceded or followed by winding-up of the affairs of the company, namely sale of its assets, payment of creditors and distribution of any surplus to shareholders.” Dissolution thus does not refer exclusively to the moment when a company is struck out of the commercial register, terms liquidation and winding-up are going to be used as synonyms. See KPMG European Business Centre, *Study on Transfer of the Head Office of a Company From One Member State to Another*, Luxembourg: Office for Official Publications of the European Communities 1993, p. 2, hereinafter the KPMG Study.

<sup>4</sup> See for example in German law and possibility of *renvoi* as explained in ROTH, *supra* note 2, 184-185.

<sup>5</sup> GUILLAUME, *supra* note 1, p. 89.

external or internal affairs. For example, in case of insolvency, the liquidation is usually governed by relevant insolvency laws provisions which may or may not be part of national company laws. Similarly, a company may be subject to taxation legislation of more than one state. This distinction is a crucial one given the rather ambiguous approach of the Court of Justice of the European Union (hereinafter, the CJEU) in distinguishing such situations for the purpose of interpretation of the EU law in its case law related to changes of applicable law triggered by cross-border transfers of seat.

### **Incorporation Theory and Real Seat Theory**

Determination of *lex societatis* requires an existence of a connecting factor which links the company to laws of a particular state. In general and for the purpose of this submission<sup>6</sup>, it is possible to distinguish between two main theories – incorporation and real seat theory.

Incorporation theory originates in common law countries where a personal statute of natural persons has been traditionally determined on the basis of their domicile of origin.<sup>7</sup> Under incorporation theory by analogy, *lex societatis* is determined by the laws of a state under which the company was created and where it is registered with relevant authority (registry of commerce). The place of registered office is a predictable criterion which can be easily ascertained by third persons. The fact that a company may exercise all of its activities in other state is irrelevant for the determination of *lex societatis*. Consequently, real seat of such company is quite often located in a different state than its registered office.

Under the real seat theory the *lex societatis* of a company is determined by the laws of a state in which its real seat is located. Real seat usually corresponds to the place where the company has its central administration (e. g. control and management), principle place of business or main activity. Theoretically, the states of real seat and registered seat may differ but more often it would not be the case. In practice, many states combine the elements of both theories or apply different elements depending on whether the company is domestic or foreign.<sup>8</sup>

Determination of *lex societatis* or nationality of legal and natural persons is not regulated by EU law. However, this does not prevent the EU law from having an indirect impact on such determination. The following part shall focus on primary provisions of the EU law which have influenced the way

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<sup>6</sup> Leaving aside other minority approaches to this issue.

<sup>7</sup> Guillaume, *supra* note 1, p. 116. See also Mucciarelli, F. M., "Companies' Emigration and EC Freedom of Establishment", 2007, p. 14. Available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1078407](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1078407) [27/4/2010].

<sup>8</sup> See examples in the KPMG Study, *supra* note 3, p. 7.

the Member States apply their relevant laws (either substantive or private international law rules) on domestic and foreign companies, especially as for recognition and change of applicable law.

### **Articles 49 and 54 of the TFEU: Freedom of Establishment**

Besides free movement of goods, services and capital, the TFEU contains provisions on free movement of persons including the freedom of establishment. Similarly to other freedoms, the TFEU provides for a general framework and conditions. In case of legal persons it is: a general principle under which companies and firms may acquire and exercise their rights (articles 49 and 54), and derogations to the rule (i. e. articles 51 and 52 which specify derogations to the principle of freedom of establishment justified by the exercise of official authority, and on the grounds of public policy, public security or public health).

In order to define freedom of establishment and scope of articles 49 and 54, the focus of this submission is on the possibilities of interpretation of the respective provisions of the TFEU<sup>9</sup> given the existing body of the case law of the CJEU<sup>10</sup>.

#### Article 49<sup>11</sup>

*“Within the framework of the provisions set out below, restrictions on the **freedom of establishment of nationals** of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply 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.*

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9 For detailed analysis of the case law of the CJEU related to the relevant TFEU provisions see Novotna, P. Connecting Criteria After Cartesio. In Dávid R., Neckář J., Sehnálek D., (Editors). COFOLA 2009: the Conference Proceedings, 1st edition, Brno: Masaryk University, 2009. ISBN 978-80-210-4821-8. The conclusions in this submission are based on thorough study of the case law in the submission above. This as such should be therefore used as reference in general throughout this text where no other citations are used.

10 Most importantly: Case C-210/06 CARTESIO Oktató és Szolgáltató bt [2008] ECR I-9641. Case C-81/87, The Queen v H. M. Treasury and Commissioners of Inland Revenue, ex parte Daily Mail and General Trust plc., [1988] ECR 05483. Case C-446/03, Marks & Spencer plc v David Halsey (Her Majesty's Inspector of Taxes), [2005] ECR Page I-10837. Case C-411/03, SEVIC Systems AG, [2005] ECR I-10805. Case C-208/00, Überseering BV v Nordic Construction Company Baumanagement GmbH (NCC), [2002] ECR I-09919. Case C-212/97, Centros Ltd v. Erhvervs- og Selskabsstyrelsen, [1999] ECR I-01459. Case C-9/02, Hughes de Lasteyrie du Saillant v Ministère de l'Économie, des Finances et de l'Industrie, [2004] ECR I-02409. Case C-196/04, Cadbury Schweppes plc and Cadbury Schweppes Overseas Ltd v Commissioners of Inland Revenue, [2006] ECR I-07995

11 Emphasis added by the author.

*Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 48, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital.”*

#### Article 54

*“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 European Union shall, for the purposes of this Chapter, be treated in the same way as natural persons who are nationals of Member States. [...]”*

Firstly, wording of article 49 suggests that by “nationals” the TFEU means both natural and legal persons. In fact, subsidiaries can be set up by companies only. It is possible to distinguish between primary and secondary establishment. The former is related to the setting-up of new companies and transfer of primary seats, the latter includes setting up of subsidiaries, branches or agencies. Nevertheless, those forms of establishment should not be read as an exhaustive list of examples, as it was indeed later confirmed by the CJEU.<sup>12</sup>

Secondly, wording of the article 54 suggests that in order to benefit from the right of establishment, a company must be validly formed under the laws of any of the Member States and have its registered office, central administration or principal place of business within the territory of EU. It might therefore seem that the state of formation and the state where a company has one of the three “seats” can differ. It could be implied that the three connecting factors refer to the private international law provisions of Member States related to determination of *lex societatis*. Same factors are for example used in Brussels I regulation for the purpose of determining the court having international jurisdiction in civil and commercial matters.<sup>13</sup>

Unfortunately, the CJEU has used the term connecting factor rather ambiguously - especially in its *Cartesio* decision - where it uses the term both in the context of private international law and substantive company

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12 See Case 205/84 Commission v Germany [1986] ECR 3755, paragraph 21, discussed in Opinion of Mr Advocate General Tizzano delivered on 7 July 2005 in *SEVIC Systems AG*, [2005] ECR I-10805, paragraph 39, hereinafter, *SEVIC* opinion. The question remains on how exhaustive the article 49 (ex-article 43) is in relation to primary establishment.

13 Council Regulation (EC) No 44/2001 of December 22, 2000, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, [2001] O.J. L12/1. See article 60. Nevertheless, on interpretation see e. g. Opinion of Mr Advocate General La Pergola delivered on 16 July 1998, in case C-212/97, *Centros Ltd v Erhvervs-og Selskabsstyrelsen*, [1999] ECR I-01459, paragraph 19.

law<sup>14</sup>. Narrow interpretation of the three "seats" would lead to a conclusion, that the scope of article 54 as for the three "seats" is concerned only with private international law issues (and thus recognition of foreign-EU based companies). Broad interpretation, on the other hand, might be a gate to limitation of the first condition imposed by article 54 ("Companies or firms formed in accordance with the law of a Member State") - and thus affect the substantive company law provisions of Member States.

The scope of articles 49 and 54 also used to be clarified by reference to article 293 of the former EC Treaty. Under this provision freedom of establishment also includes issues of recognition of a company, transfer of its seat and cross-border mergers.

Former Article 293 of the EC Treaty (Deleted)

*“Member States shall, so far as is necessary, enter into negotiations with each other with a view to securing for the benefit of their nationals: [...]*

*— the mutual recognition of companies or firms within the meaning of the second paragraph of Article 48 [54], the retention of legal personality in the event of transfer of their seat from one country to another, and the possibility of mergers between companies or firms governed by the laws of different countries, [...]*”

First and foremost, the condition of necessity (“so far as is necessary”) could have been interpreted as inciting the Member States to negotiate only in cases where the issues related to freedom of establishment cannot be relied on directly, i. e. by invoking ex-articles 43 and 48 of the ECT. Indeed, the CJEU gradually developed a line of case law that rendered the article 293 practically obsolete which, among other reasons, in the end led to its deletion from the TFEU as it is argued below.

It is submitted that as far as mutual recognition of companies or firms was concerned, its scope were to be limited to situations where transfer of seat invoked private international law provisions of Member states only (i. e. the private international law provisions of the recognizing state of arrival, not the PIL provisions of the country of departure, nor the company law substantive provisions of the country of arrival).

On the other hand, wording of the article 293 did not clearly indicate the scope of recognition envisaged by the EC Treaty. In general, recognition of a company might refer to recognition of the company as such, or the

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<sup>14</sup> See in particular paragraphs 109 et seq. of the Cartesio judgement supra note 10.

recognition limited for the purposes of acquiring a legal standing before courts of another Member State.<sup>15</sup>

After *Überseering* case<sup>16</sup>, this provision has become de facto obsolete since the Member States are obliged to disregard their private international law provisions where it comes to disputes in recognition of EU established companies and firms, provided the conditions of article 54 have been fulfilled (i. e. such transfer of seat is allowed by substantive company law provisions of the state of departure whether or not it simultaneously entails change of *lex societatis* of the transferring company). Whereas article 293 ceased to be an exclusive ground for recognition of companies or transfer of primary establishment,<sup>17</sup> Member States were allowed to conclude conventions in that area but their national rules were no longer immune from the examination by the CJEU in the light of ECT.<sup>18</sup>

The issue of retention of legal personality on the contrary, has proved to be rather complicated. It indeed did not imply whether it was related to transfers of seat resulting in change of *lex societatis*, no change of *lex societatis* or both.

Both, substantive company law provisions and private international law provisions of the Member States may come in question. Obviously, the substantive company law provisions of the state of departure would be concerned. After *Cartesio*<sup>19</sup> case it seems that in case such transfer involves change of applicable law, the substantive company law provisions of the state of departure are severely limited by the EU law. Limitations as to substantive company law provisions of the state of arrival, however, are disputable. Applying the logic of the *SEVIC*<sup>20</sup> case (and by analogy also *Überseering* case, should one accept a premise that a right to transfer with attending change of applicable law follows now from the CJEU case law), a Member State should not treat transformations of foreign companies differently from transformation of its domestic companies. Thus, the state of

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<sup>15</sup> See W. H. Roth, "Recognition of Foreign Companies in *Siège Réel* Countries: A German Perspective", in J. Wouters, H. Schneider (ed.), *Current Issues of Cross-Border Establishment of Companies in the European Union*, METRO, Antwerpen, MAKLU, 1995, p. 29-30. The author suggests that for the purposes of article 293 ECT, recognition is understood in its limited scope.

<sup>16</sup> See supra note 10.

<sup>17</sup> See Case C-208/00, *Überseering BV v. Nordic Construction Company Baumanagement GmbH (NCC)*, [2000] ECR I-9919. See also W. G. RINGE, "No Freedom of Emigration for Companies?", (2005) 16 EBLR 633. E. VACCARO, "Transfer of Seat and Freedom of Establishment in European Company law", (2005) 16 EBLR 1352.

<sup>18</sup> P. J. OMAR, "Centros Redux: Conflict at the Heart of European Company Law", (2002) 13 I.C.C.L.R. 452.

<sup>19</sup> See supra note 10.

<sup>20</sup> *Id.*

arrival might impose only limited and indistinctly applicable set of conditions on incoming companies who wish to be governed by its company laws.<sup>21</sup>

After SEVIC case, the issue of cross-border merges seemed to be solved. However, relevant legislation has been adopted later despite the CJEU concluding that right to cross-border merger<sup>22</sup> could be relied upon directly without the need to enact secondary instruments of EU law. No directive on cross-border transfer of seat with attending change of applicable law has been adopted yet<sup>23</sup>, and, after *Cartesio*, such step does not seem necessary indeed. However, the same logic as in the issue of cross-border mergers could indeed be used in order to argue on the necessity of enacting secondary legislation to facilitate freedom of establishment by other means<sup>24</sup> - and by transfers of seat with attending change of applicable law in particular. The issue of transfers of seats without change of applicable law where limited, restricted or prohibited by national substantive company laws (as opposed to some aspects of the tax law motivated transfers of seat already addressed by the CJEU<sup>25</sup>), for now remains to be solved.

## **Conclusion**

In conclusion, a Member State of arrival can apply neither its substantive nor private international rules for determination of legal personality of a foreign company coming from another Member State in so far as they would refer to other criteria than those required by the state of departure.<sup>26</sup> However, such obligation of recognition depends exclusively on the

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<sup>21</sup> For further discussion see also Beuerle C. G., Schillig, M. *The Mysteries of Freedom of Establishment After Cartesio*. 59 ICLQ (2010) 303 - 323.

<sup>22</sup> Directive 2005/56/EC of the European Parliament and of the Council of October, 26, 2005, on cross-border mergers of limited liability companies, [2005] O.J. L310/1.

<sup>23</sup> Despite the pending proposal of the 14th Directive, see more supra note 3. See also Report and Motion for European Parliament Resolution with recommendations to the Commission on the cross-border transfer of the registered office of a company, 2008/2196(INI), PE 414.360v02-00, A6-0040/2009, Commission{JURI}Committee on Legal Affairs.

<sup>24</sup> See the basis for adopting of so called Company law directives in article 47, paragraph 2, letters f) and g) TFEU. Council Regulation (EC) No 1435/2003 of July 22, 2003, on the Statute for a European Cooperative Society (SCE), [2003] O.J. L 207/1. Council Regulation (EC) No 2157/2001 of October 8, 2001, on the Statute for a European company (SE) [2001] O.J. L 294/1. Council Regulation (EEC) No 2137/85 of July 25, 1985, on the European Economic Interest Grouping (EEIG), [1985] O.J. L 199/1. See also the Directive supra note 22.

<sup>25</sup> See in particular on the issue of abuse of law the cases *Centros*, *Cadbury Schweppes*, *Lasteyrie du Saillant* and *Marks and Spencer* supra note 10.

<sup>26</sup> See e.g. P. J. OMAR, "Centros, Uberseering and Beyond: A European Recipe for Corporate Migration: Part 2", (2005) 16 I.C.C.L.R. 23. P. DYRBERG, "Full Free Movement of Companies in the European Community at Last", (2003) 28 *E.L. Rev.* 535.



position of the Member State of departure towards cross-border transfer of seats (either primary or secondary) of its companies where there is no change of applicable law. It seems that there is no right to enter if there is no right to leave, unless enforced directly by relying on EC law in cases of transfers with change of applicable law. It is however submitted, that the text of articles 49 and 54 could indeed be interpreted broadly so as to include a right to rely on freedom of establishment even in situations which have not been yet confirmed in the case law of the CJEU (notably transfer of seat abroad without change of applicable law where substantive company law of the state of departure imposes restrictive conditions). It seems that some of the bold proposals made by the Advocate Generals<sup>27</sup> will simply have to wait a little longer so as to be put into practice.

**Literature:**

- Beuerle C. G., Schillig, M. The Mysteries of Freedom of Establishment After *Cartesio*. 59 ICLQ (2010) 303 - 323.
- Dyrberg, P., "Full Free Movement of Companies in the European Community at Last", (2003) 28 E.L. Rev. 528 - 537.
- Guillaume, F., *Lex societatis: principes de rattachement des sociétés et correctifs institués au bénéfice des tiers en droit international privé suisse*. Etudes suisses de droit international; vol. 116, Schulthess, Zürich, 2001, 383 p.
- KPMG European Business Centre, Study on Transfer of the Head Office of a Company From One Member State to Another, Luxembourg: Office for Official Publications of the European Communities 1993, 66 p.
- Mucciarelli, F. M., "Companies' Emigration and EC Freedom of Establishment", 2007. Available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1078407](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1078407) [27/4/2010].
- Novotna, P. Connecting Criteria After *Cartesio*. In Dávid R., Neckář J., Sehnálek D., (Editors). *COFOLA 2009: the Conference Proceedings, 1st edition*, Brno: Masaryk University, 2009. ISBN 978-80-210-4821-8.

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<sup>27</sup> Note the differences in conclusions reached by Advocate Generals and final decisions of the CJEU in establishment cases - in particular in *Daily Mail* and *Cartesio* supra note 10.

- Omar, P. J., "Centros Redux: Conflict at the Heart of European Company Law", (2002) 13 I.C.C.L.R. 448 - 454.
- Omar, P. J., "Centros, Uberseering and Beyond: A European Recipe for Corporate Migration: Part 2", (2005) 16 I.C.C.L.R. 18 - 27.
- Ringe, W. G., "No Freedom of Emigration for Companies?", (2005) 16 EBLR 621 - 642.
- Roth, W. H., "From Centros to Überseering: Free Movement of Companies, Private International Law, and Community Law", (2003) 52 I.C.L.Q. 177 - 208.
- Roth, W. H., "Recognition of Foreign Companies in Siège Réel Countries: A German Perspective", in J. Wouters, H. Schneider (ed.), Current Issues of Cross-Border Establishment of Companies in the European Union, METRO, Antwerpen, MAKLU, 1995, p. 29-46.
- Simonart, V., La personnalité morale en droit privé comparé. L'unité du concept et ses applications pratiques – Allemagne, Angleterre, Belgique, Etats-Unis, France, Italie, Pays-Bas et Suisse. Collection de la faculté de droit de l'Université libre de Bruxelles, Bruylant, Bruxelles, 1995, 670 p
- Vaccaro, E., "Transfer of Seat and Freedom of Establishment in European Company law", (2005) 16 EBLR 1348 - 1365.
- Case C-208/00, Überseering BV v. Nordic Construction Company Baumanagement GmbH (NCC), [2000] ECR I-9919.
- Opinion of Mr Advocate General La Pergola delivered on 16 July 1998, in case C-212/97, Centros Ltd v Erhvervs- og Selskabsstyrelsen, [1999] ECR I-01459.
- Case 205/84 Commission v Germany [1986] ECR 3755.
- Opinion of Mr Advocate General Tizzano delivered on 7 July 2005 in SEVIC Systems AG, [2005] ECR I-10805.

- Opinion of Mr Advocate General Poiares Maduro delivered on 22 May 2008, in case C-210/06, CARTESIO Oktató és Szolgáltató bt [2008] ECR I-9641.
- Case C-55/94, Gebhard , [1995] ECR I-4165
- Case C-210/06 CARTESIO Oktató és Szolgáltató bt [2008] ECR I-9641.
- Case C-81/87, The Queen v H. M. Treasury and Commissioners of Inland Revenue, ex parte Daily Mail and General Trust plc., [1988] ECR 05483
- Case C-446/03, Marks & Spencer plc v David Halsey (Her Majesty's Inspector of Taxes), [2005] ECR Page I-10837
- Case C-411/03, SEVIC Systems AG, [2005] ECR I-10805
- Case C-208/00, Überseering BV v Nordic Construction Company Baumanagement GmbH (NCC), [2002] ECR I-09919.
- Case C-212/97, Centros Ltd v. Erhvervs- og Selskabsstyrelsen, [1999] ECR I-01459
- Case C-9/02, Hughes de Lasteyrie du Saillant v Ministère de l'Économie, des Finances et de l'Industrie, [2004] ECR I-02409
- Case C-196/04, Cadbury Schweppes plc and Cadbury Schweppes Overseas Ltd v Commissioners of Inland Revenue, [2006] ECR I-07995
- Treaty Establishing the European Community, [2006] OJ C 321E/37
- Treaty on the Functioning of the European Union [2010] OJ C 83/13
- Council Regulation (EC) No 44/2001 of December 22, 2000, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, [2001] O.J. L12/1.
- Council Regulation (EC) No 1435/2003 of July 22, 2003, on the Statute for a European Cooperative Society (SCE), [2003] O.J. L 207/1.
- Council Regulation (EC) No 2157/2001 of October 8, 2001, on the Statute for a European company (SE) [2001] O.J. L 294/1.
- Council Regulation (EEC) No 2137/85 of July 25, 1985, on the European Economic Interest Grouping (EEIG), [1985] O.J. L 199/1.

- Directive 2005/56/EC of the European Parliament and of the Council of October, 26, 2005, on cross-border mergers of limited liability companies, [2005] O.J. L310/1.
- Report and Motion for European Parliament Resolution with recommendations to the Commission on the cross-border transfer of the registered office of a company, 2008/2196(INI), PE 414.360v02-00, A6-0040/2009, Commission{JURI} Committee on Legal Affairs.

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