m.shambartas
ADVOCATES & LEGAL CONSULTANTS

ASPECTS OF CORPORATE LAW AND INSOLVENCY WITHIN THE EUROPEAN COMMUNITY

"Cross-border mobility is secured by the four freedoms of the Treaties: the freedom of establishment, of services, of goods, and of capital. Within company law, the freedom of establishment is particularly important. However, in respect of companies the freedom of establishment remains incomplete and in need of reform." (European Commission, Internal Markets and Services, Report of the Reflection Group on the Future of EU Company Law (5 April 2011))

Introduction

The European Community aiming to create an integrated single market in the area of companies started harmonizing the Company law through Treaties and Directives. Particularly, this aim was purported to be achieved by allowing and facilitating the Freedom of Establishment (FoE) in respect of companies.[1] It has been said that what makes the right to FoE so important for companies is that it gives to the incorporators the capacity to choose freely between various company law regimes and enables them to go for the form and regulatory environment that is the most suitable for their needs.[2] However, as will be understood throughout the essay the enjoyment of the right to FoE will be subject to various restrictions imposed by the law of the Member States (MS) which apply to the formation of each company (Co). Each MS may have a different view on how the companies may be transferred form one MS to another, therefore on how they will be benefited from the right and this will obviously create an inconsistency in the exercise of the right of FoE.[3]

Coming to the area of Insolvency law and the right of companies for cross border mobility, things are even more difficult comparing with Company law.[4] Although corporate entities, within the scope of the FoE right and the concept of cross-border movements in Europe, are supposed to go 'forum shopping' in order to benefit from another insolvency law regime[5] things are not so simple since there is no harmonisation in relation to insolvency law of the member states[6]. Instead the European Union (EU) provides for an instrument that deals exclusively with the issue of insolvency namely the European In-

[1] EU, Companies Incorporation Law' <http://www.legalnorms.com/freedom_of_establishment.php > Accessed 15 May 2012
[2] Gerner-Beuerle,C and Schillig, M 'The Mysteries of Freedom of Establishment after Cartesio' (2010) 59(2) ICLQ 303,322.
[3] Omar, P 'Centros, Uberseering and beyond: European recipe for corporate migration:Part1' 2004 15(12) ICCLR 398, 403.
[4] Ringe, WG,' Forum shopping under the EU Insolvency Regulation' (2008) 9(4) EBOR 579, 580.
[5] Ibid
[6] Ibid

solvency Regulation[7] (EIR).[8] EIR generally impedes the enjoyment of the FoE right as it generally provides that forum shopping should be avoided in order to have proper functioning of the internal market.[9]

This essay will focus on examining the extent that companies formed under the law of a MS will be able to enjoy the benefits of the FoE rights in relation to both company and insolvency law.[10]

Freedom of Establishment Right.

According to Article 49 (ex-article 43 EC Treaty) of Treaty on the Functioning of the European Union (TFEU), it is prohibited to restrict nationals of a MS to enjoy the right of FoE in the territory of another MS. Similarly Article 54 (ex-article 48 EC Treaty) TFEU provides that companies formed in accordance with the law of a MS and which have their registered office, central administration or principal place of business within the Community shall be treated in the same way as natural persons who are nationals of MS.

Company Law-Theories in Legal Recognition of Companies

Companies are creatures of the law and therefore the legal recognition of a foreign Co differs in each MS.[11] There are two opposing theories in recognising a Co as having a valid legal personality and are commonly referred to as the 'real seat' theory and the 'incorporation theory'.[12]

The former theory provides that the law that applies to a Co's relationships is the law of the country where the Co has its real seat i.e where its management and control centre

[7] Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, OJ 2000 L 160/1, (will be referred as EIR)
[8] Ringe (n 4).
[9] EIR, Recital 4.
[10] Gerner-Beuerle and Schillig 303.
[11] EU, Companies Incorporation Law http://www.legalnorms.com/freedom_of_establishment.php (n 1)
[12] (Ibid)

are.[13] The incorporation theory provides that the Co is ruled by the law of the country it was duly established.[14] This implies that those managing the Co are free to choose which legal system applies to their Co.[15] Where real seat theory applies, cross border mobility in Europe may be frustrated as cross borders transfer require a compulsory change in the proper law of the Co.[16] This will lead us to the conclusion that FoE right and therefore the single market is likely to suffer from an excessively rigid application of the 'real seat' theory.[17]

Daily Mail

In *Daily Mail*[18] the main issue regarding the FoE was to what degree companies formed under the law of MS are able to enjoy the right to FoE.[19] The actual issue in this case was whether provisions of a MS regarding incorporation and which rendered the transfer of a Co impossible were considered to be an abuse of the right to FoE.[20]

This case concerned a Co incorporated under UK law and which wished to transfer its central management to Netherlands for the purpose of avoiding English tax law[21] The United Kingdom objected so as to prevent the Co from circumventing the law of MS.[22] The ECJ stated that a member state has the right to prevent a Co from moving its central administration without breaching article 54 of the EC Treaty (European Community Treaty) .[23] It was stated that articles 43, 48 of the EC Treaty *'cannot be interpreted as conferring on companies incorporated under the law of Member States a right to transfer their central management and control and their central administration to another MS while retaining their status as companies incorporated under the legislation of the first*

[13] Rammeloo, S *Corporations in Private International Law, A European Perspective* (OUP, New York 2001) 9.
[14] Ibid 16.
[15] Ibid.
[16] Ibid 15.
[17] Ibid
[18] Case 81/87 *The Queen v HM Treasury and Commissioners of Inland Revenue, ex parte Daily Mail and General Trust plc* [1989] Q.B. 446
[19] Gerner-Beuerle and Schillig (n 2) 303.
[20] Ibid 305.
[21] Daily Mail 446-447.
[22] Ibid
[23] Ibid 456.

MS'.[24] This, as explained, was due to the fact that companies, unlike natural persons, are creatures of the law and more particularly creatures of their national law.[25]

It is clear that companies which wish to transfer their principal establishment to other MS than that they are initially incorporated may be subject to very different legislative provisions in jurisdictions within the EU, therefore creating an inconsistency in the effective exercise of the right to FoE.[26] In the case where a MS is restricting a Co in transferring its business to other MS the key question is whether such measure which seeks to limit the exercise of the Art.54 acts in accordance with the justified but strictly controlled exceptions to that right.[27] It is stated that any restraining of the FoE must be purposive and in full awareness of the aims of the Treaty to promote a single market, of which the four freedoms are fundamental elements.[28]

Centros

The case of *Centros*[29] involved a Danish couple who had set up and registered a Co in UK and wished to operate a branch in Denmark.[30] Registration of the branch was denied by the Danish authorities on the grounds that the branch amounted to a principal establishment and that the use of the right of establishment was merely a way to circumvent Danish rules on minimum capital amounts. [31] The issue was referred to the ECJ where it was held that it is contrary to the right of FoE for a MS to reject the registration of a branch of a Co since the situation where a Co is formed under the law of the MS where it has his registered office and later moves to set up a branch in another MS was a fact-

[24] Ibid 460.
[25] Ibid.
[26] Omar (n 3) 403.
[27] Ibid.
[28] Ibid.
[29] Centros Ltd. v Erhvervs- og Selskabsstyrelsen, [2000] Ch. 446
[30] Ibid.
[31] Ibid 447.

situation that definitely falls within the scope of EU law.[32] It was immaterial that *Centros* have been formed in the first MS with the purpose of establishing later itself in another MS where its business was about to occur.[33] That is to say, that the express purpose of circumventing Danish legislation did not mean that the formation of a branch could not attract the protection of the FoE provisions. [34] However, it was acknowledged that MS are entitled to take measures to prevent their nationals from trying to improperly circumvent national legislation,[35] provided that any assessment by a national court should be in accordance with the overriding objectives of the EC Treaty.[36] The ECJ finally concluded that the right to form a Co and branches of that Co in other member states was an inherent characteristic of the Single Market and a legitimate exercise of the freedoms of the EC Treaty.[37]

Comments on *Centros* and comparison with *Daily Mail*

Centros has caused much dispute between academics due to the contrasting decision with the Daily Mail.[38] After the Daily Mail decision, it was thought that the evasion of national law was incompatible with the FoE, while the decision in *Centros* seems to disprove such conclusion.[39] Additionally, another point of controversy is the argument that the judgement in *Centros* implies an end to the real seat theory.[40] However the ECJ did not stated expressly that the real seat theory is incompatible with the EC Treaty[41].

[32] Ibid 479.
[33] Ibid.
[34] Ibid.
[35] Ibid 480
[36] Ibid 460.
[37] Ibid 481
[38] EU, Companies Incorporation Law http://www.legalnorms.com/freedom_of_establishment.php (n 1).
[39] Ibid
[40] Ibid
[41] Ibid.

The ECJ distinguished the *Daily Mail* from *Centros* by telling that the *Daily Mail* was concerned with the transfer of the centre of administration to another MS, not with a Co whose seat of administration was transferred.[42]

Additionally, the *Centros* judgment provoked a discussion in Germany which stemmed from the fact that in a setting similar to *Centros,* German courts have rejected the registration of a branch however on a rather different legal basis than that used by the Danish authorities.[43] The fact that German law uses the centre of administration i.e the real seat of the Co as the conclusive connecting factor for selecting the legal order to be applied to the Co meant that, in a case where the founders of a Co intend to start their business in Germany, with the centre of administration in Germany, German Co law will become applicable.[44]

Roth[45] states that on the basis of the approach taken by the ECJ in *Centros* one can easily argue that the German conflicts rule is now in trouble.[46] As Omar[47] and other commentators have stated, *Centros* was mainly interpreted as the 'death knell' of the real seat doctrine, even though no mention was made in the judgment of that doctrine itself.[48] Roth also argues that although the Court has approached the legal issue as one of secondary establishment[49] the *Centros* Co had de facto attempted to set up its centre of administration in Denmark and therefore *Centros* can be interpreted to deal with a de facto transfer-of-seat case. [50] He points out that in such a situation the real seat doctrine will represent greater impediment to FoE than the Danish authorities do and this leads to

[42] Centros (n 29)
[43] Roth, 'From Centros to Ueberseering : Free Movement of Companies, Private International Law and Community Law' (2003) 52 ICLQ 177,178.
[44] Ibid 179.
[45] Roth (n 43).
[46] Ibid.
[47] Omar (n 3)
[48] Omar (n 3) 406.
[49] Centros (n 29) 481.
[50] Roth (n 43) 179.

the conclusion that, Community law has to be applied in a uniform fashion; for example what is forbidden for Germany cannot be allowed for Denmark.[51]

The judgment in *Centros* therefore, by pointing the end of the real seat theory made it clear that jurisdictions could not seek to apply their own national law to foreign companies which would have the effect of re-qualifying the nationality of a Co that was lawfully formed in another jurisdiction. [52] *Centros* indicated that domestic legal principles, which are mandatory for domestic companies, cannot be imposed wholesale on companies that come from other jurisdictions.[53]

Uberseering [54]

ECJ confirmed that MS must recognise companies incorporated in other MS without further formality and without any need for the MS to enter into conventions concerning the mutual recognition of companies.[55] In Uberseering the Co had been incorporated in the Netherlands but came to conduct all of its activities in Germany and all its shareholders were German.[56] When the Co tried to sue on a civil matter in Germany it was denied locus standi on the basis that it had no legal capacity in Germany not having been incorporated there. [57]The ECJ held that the failure to recognise the Co's standing and effectively to require its reincorporation in Germany was an infringement of the FoE and incompatible with the then articles 43 and 48 of the EC treaty.[58]

Cartesio

[51] Ibid
[52] Omar (n 3) 406.
[53] Ibid
[54] Überseering BV v Nordic Construction Co Baumanagement GmbH (NCC) [2005] 1 W.L.R. 315
[55] Uberseering
[56] Ibid 315
[57] Ibid
[58] Ibid.

According to Gerner-Beuerle and Schillig[59] the scope of the right to FoE for companies remained fairly uncertain even after the *Cartesio*[60] case.[61]*Cartesio* introduces new restraints and complexities which will render FoE for companies an ineffective tool for the establishment of the Single Market[62]

Cartesio was a Co formed and registered under Hungarian law and wanted to transfer its registered office to another MS.[63] When he applied to register its operational headquarters in Italy the national court rejected the application on the ground that Hungarian law did not allow companies to transfer their operational headquarters to another MS while they maintain their legal status as a Co governed by Hungarian law.[64] The issue was whether articles 49, 54 TFEU (ex-articles 43, 48 EC) are to be interpreted as to preclude national legislation from preventing a Co from transferring its operational headquarters to another MS while it retains the status as a Co governed by the law of the MS of incorporation. [65]

It has been assumed that Hungarian law is grounded in the 'real seat' theory and since under Hungarian law, the place of a Co's operational headquarters theoretically coincide with its place of incorporation the Hungarian Co law will forbid the transfer of a Hungarian legal person to the territory of another MS.[66] ECJ stated that the Article 54 TFEU (ex-article 48 EC) takes into account that national laws differ generally as to the connecting factor required for incorporation.[67] In the case where there is absence 'of a uniform Community law regarding *the companies which may enjoy the right of establishment on the basis of a single connecting factor determining the national law applicable to a Co'*[68]

[59] Gerner-Beuerle and Schillig (n 2)
[60] Cartesio Oktató és Szolgáltató bt (a limited partnership) [2009] Ch. 354.
[61] Ibid.
[62] Ibid.
[63] Ibid
[64] Ibid.
[65] Ibid 367.
[66] Ibid 366-367.
[67] Cartesio (n 60)
[68] Ibid 386.

and there is a question as to whether a certain Co has the right to FoE it *can only be resolved by the applicable national law.'* [69] Therefore as Gerner-Beuerle, and Schillig put it '*the definition of the connecting factor (that determines the applicable law) is a matter for national law and immune from FoE interference in the same way as are domestic substantive and procedural rules on Co formation*.[70] Nevertheless, they also state that the ECJ being consistent with the Court's case law on the market freedoms in general, has extended the ambit of FoE so as to include national measures which are 'liable to hinder or make less attractive' the exercise of FoE.[71]

What is understood from *Cartesio* is that, whether a Co and its owners and managers can rely on FoE seems to be essentially linked to, and dependent upon, the structure of the conflict of laws rules adopted by the affected Member States, and their fundamental Co laws.[72]

Insolvency Law

The mechanism by which a Co may choose the insolvency regime of its preference or the ability to change its original insolvency option to an alternative and more favourable one is called 'forum shopping'.[73] As will be understood below, 'forum shopping' is substantially confined by the application of the provisions of EIR, which determine which is the applicable insolvency regime in each case. According to Article 3(1) of EIR, the main insolvency proceedings will be held under the jurisdiction of the MS in which the debtor (the Co) has the centre of its main interest (COMI).[74] Article 4 of the EIR provides that the law that will apply in insolvency proceeding will be that of the MS where such proceedings where opened. Under the EIR provisions both the forum and the applicable law will

[69] Ibid.
[70] Gerner-Beuerle and Schillig (n 2) 310.
[71] Ibid.
[72] Gerner-Beuerle and Schillig (n 2) 313.
[73] McCormack, G 'Jurisdictional Competition and Forum shopping in Insolvency proceedings' (2009) 68(1) CLJ 169, 178.
[74] EIR, Article 3(1), first sentence of the EIR.

be determined by the COMI[75], that is to say COMI will be the test in cross border insolvency situations, for determining the jurisdiction under which the main insolvency proceeding will take place. [76] Ringe[77] states that '*a successful forum shopping in the context of insolvency law will depend upon the debtor's ability to move this very COMI from one to another jurisdiction'*. [78]

The Meaning and Effectivenes of COMI

In the EIR there is not a specific definition regarding the concept of COMI[79] apart from that there is a rebuttable presumption that the COMI is in the MS where the registered office of the Co is located.[80] In addition to that, the Recital 13 of the Regulation provides that '*The centre of main interest should correspond to the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties.'*[81]

The issue of COMI interpretation has been considered by the ECJ in a case called ***Eurofood***.[82] In this case main proceedings for insolvency were opened against an Irish Co (Eurofood) which was wholly owned by an Italian Co.[83] Eurofood was registered in Ireland but it had no offices in Ireland and all the important decision were carried out in Italy.[84] The ECJ affirmed that main proceedings for insolvency should take place in Ire-

[75] Ringe (n 4) 581.
[76] Mevorach, 'Jurisdiction In Insolvency: A Study Of European Courts' Decisions' JPIL (2010) 6(2) JPIL 327.
[77] Ringe (n 4)
[78] Ibid. 581
[79] Mevorach (n 76) 327.
[80] EIR, Article 3(1), second sentence of the EIR
[81] EIR, Recital 13.
[82] Eurofood ISFC Ltd [2006] BCC 397.
[83] Ibid 397.
[84] Ibid.

land. [85] It was stated that the registered office presumption will be rebutted only by objective factors ascertainable by third parties which show a situation other than that which location to the registered office is deemed to reflect, such as if the Co did not carry out any business in the territory where the registered office is located.[86] In the case where a Co carries on its business in the MS where the registered office is located, the mere fact that its economic decisions are controlled by the parent Co in another MS is not enough to rebut the presumption of the EIR.[87]

In a recent case called ***Interedil*** [88] the ECJ stated that the debtor Co's COMI had to be determined by attaching more importance to the place where the Co has its central administration, as will be established by objective factors which will be ascertainable by third parties.[89] Where a Co's central administration was not in the same place as its registered office, the presence of Co assets in a MS other than that in which the registered office was located could not be regarded as sufficient factor to rebut the presumption unless a complete assessment of all the relevant factors and ascertainable by third parties were capable to establish that the Co's actual centre of management and supervision and of the management of its interests was located in that other MS.[90]

Mevorach[91] states that *Eurofood* judgment is not particularly instructive on the meaning of COMI,[92] although it may have served to make stronger the presumption and may suggest a move towards a statutory seat approach.[93]

[85] Ibid 410
[86] Ibid
[87] Ibid
[88] Interedil Srl v Fallimento Interedil Srl [2011] BPIR 1639.
[89] Ibid [59]
[90] Ibid.
[91] Mevorach (n 76).
[92] Ibid 332.
[93] Ibid 332.

Nevertheless, statistics[94] show that the MS courts are still likely to rebut the presumption in the cases of jurisdictional conflicts even after the judgement in *Eurofood* which arguably served to make stronger the presumption of the registered office.[95] One of the main factors that were used to rebut the presumption is the operational head office factor[96] which suggests that COMI as a standard is based on the real seat theory.

Ringe also argues that *Eurofood* is a case which should clarify the COMI criteria but after its judgement the courts across the EU deviate as to the interpretation of COMI.[97] He also states that the vagueness of the COMI test, including the uncertainty as to the conditions for rebutting the presumption, is likely to cause legal uncertainty both for the Co and for third parties who are in business relations with the Co.[98]

McCormack[99] suggests that COMI is poor performer as it makes decision on the applicable jurisdiction difficult to predict and as a consequence, uncertainties in the market place will be created.[100] Mevorach also argues that that the COMI standard is vague and suggests that the fact that the jurisdictional standard does not refer only to the registered office or that the presumption is not as strong so as to suggest with certainty that the registered office is the jurisdictional standard causes uncertainty and unpredictability.[101] Eidenmuller[102] suggests that the COMI standard is fuzzy and very fact-sensitive and as a consequence it allows manipulation of facts which might work to the detriment of vulnerable creditors.[103]

[94] Data and Statistic as laid down in Mevorach Article (n 76)
[95] Mevorach (n 76)
[96] Ibid.
[97] Ringe (n 4) 613
[98] Ibid.
[99] McCormack (n 73)
[100] Ibid 196.
[101] Mevorach (n 76) 334.
[102] Eidenmuller,' Free choice in international company insolvency law in Europe' (2005) 6(3) EBOR, 423.
[103] Eidenmuller 431.

Compatibility of COMI with the Freedom of Establishment

Ringe lays down the home state principle, which provides that every Co incorporated in a MS has to be recognised and cannot be made subject to additional ruling in the host MS.[104] He states that in order to see whether COMI standard obstructs the exercise of corporate FoE the test is whether it renders the establishment in another MS less attractive.[105] Ringe stated that when a Co chooses establishment in a MS other than the state of its incorporation, it is needed to adjust to the different insolvency law and probably take measures in order to comply with this different law.[106]

This therefore suggests the application of the COMI standard is not compatible with the FoE. Ringe also suggests that since company law and insolvency law are inseparable and satisfy the same objective they should both equally benefit from the FoE right.[107] However, although a Co registered in England for example is able under the FoE concept to bring its entire business in Germany and still be subject to English law, the EIR does not allow the same standard for insolvency law and this he suggests is contradicted to the EC Treaty.[108]

As already, mentioned there is fuzziness and unpredictability surrounding the COMI standard mainly regarding the conditions to rebut the presumption which will cause uncertainty both for the Co and for third parties who are in business relationship with it.[109] Rebutting the presumption of the registered office, means that the forum and applicable

[104] Ringe (n 4) 610.
[105] Ibid.
[106] Ringe (n 4) 612.
[107] Ringe (n 4) 609-610.
[108] Ringe (n 4) 613.
[109] Ibid.

law will follow the place where the head office (based on the real seat theory) of the Co is located.[110] Real seat as a doctrine has been criticised on the ground that as a theory impedes the enjoyment of the right of FoE.[111] The emphasis on the 'head office' (real seat) gives lesser effect to the incorporators to choose the law under which insolvency proceeding of their Co will be held.[112] Omar also argues that sticking to the real seat concept, will lead to the frustration of the choice that was firstly exercised by incorporators in respect of the proper law of the Co[113] Eidenmuller shares the same view as he stated that the EIR seems to prevent forum shopping in international insolvencies[114] as the COMI standard does not give freedom to companies to choose the jurisdiction under which the insolvency proceedings will take place.[115]

It is submitted that since COMI is a real seat standard indicates incompatibility with the FoE as the real seat theory was generally thought to present obstacles to the enjoyment of the right of FoE.[116]

Possible Alterations to achieve compatibility with EU law.

It has been suggested that the idea of rebuttable presumption should be abolished and instead a connection between the jurisdiction and the applicable law to the particular MS of incorporation should be achieved.[117] Therefore Article 3(1) of EIR will be amended to state that the Co shall have jurisdiction to open insolvency proceedings where its COMI is situated.[118]

[110] Ringe (n 4) 614.
[111] Rammelloo (n 13) 14.
[112] Mevorach (n 76) 332.
[113] Omar (n 3) 401.
[114] Eidenmuller(n 102) 447.
[115] Ibid 431.
[116] Ramelloo (n 13) 13.
[117] Ringe (n 4) 614.
[118] Ibid

Moreover, it has been suggested that the choice of law rule in Article 4 of EIR should be reformed so as that the applicable law would be that of the MS of origin.[119] It will be amended to state that the applicable law to insolvency proceeding will be that of the MS within territory of which the Co's registered office is situated.[120]

Range argues that apart from the fact that this new approach would have the advantage of a predictable jurisdiction venue and certainty as to the applicable insolvency law he also confirms that both solutions would be acceptable from an EC law perspective since they would '*conform better with the Treaty, [and] they would also harmonise the applicability of company law and insolvency'.* [121]

Conclusion

It can be argued that, despite the provisions of the Treaty, and the high expectations of EU law in facilitating the cross border Co mobility the outcome for the time is being poor.[122] Full FoE for a Co is not that possible due to the fact that the domestic laws of a MS protecting the interests of shareholders and creditors differ in a significant degree from one MS to another and this lead to obstacles in relation to the development of an integrated single market[123]

Regarding Company law and the transfer of a Co's business in another MS, on the one hand, in *Centros*, it was established that companies incorporated in EU member states have the right to carry out their business in another MS provided that they would be recognized by the MS in which they want to establish their business.[124] On the other hand it was held that restrictions by the national law of a MS on transferring the centre of ad-

[119] Ibid
[120] Ibid
[121] Ibid
[122] Rammeloo, (n 13) 9.
[123] Maitland-Walker,J *Guide to European Co laws* (Sweet and Maxwell 1993) 471.
[124] Centros (n 29)

ministration of a Co formed in that MS to another MS would not be incompatible with the FoE right provided under EU law. [125] Therefore although article 49 and 54 of provide FoE and entitles companies to choose a corporate form of their preference the exercise of the FoE right is subject to restrictions.

Concerning Insolvency law, there are also great impediments to the enjoyment of the right of FoE as the companies are not free to choose the applicable insolvency law re-gime. [126] Insolvency forum shopping faces negative tendencies mainly from the way the current COMI standard is applied[127]

Concluding, it seems that the fundamental freedoms of the Treaty and particularly FoE are seriously violated with the current law that applies both in company and insolvency law and therefore a reform should take place in order to create more legal certainty and enable more corporate mobility within the EU.[128]

[125] Cartesio (n 60)
[126] Eidenmuller (n 102) 424.
[127] Range(n 4) 619.
[128] Ibid 580.

m.shambartas
ADVOCATES & LEGAL CONSULTANTS

30, COSTA ANAXAGORA,
OFFICE 102,
2014 NICOSIA, CYPRUS
COURT BOX 403

T. +357 22007888
M. +357 99475521
F. +357 22028808
S. marinosshambartas

Bibliography

Primary Sources

Cases

- Cartesio Oktató és Szolgáltató bt (a limited partnership) [2009] Ch. 354
- Case 81/87 *The Queen v HM Treasury and Commissioners of Inland Revenue, ex parte Daily Mail and General Trust plc [1989] Q.B. 446*
- Centros Ltd. v Erhvervs- og Selskabsstyrelsen, [2000] Ch. 446
- Eurofood ISFC Ltd [2006] BCC 397
- Interedil Srl v Fallimento Interedil Srl [2011] BPIR 1639
- Überseering BV v Nordic Construction Co Baumanagement GmbH (NCC) [2005] 1 W.L.R. 315

Legislation

- Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, OJ 2000 L 160/1 (EIR)
- European Community Treaty.
- Treaty on the Functioning of the European Union.

Secondary Sources

Books

- Maitland-Walker,J *Guide to European Co laws* (Sweet and Maxwell 1993)
- Rammeloo, S *Corporations in Private International Law, A European Perspective* (OUP, New York 2001)

Articles

- Eidenmuller,' Free choice in international company insolvency law in Europe' (2005) 6(3) EBOR, 423.
- Gerner-Beuerle,C and Schillig, M 'The Mysteries of Freedom of Establishment after Cartesio' (2010) 59(2) ICLQ 303
- McCormack, G 'Jurisdictional Competition and Forum shopping in Insolvency proceedings' (2009) 68(1) CLJ 169
- Mevorach, 'Jurisdiction In Insolvency: A Study Of European Courts Decisions' JPIL (2010) 6(2) JPIL 32
- Omar, P 'Centros, Uberseering and beyond: European recipe for corporate migration:Part1' 2004 15(12) ICCLR 398
- Ringe, WG,' Forum shopping under the EU Insolvency Regulation' (2008) 9(4) EBOR 579
- Roth, 'From Centros to Ueberseering: Free Movement of Companies, Private International Law and Community Law' (2003) 52 ICLQ 177

Other

EU, 'Companies Incorporation Law'

<http://www.legalnorms.com/freedom_of_establishment.php > Accessed 15 May 2012