



THE LONDON SCHOOL
OF ECONOMICS AND
POLITICAL SCIENCE



European
Institute

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LSE Consulting presentation: Study on the Law Applicable to Companies, prepared for DG Justice

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#LSEBrexit

Corporate Mobility and the Harmonisation of Private International Company Law

Edmund Schuster, LSE Law

Overview

- The Project: LSE Study on the Law Applicable to Companies in the European Union
- The role of LSE Law and LSE Consulting
- Subject matter of the study - and why (we think..) it matters
- Our main findings

Our Project

- **European Commission tender**
 - Study on the law applicable to companies
 - Aim? Possible harmonisation of conflict of laws rules - “Rome V Regulation”
 - A pre-Brexit project
- **Our tasks:**
 - Comparative analysis of private international law mechanisms of all 28 EU Member States
 - Empirical analysis: companies making use of freedom of establishment; problems created by uncertainty and lack of harmonization; surveys
 - Proposal for possible harmonisation

Our Project

■ Team

■ Core group:

- Carsten Gerner-Beuerle (LSE)
- Edmund Schuster (LSE)
- Federico Mucciarelli (SOAS & Modena)
- Mathias Siems (Durham)

- Plus international team of more than 25 leading company / PIL experts from 20 institutions across Europe

■ The role of LSE Law & LSE Consulting

- Second project in this space - Directors' duties (2013)
- Leveraging LSE expertise & its extensive European network
- Synergies between academic work and consulting projects - our experience...

Background - A brief primer on international company law in Europe

- **Relevance of company law (or: why should you care?)**
 - Companies are how most economic activity is organised in market economies
 - What is company law (roughly speaking) and what are its effects?
- **National company law vs. EU company law**
 - Harmonisation of EU company law (or the lack thereof)
 - Status quo: most of company law still *national*, unlike e.g. financial regulation
 - Some rules are based on EU Directives, but for the most part, national law dominates
- **Company law and the regulation of businesses more generally**
 - Traditionally, very different approaches across the EU
 - Historic dimension, but also differences in regulatory philosophy.
 - Given the importance of companies in the economy, company law is ultimately a highly "political" field of law
 - Company law as a regulatory tool - examples

Background - A brief primer on international company law in Europe

- **International aspects**
 - EU vs. US
 - Fears of a “European Delaware”
 - *Recognising the role of company law, Member States have traditionally sought to maintain their sovereignty over company law matters*
 - Note also the role of the decision-making process on EU level

- **Court of Justice & corporate mobility**
 - Treaty interpretation by the CJEU
 - See *Centros* etc
 - Result: choice of law - whether Member States like it or not!
 - Effects of choice of law?

Effects of “Mobility”

- A German airline?



- An Italian car manufacturer?



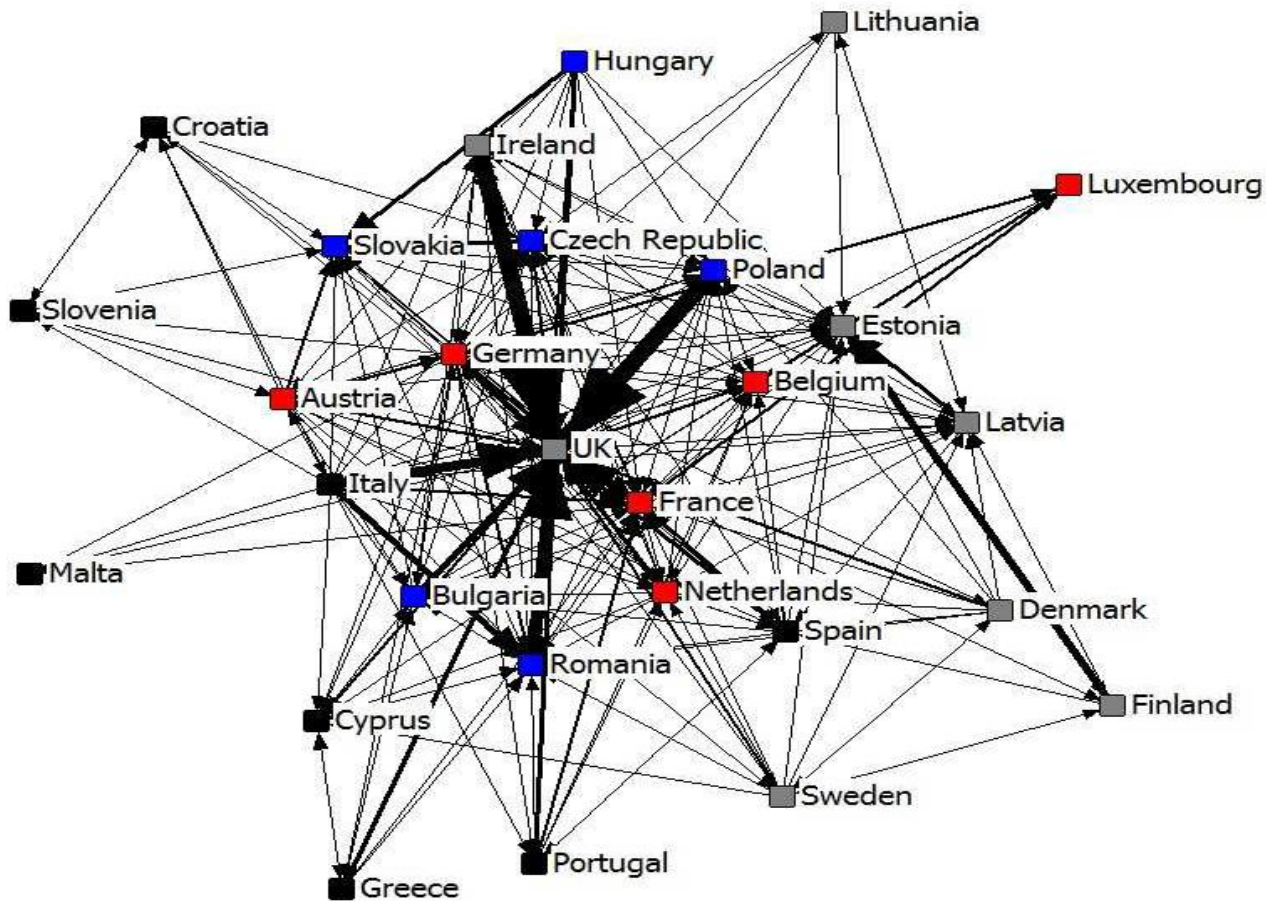
Problems & unsolved questions

- Technical aspects: the role of conflicts of law rules
- Case law solves some problems, but many questions left unanswered:
 - What is company law, *precisely*?
 - Company law vs. insolvency law
 - Company law vs. tort law
 - etc
 - Ill-defined boundaries, significant legal uncertainty
- Potential costs?
 - Regulation over or under-inclusive - significant scope for regulatory arbitrage,
 - but also business-inhibiting “double jeopardy”
 - [See also LSE Study on Director's Duties for EU Commission, 2013]

Findings

- **Empirical analysis**
 - The predominant role of the UK...
 - Over 200,000 inbound incorporations in the UK
 - But total estimated at 420k+

Findings



Findings

- **Significant uncertainty / overlap across all Member States**
 - Often no case law & no clear answers
 - Some Member States actively trying to re-establish their regulatory space through reclassification
- **Functional equivalents make it hard to find reliable solutions**
- **Policy options for the Commission**
 - We provide factual basis for possible EU legislation
 - Also: specific suggestions for possible harmonisation
 - E.g. what about EU 28/27 vs third countries?
 - Align connecting factors across legal areas?
 - Whether & how to define “company law” on the EU level...

Thank you!