Corporate Mobility
and the Harmonisation of Private International Company Law

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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!