REGULATIONS OF INTERNATIONAL ROMANIAN PRIVATE LAW AND "EMIGRATION" OF TRADE COMPANIES IN THE EUROPEAN UNION

Gheorghe BONCIU[1]

Abstract

In this study, the author analyzes the way of establishing the registered office by the companies, taking into account one of the fundamental freedoms of European Union law, namely the free movement of natural persons and legal persons, irrespective of the Member State in which this freedom is to be exercised. freedoms. In the case of legal entities, there are two valences of the right of free establishment: the right of primary establishment and the right of secondary establishment. The right of secondary establishment refers to the freedom of the legal person to set up secondary offices (branches,agencies, etc.) in any Member State of the European Union, and the right to primary establishment offers the possibility of a legal person to transfer his headquarters to the another state without the need for liquidation. While the right to secondary settlement is explicitly guaranteed in European Union law, the right to primary settlement is one of the most controversial and debated topics of European business law, both from the point of view of doctrine and from the point of view. of the case law. The present research tries to establish under what conditions the regulations of Romanian private international law allow the commercial companies to exercise their right to primary establishment in relation to the doctrinal statutes and the jurisprudence of the Court of Justice of the European Union.

Keywords: *legal entity, registered office, free movement, primary law, secondary law, European jurisprudence.*

1. Introductory considerations. The freedom of establishment of company premises in the European Union has as their consequence, the exercise by them of commercial activities, as set out in the object of activity, outside the borders of the state in which they established their premises and the efficient and controlled expansion of companies activity is necessary to be accompanied by the establishment by the parent company, in the territory of the states in which it seeks to penetrate its goods, branches, agencies or subsidiaries [1].

The premises are an element of identification of the legal person, the localization in space, and the dichotomy between the structural approach and the formal point of view constitutes a constant of legal doctrine [2]. Formally, the seat of a company called and the statutory seat shall be the place declared in the constituent act of the legal person concerned and appearing in all official acts of the company. Structurally, the seat of the company is appointed as a real establishment and is represented by the actual place where the central administration of a company and its decision-making bodies is located, irrespective of the place established as its headquarters through of the constituent Act. The actual establishment justifies its usefulness by the idea that the decision-making centre of any company must be as close as possible to the production activity of the company concerned [3]. In turn, the registered office is of relevance at Community level with various roles (the liaison between a company and the system of law of a Member State, the domicile of the company for the purposes of applying the legal provisions of substantive law, criterion for determining the competent jurisdiction).

In reality, we are in the presence of a double determinations: The registered office determines the law applicable to a company (Lex societatis) by the link it establishes between the company concerned and the system of law of the Member State, but at the same time The notion of a registered office shall be determined by the law of the Member State in whose territory the statutory seat has been declared or is the actual establishment. The magnitude of the phenomenon of establishment of the registered office determined at European Union level

[1] Lecturer at the University Constantin Brancoveanu Pitești; e-mail: george_bonciu@yahoo.com

the need to consecrate a right allowing companies to transfer their headquarters from one Member State to another, with the preservation of legal personality.

Starting from this double determination, two great conceptions are shared within the European Union, according to which Lex Societatis is established: The Theory of Incorporation that a company is constituted and operates in accordance with The law of the State in whose territory it declared its statutory office, without relevance the place where it operates itself or the place where the decision-making bodies of the company are located, shared in the community area, among other states, The United Kingdom, Denmark, the Netherlands, Ireland and Spain [4]; and the actual seat theory that the law applicable to a company belongs to the State in whose territory the central government is located, independently of the state in whose territory the statutory seat was declared, shared in the space Community, among other states, by Germany, Belgium, France, Italy [5].

Since 1968, the year of the first directive [6] has followed a remarkable legislative effort in the field of society, having as its starting point compliance with the principle of freedom of establishment, namely with the prohibition of restrictions on freedom of establishment, component of the freedom of movement of persons and services [7].

In the case of legal persons, there are two valences of the right of free establishment: the primary establishment and the right of secondary establishment, irrespective of the Member State in which the exercise of that freedom is intended. The right of secondary establishment refers to the freedom of the legal person to establish secondary offices (subsidiaries, branches, agencies, etc.) [8] In any Member State of the European Union, doctrine [9] In this regard was relatively unified. The problem becomes much more complex in the case of the primary right of establishment which provides the possibility for a legal person to transfer their premises to another State without the need for liquidation, the present research trying to determine under what conditions they can Exercise commercial Companies the right to primary establishment, as a freedom guaranteed by the Treaty of Rome [10].

2. Right of establishment of legal persons. While the right to secondary establishment is explicitly guaranteed in European Union legislation, the right to primary establishment is one of the most controversial and debated topics, both in terms of doctrine and in terms of Jurisprudence [11], and the judgment given in Cartesio [12] was the culmination of a polemic for more than three decades in the doctrine of private international law and European business law.

The right of establishment in cases involving an element of extranicity enshrines a equality of treatment of parent companies against the companies belonging to the host State, a tie highlighted by offering the possibility to establish units Subsidiary in the territory of another Member State under the same conditions as the host State's nationality companies. Nationals of any Member State shall enjoy the right to constitute a company in any of the Member States, the right to establish the registered office or the principal administration in its territory and to exercise the commercial activity contained in Its object of activity through a branch or subsidiary established for that purpose in that state.

The right of establishment presupposes the prohibition of discrimination having as a benchmark the conditions laid down for their own nationals by the law of the country where that establishment is made (Article 18 of the Treaty of Rome), without removing application of national treatment or determine the uniformity of national legislations and local peculiarities. On the contrary, the right of primary establishment is in an area of overlapping of a fundamental freedom of legal persons and of the private international law of the Member States, the complexity of the problem being generated precisely by the heterogeneity of the rules legal (private international law) in the Member States of the Union: Some legal systems facilitate the exercise of the right of primary establishment, while other systems exclude the possibility of exercising this right.

In order to fully exploit the benefit of the right of free movement, the issue of legal personality of companies, regulated differently in Member States [13], must be resolved in advance, since some recognise foreign companies only by virtue of the criterion of the registered office, others take into account, in certain circumstances, the actual establishment, if different from the statutory premises, and others consider the criterion of incorporation which privilege the fulfilment of the formalities of incorporation [14]. Treaty of Rome in art. 54 defines the notion of companies as representing all legal persons which have been constituted in accordance with the rules of civil or commercial law of a Member State, irrespective of whether they are legal persons governed by public or private law, with the sole condition of having a lucrative purpose; thus, the liberal system of incorporation, for the benefit of companies incorporated under the legislation of a Member State, is necessary for companies to have within the community either their statutory seat or central administration, be a main establishment [15].

In the meaning of art. 54, become art. 48, of the treaty, beneficiaries of the right of establishment are civil or commercial law firms, including cooperative associations and other legal persons governed by public or private law, with the exception of companies which do not pursue a lucrative purpose. Account shall be taken of both groups of companies possessing capacity for action and their own assets [16] and mixed economic societies, groups of economic interest, public institutions. In the absence of action at EU level, only non-harmonised national solutions would remain available, SMES would continue to face obstacles to the effective exercise of freedom of establishment and companies would be largely affected by related costs [17].

The main prerogatives of the right of establishment of companies are [18]: a) the right of the founders of a company to decide freely what will be the Member State in which the company will set up and which will be the form it will wear this; (b) the right of associates (shareholders) to decide freely whether the exercise of the company's commercial activity will be carried out in the territory of the Member State where it has its registered office or the main administration or in the territory of another State Member State where a subsidiary or branch will be established in this regard; c) the right of members to opt freely if the exercise of commercial activity outside the territory of the state of incorporation is to be carried out through a subsidiary or branch, the receiving state being obliged to remove any rule from the legislation national law which creates, directly or indirectly, the obligation of a foreign company to establish itself in its territory only in the form of the subsidiary; (d) the right of any company to equal treatment in the event of the establishment of a subsidiary or branch in the territory of another Member State, without discrimination based on the origin of capital or nationality and under conditions similar to companies belonging to of the host state.

Any restriction on the right of establishment must be strictly reasoned as to how restrictions can be made to this fundamental right. Thus, art. 45 of the treaty provides for a derogation from the right of establishment where the public interest of a Member State intervenes [19]; when the object of the company is to exercise an activity involving a public authority exercise; for reasons of policy, security and public health, the state concerned may demonstrate the existence of a real and sufficiently serious danger which could affect the interest of society [20].

3. Nationality and headquarters company. Nationality is what puts the company within a system of law expressing his membership in a particular state. The criterion for determining nationality common law legal person is the registered office, with whom there are special criteria, found mainly in international conventions for special situations. One of these criteria is the special control under which a person can be considered as belonging to a foreign state due to the control exerted on them by foreign interests [21].

The existence of differences between national legal systems, on the means used to determine the lex societatis prevents consecration express primary right of establishment of companies, which must be accompanied by a standardization or harmonization of national regulations of the Member States of the European Union. Thus, if a company moves its headquarters on the territory of a Member State, used as a means of determining the lex societatis system incorporaţiunii the territory of another Member State, which is used for this purpose system real seat will be required in indirectly, in advance, to dissolve in their home State and then to establish a valid in accordance with regulations of the receiving State and thus excluded the completion of the transfer of the seat, while keeping legal personality.

The transfer from one Member State to another, while preserving the legal personality, can only be achieved if both countries apply incorporaţiunii system. There are other criteria that may be used to determine lex societatis: criteria will founder legal entities; territoriality criterion management (headquarters) [22]; control criterion [23], etc.

Changing the company's nationality is irrelevant only if the headquarters move from one state to another. Nationality places companies under a system of law, domestic or foreign, and are identified by location of headquarters and after that it exercises control over the management and organization of foreign states such forms of society. A corporate implementation plan eloquent thesis admissibility of multiple nationalities for individuals is the existence of transnational corporations, companies that have offices in several states simultaneously. In turn, the branches and the branches are influenced by a foreign element specific to species of companies having their specific behavior. They must meet prior formalities, such as the mention in the constituent documents of the organizational structure of the company (form, seat, capital), the general assembly and respect its decisions.

4. The collision of legal norms of the European Union on establishment of legal entities and private international law of the Member States. The most important provisions which govern the seat of legal persons (including commercial companies) are articles 49 and 54 of the treaty on the functioning of the European Union. Article 49 forbids any provisions which would restrict the right of establishment of nationals of a Member State in another Member State, the prohibition including also those measures which would hamper the rights of those citizens of a Member State wishing to set up agencies, branches and subsidiaries in another Member State. Freedom of establishment includes the right to set up and manage undertakings, and in particular companies and is guaranteed for citizens of the Member States. This fundamental freedom must be achieved in accordance with the conditions set for their own nationals of the Member State concerned.

Regarding freedom of establishment of legal persons, art. 54 of the treaty on the functioning of the European Union [24] states that: „companies incorporated under the law of a Member State and having their registered office, central administration or principal place of business within the Union shall in application of this subsection, persons physical nationals of Member States ". These provisions relate to the establishment side, when registered office and central administration of the company remain unchanged, but the work being completed by setting up new business units or agencies, branches or subsidiaries in any Member State of the Union.

While the right of establishment secondary problem was solved satisfactorily, much more difficult and uncertain is the matter of establishing primary law [25], which implies the possibility that a company can transfer its seat to another Member State, it preserves and while legal personality in the state of establishment. If companies transfer office while preserving the legal person is entirely in the spirit of free movement within the Community, but the treaty does not contain explicit provisions on this point and, as such, the issue cross-border transfer of company seats keeping the person legal has become one of the most controversial [26]. The transfer of a European Union Member State to another, while

preserving the legal person, is hampered by differences in private international law of Member States in determining organic status, nationality and ownership, society [27].

Referring to determine ownership, applicable to companies, there are two principles in private international law: the principle headquarters and principle record identifier (incorporation) [28], these two principles competing to establish your ownership of companies, although the legal systems of the Member States of the European Union are divided according to this criterion. The principle states that the right staff headquarters of the legal person is the law of that state where the head office of the legal person, while the principle of registration determines the personal law applicable state law where there was foundation of the company.

A comparative analysis of the principle and the principle of registration of the registered indicates that the latter is more advantageous for the transfer of the registered preserving nationality; and thus the question is to what extent it is compatible with the principle of free movement of office stipulated in the Treaty of Rome. The main problem in clarifying these issues is that the Treaty of the European Union does not give clear indications in this regard, but the key to the solution was given from the beginning as art. 293 of the Treaty of Rome recommended already in 1957 new negotiations to facilitate the conclusion of an international convention for Member States to clarify the transfer of headquarters while preserving the legal person.

On February 2, 1968, it was signed in Brussels by the six founding states treaty drafted under art. 293 designed to provide a solution to the transfer of headquarters and the mutual recognition of companies and legal entities, however, since it was ratified by the Netherlands, has not been implemented [29].

For a long time, the possibility of exercising the right of establishment mayor was only a theoretical problem, but since the 80s of the twentieth century more and more cases concerning the transfer of headquarters to come before the European Court of Justice. Thus, the expression of the gaps of the founding treaty resulted in a very extensive literature has been presented and analyzed where relevant Court case law.

5. Interpretation primary right of establishment Court of Justice of the European Union. Problem primary right of establishment was discussed for the first time in the fund by European Court of Justice in case *Daily Mail* in 1988 [30]. The company Daily Mail wished to move - tax considerations - UK head office in the Netherlands, but such a transfer of central government was possible only after having obtained an opinion from tax authorities. Since the Daily Mail has not fulfilled tax obligations, the British authorities have not given notice required for transfer of the registered. As a result, the company made reference to freedom of establishment contained in article 43 (52) 48 (58) of the Treaty of Rome, arguing their case by the fact that the refusal of the required transfer of headquarters is in conflict with Community law. Subsequently, legal court action initiated preliminary proceedings and asked the Court of Justice of the European interpretation of legal norms to which reference was made.

Court ruled in favor of English IRS stating that regulatory differences can not be harmonized or standardized on art. 49 and Art. 54 of the Treaty of Rome since these two articles only establish secondary right of establishment of a company, not the primary setting. Accordingly, art. 49 and Art. 54 of the treaty can not be invoked by a legal person of a Member State for it to be able to transfer its registered office and central administration of a Member State to another with retention of legal personality [31]. The key decision in case *Daily Mail* is the assertion as that unlike individuals, legal persons (including commercial companies) are entities established under a legal order and thus they are exclusively based on those rules judicial national legal system governing their establishment and operation.

The Treaty of Rome on freedom of movement are able to dissolve the differences between the legal systems of the Member States and, therefore, such provisions entitling a company incorporated and registered under the law of a Member State to transfer administration central in another Member State maintaining at the same time, the quality of legal entity if the competent authority does not grant approval. According to the Court, to resolve the issue concerning the transfer and storage premises, while the quality of legal entity, it would take measures to harmonize legislation, namely the conclusion of an agreement between Member States.

In its core business the Court was called upon to settle a question which, at least apparently, on freedom of establishment on a secondary basis (establishment in another Member State of a branch) in the settlement that did not even refer to any conflict of laws between the two systems of law which intersected (the English and the Danish). And yet, the solution exceeded the freedom of establishment in the alternative in that it recognized the right of the center's decision a company to be in a country other than hosting the registered office, which is practical for the transfer of the real seat of -a state in another Member State [32].

The problem right of establishment mayor came again to the European Court of Justice in the case of *Überseering* [33]. Essentially, this question aimed at clarifying whether Community law is compatible with German law - the principle advocate the establishment - which determines the quality of a company legal proceedings by state law where the company's registered office. European Court of Justice, the argument offered, the partially reinterpreted in the order given in due *Daily Mail* [34], and said that in the spirit of art. 43 and 48 of the treaty, Member States may refuse to recognize the quality of legal subject of a company incorporated under the law of a Member State and therefore i can not refuse any recognition of its locus. Despite efforts by European Court of Justice to give a meaning jurisprudence Überseering doctrinal decision was seen as a time when the Court postulated the theory incorporaţiunii as a method of determining the law applicable to a company detrimental theory of real seat, which by nature undermining the freedom of establishment guaranteed by the EC Treaty.

In cases *Commission v France, Commerzbank, Commission v Italy*, the Court held that state tax provisions contravene the freedom of establishment established by art. 49 and art. 54 of the Treaty of Rome as restricting the right of choice of foreign companies in terms of their presence in another Member State, in the form of free options for setting up a branch, agency or branch. Host States forced indirectly foreign companies in this sector of the economy to create branches at the expense of branches to benefit from certain tax benefits, which represent, however, a restriction of freedom of establishment and infringement of these articles, which obliges state parties to take steps not likely to affect this right.

Also in *Factortame II* case C-221/89 ECR I-3905 §21 Court of Justice stated that the UK rules on the registration in that State of companies and its main activity is fishing and the fishing vessels they own represents a restriction of freedom of establishment provided for by art. 52 and art. 58 of the Treaty of Rome as drastically limits the possibility of companies from other Member States to establish in the UK company and its main activity is fishing.

On April 19, 2001 European Court of Justice was asked by the Cantonal Court in Amsterdam with an action whose purpose was preliminary interpretation of art. 43, art. 46 and art. 48 of the EC Treaty. Questions whose answer must be given by the European Court of Justice appeared in the proceedings of the Chamber of Commerce and Industry Amsterdam and *Inspire Art* Ltd, a company of British who set up a branch in the Netherlands that has made a the Dutch Trade Register, as such, no special mention. The Court held that as long as *Inspire Art* is present in its relations legal third parties as a company nationality English, but not to induce their error further conditions which kept its status as a company pseudo-strangers could not be justified on grounds of creditor protection and the protection of the

general interest, creditors are sufficiently warned. On the other hand, the Court ruled that the very concept of pseudo-foreign companies is contrary to freedom of establishment guaranteed by the EC Treaty, which leads to the conclusion that Member States are free to maintain legal provisions on these companies as condition that requires them, in this way, restrictions on freedom of establishment [35].

Most recently, the European Court of Justice had the opportunity to express their views on the right of establishment during the primary cause of *Cartesio.* In November 2005, Cartesio Oktató és Szolgáltató Bt. submitted an application to the competent court, Bacs-Kiskun Megyei Bíróság (Regional Court, Bács-Kiskun), who requested to make changes on the new headquarters address Italy, 21013 Gallarate, Via Roma 16 "[36]. Rejecting the request was based on the principle headquarters Court stating that in Hungary and Italy apply the principle of personal law office to establish legal persons [37]. The appeal against the decision was filed by Cartesio Bt. Court of Appeal of Szeged, which started preliminary procedure, asking the Court of Justice of the European First question whether a company has the right to refer directly to the rules of EU law for the transfer of their seat from one Member State to another or the question whether or not incompatible with European Union law regulating the internal case law that prevents companies to move their headquarters from one Member State to another Member State.

The ECJ ruled that a Member State may require companies established in accordance with its national law to maintain their seat in that state as long as it is subject to its laws and if this change headquarters involves changing the law applicable national, state the company moved its headquarters may not require dissolution or liquidation of the company [38]. With her decision, the Court held that in the present state of EU law, freedom of establishment is incompatible with the practice of a Member State to restrict a company incorporated under national law in transferring headquarters in another Member State, keeping in both a company registered in the country of origin. The Court also pointed out that freedom of establishment allows such changes in company statutes without the need for dissolution and liquidation of the country of origin, provided that the country of destination to recognize this transformation (unless restriction of this freedom is justified by the public interest).

Consequently, the decision given in case *Daily Mail* to *Cartesio* decision because it is an indisputable trend in the European Court of Justice on the right of establishment of companies mayor. *Daily Mail* this decision held that Member States are entitled to restrict or prohibit the company to transfer its registered legal entity with keeping quality country of origin. In the case of Überseering, has been debated "emigration" of societies, the Court held that Member States are not entitled to refuse legal recognition of a company incorporated legalmente in another Member State. As in the case of the Daily Mail, the cause Cartesio Court had to decide on the right of "migration" of societies and the decision once it appears that it is maintained that Member States have the right to decide whether to allow or not a company transfer headquarters legal entity with keeping quality in the home.

Although means are always different intended result remains the same, whether it is because of Centros, Überseering and Inspire Art, namely order indirect companies established in a Member State to comply with the conditions of the receiving State for setting up a companies, despite the fact that the companies concerned by these conditions already enjoyed by virtue of treaty provisions, the status of legal persons.

6. The rules of private international law on nationality Romanian legal entities in the light of EU law. Romanian Civil Code [39] regulates the relations of private international law, in Book VII, art. 2571 or art. 2580-2584. The most important recognition of the foreign legal persons in Romania are contained in art. 2571 par. 1 C. civ., which states that the legal person is a national of the state in whose territory has set, according to the articles of incorporation, registered office. In para. (2) establishes that if there offices in several states determined to

identify the nationality of the legal person is the head office while par. (3) defines the notion of real seat. If foreign law determined in par. (1) - (3) refer to the law of the state was constituted legal person, applicable law of that State.

Further, articles 2580-2581 of the Civil Code states that are governed by national law as capacity and exercise capacity, the acquisition and loss of quality of the associated rights and obligations of an associate, the election, powers and functioning of the governing bodies of the legal entity, its representation through their organs, liability of legal persons and bodies to third parties, amending articles of incorporation, dissolution and liquidation of companies.

In the spirit of art. 2584 C. civ., the merger of several legal persons of different nationalities can be achieved if all the conditions laid down in relevant national laws of their organic status.

The analysis shows that the abovementioned provisions in force in Romania headquarters principle, for art. 2571 par. 1 Civil Code statuază that "legal person is a national of the state on whose territory has set, according to the articles of incorporation, registered office." Para. (2) once again confirms this principle, formulating real seat principle: "If there are offices in several states determined to identify the nationality of the legal person is the real seat". The head office is defined by law as a place where the main center management and business management statutory organ even if decisions are taken according to directives sent to shareholders or in other countries [40].

Headquarters principle is confirmed by paragraph. (2) art. (1) of the Law no.31/1990 on companies, companies based in Romania are romanian legal persons. "In addition to this principle comes societies numerous clauses principle, the principle form" companies will be one of the following forms: a) limited partnership; b) limited partnership; c) joint stock company; d) limited partnership by shares e) limited liability company. "

So, from the perspective of private international law Romanian organic status and nationality of legal persons, including companies and are determined by the law of that State where the head office. Thus, if it is proved that the real seat of a company is in Romania, under the principle of the headquarters, the company will be the Romanian nationality, but since the company was established pursuant to Law No.31 / 1990 on companies or under other legal rules governing the formation of companies, romanian law can not recognize the legal personality. The doctrine are opinions that if a foreign company transfers its head office in Romania (without set by romanian law), we can infer the intent of circumventing the romanian legislation, and hence there can not be accepted as a legal [41].

These views but do not appear to be compatible with European Union law or the principles that are outlined in the European Court of Justice on freedom of establishment. From that date *Überseering* decision make clear that the authorities of a Member State may not refuse recognition as a legal subject of a legal companies legally established in another state.

Romanian law does not provide clear provisions on "emigration" companies, but in my personal opinion, this option is excluded under the legal rules governing the relations of private international law embodied in the new Civil Code and under Law No.31/1990 the companies that make the real seat principle. Thus, in the spirit of the Law no.31/1990 on companies considered only those companies are romanian legal persons domiciled in Romania, and the cross-border transfer of the seat would extraction under romanian law, and therefore is unlikely endorsing this the Trade Register of such claims. Moreover, that judgment as interpreted by the European Court of Justice on emigration societies, as shown in this case, the Daily Mail and Cartesio causes.

7. Conclusion. Freedom of establishment of companies within the common market is another proof in the sense that in the absence of legislative harmonization at EU level, member states continue to promote, through various legal regulations, protect their legal

system to companies incorporated under the legislation of another member, since Community law does not provide satisfactory solutions to the problem of cross-border transfer of the seat, but some key court decisions are crucial.

Each Member State must recognize the right of a company incorporated under its legal system, to be decided by the general assembly decision adopted by forms and procedures required to amend the statute to transfer its registered office in another Member State in order to gain a new personality legal in the place of origin. This decision, as the start of the registration procedure in the new Member States can not lead by itself or to the dissolution of the undertaking, nor the loss of legal personality which has in the Member State of origin as long as the acquisition of legal personality by society receiving Member State will not be confirmed by registration in the latter.

Analyzing the effect Court of European Justice on regulating Romanian, one can say, in my personal opinion, that on "migration" of legal persons, the principle of the establishment which is applied in Romanian law is consistent with the interpretation given by the Court in the cases of Daily Mail and Cartesio. But in terms of "immigration" companies are of the opinion that the legislator should take into account the decision that date Überseering, for unconditional application of the principle of real seat could restrict freedom of establishment of social companies.

In the current state of EU law, member states have the power to set both the connecting element required for a company to be considered validly constituted in accordance with its national law (and likely so to invoke European freedoms of movement), as and conditions necessary to maintain that status after, implying for any State member, the possibility of refusing a company incorporated under the law of his right to retain its legal personality in the event that shifts its head office in territory of another Member State.

References

[1] Directive (EU) 2017/1132 governing EU company law. In the EU there are about 24 million businesses, of which approximately 80% are limited liability companies. Approximately 98-99% of limited liability companies are SMEs.

[2] M.V. Benedettelli, *Conflicts of jurisdiction and conflicts of law in company law matters within the EU market for corporate models: Brussels I and Rome I after Centros*, in European Business Law Review 2005, p. 64-65.

[3] W.F. Ebke, *The European conflict of corporate laws revoluŃion: Uberseering, Inspire Art and Beyond*, in European Business Law Review 2005, p.10-13.

[4] R.R. Drury, *Migrating companies*, in European Law Review, 1999, p. 354-358.

[5] M. Menjucq, *Droit international et europeen des societes*, Ed. Montchrestien, Paris, 2001, p.19-26.

[6] Directive. 68/151 / EEC of 03.09.1968 "transparency directive" or "direct advertising" was developed based on art. 54 para. (2) of the Treaty of Rome.

[7] To date 12 Directives were adopted. Last directives XI no. 89/666 / EEC relating to branches of companies registered in another Member State and XII on the limited liability company with sole no.89 / 667 / EEC concerning disclosure requirements in respect of branches of companies.

[8] In the case Centros the Court held that companies may operate through a branch or agency in any state, even if the state in which they were registered did not work. The argument on equal opportunities prevailed on the protection of third parties.

[9] G. Ripert, R. Roblot, *Traite de droit commercial, Tome I*, 16eme edition, Libraire generale de droit et de jurisprudence, Paris 1996, p. 516-518; C. Gheorghe, *Drept comercial comunitar. Instituții de drept comunitar din perspectiva dreptului român,* Ed. Logisticon,

București, 2005, p. 150 și urm.; A. Fuerea, *Drept comunitar al afacerilor*, ed. a II-a revizuită și adăugită, Ed. Universul Juridic, București, 2008.

[10] Treaty of Rome refers to the treaty which was established the European Economic Community (EEC) and was signed by France, West Germany, Holland, Italy, Belgium and Luxembourg on 25 March 1957. Initially, the full name of Treaty was the treaty establishing the European Economic Community, but the Maastricht Treaty fined eliminating, among other things, the word "Economy" as the name of the community and of the Treaty. For this reason the treaty is often called the Treaty establishing the European Community or the EC Treaty. For details see Gh. Bonciu, *Drept comunitar european*, Ed. Cartea Universitară, București, 2006, p. 78 și urm.

[11] Claudia Antoanela Susanu, *Sediul societății comerciale: aspecte relevante în jurisprudența Curții Europene de Justiție,* în „Analele Științifice ale Universității <Al. I. Cuza> Iași", Tomul LV, Științe Juridice, 2009, p. 89-109.

[12] Case C-210/06. Cartesio Oktató es Szolgaltato Bt., ECR (2008) I-00000. ECJ ruling - Grand Chamber of 16 December 2008.

[13] In some Member States such as Italy, Germany, Netherlands term "legal person" is used only for capital companies, but in the sense French term used for all companies.

[14] Recognition of companies incorporated in the UK, France and the Netherlands is not under Common Law. Without recognition, the company can not rely on the principle of legal capacity under the law of its home State.

[15] In this context, it is sufficient to have a statutory seat, central administration with and without a headquarters.

[16] This also applies to civil and commercial companies registered in the Commercial Register French law, and among them simplified joint stock company.

[17] A similar solution can be found in Regulation (EC) n ° 2157/2001 of 8 October 2001 on the European Company Statute (SE), which provides in Article 7 that a member state " It may require European companies registered in its territory the obligation to establish central administration and registered office in the same place ", subject to liquidation (Article 64 §2).

[18] G. Mihai, *op. cit.,* p. 22.

[19] *Cauza Commission vs. Greece*147/86 ECR 1637 § 7, *Commission vs. Spain* C-114/97 ECR I-0000 §34.

[20] *Cauza Commission v Spain* C-114/97 ECR I-0000 §46.

[21] control is assessed by citizenship (nationality) members, by origin of capital and / or citizenship by persons forming management bodies of the legal person.

[22] If the legal person has several governing bodies in different countries, registered legal entity in the land in which the top management body of the entire legal entity.

[23] Nationality legal person shall be determined either by leaders belonging legal person or by the nationality of shareholders or capital by nationality or citizenship by those carrying out activities on behalf of the legal person.

[24] Former Articles 43 and 48 of the Treaty.

[25] A. Fuerea, *Drept comunitar al afacerilor*, ed. a II-a revizuită și adăugită, Ed. Universul Juridic, București, 2008, p. 177; D.M. Șandru, *Libertatea de stabilire a societăților în Uniunea Europeană. Culegere de jurisprudență și legislație,* Ed. Universitară, București, 2014.

[26] Koroly Zsolt, *Libertatea de stabilire a societăților comerciale în Uniunea Europeană și în dreptul român*, în vol. „Studii juridice alese în onoarea prof. univ. dr. Ernest Lupan", Ed. C.H. Beck, București, 2007, p. 127-145.

[27] G. Mihai, *Influența elementelor de extraneitate asupra dreptului de liberă stabilire a societăților comerciale*, în „Revista Universul Juridic,", nr. 2, februarie 2016, p. 18-26.

[28] D.A. Popescu, *Legea aplicabilă societăților comerciale*, în „Revista de drept comercial", nr. 3/1995, p. 81.

[29] Koroly Zsolt, *op. cit*., p.131.

[30] ECJ Judgment of September 27, 1988, Case C-81/1987, *the Qeen c. HM Treasury and Commisioners of Inland*

Revenue, ex parte Daily Mail and General Trust PLC, ECR (1998) 5483.

[31] These two rules can be used, for example, that a company of a Member State enjoy equality of treatment with companies nationality of the host State in case of establishment of a subsidiary, branch, agency or representative in the State host.

[32] ECJ decision of 9 March 1999, because *C- 212/1997,Centros Ltd. c. Erhvervs –og Selskabsstyrelsen*; J.L.Hansen, *A new look at Centros from a Danish point of view*, in European Business Law Review 2002, p. 85-95.

[33] ECJ ruling of November 5, 2002, because *C-208/2000, Uberseering BV c. Nordic Construction Company Baumanagement GmbH (NCCS),* ECR (2002) I-9919; Deleanu, G. Fabian, C.F.Costaș, B. Ioniță, *Curtea de Justiție Europeană*, Ed. Wolters-Kluwer, București, 2007, p. 351-367; P.J.Omar, *Centros, Uberseering and beyond: An European recipe for corporate migration(Part II)*, in International Company and Comercial Law Review 2005, p. 22.

[34] C.-A. Susanu, *op. cit.* p.91-95.

[35] Hotărârea CJE din 30 septembrie 2003, *cauza c- 167/2001 Kamer van Koophandel en Fabrieken voor Amsterdam c. Inspire Art Ltd*.

[36] Advocate General Poiares Maduro: I p.3.

[37] M.V. Benedettelli, *op. cit.,* p. 64-65.

[38] Judgment of the ECJ - Grand Chamber of 16 December 2008.

[39] Law no. 287/2009 on the Civil Code, republished in the Official Gazette. Part I, no. 505 of 15 July 2011.

[40] Para. 3 of art. 2571 the new Civil Code and paragraph. 3 of art. 40 of the Law on regulating legal relations of private international law.

[41] D. A. Popescu, op. cit, p. 81.