

ABSTRACT

The purpose of this thesis is to analyze the current legal issue concerning the corporate mobility within the European Union. The main focus is placed, in particular, on the analysis of the relevant case law of the Court of Justice of the European Union. Other parts of this thesis will give an overview of cross border mergers and supranational forms of companies including their ability to transfer their seat to other member states without being wound up in liquidation before the transaction within the area of the European Union. As evident from the title, the paper focuses on the topic from the European perspective only and the issue of the mobility from, or into, a non-member state is not dealt with.

The first chapter provides a brief definition of the basic legal concepts that are crucial to this thesis. The definition of freedom of establishment in the context of the common market of the EU is given and also the incorporation theory and the real seat theory are briefly outlined, as well as the conflict that may arise between these two doctrines.

The second chapter, the most extensive chapter which represents the core of this thesis, describes and analyzes the case law of the Court of Justice of the European Union law relating to the freedom of establishment. This chapter is divided into two subchapters and examines in detail five landmark decisions of the Court of Justice of the EU and also one case still pending before the Court that is likely to further influence the scope of the freedom of establishment. The first subchapter concerns the analysis of the case law that deals with the outbound situations where companies leave its home state, the second one aims at interpreting the inbound immigration situations where the company is entering the host state.

The third chapter examines the supranational forms of companies and their possibilities of mobility, transfer of seat in particular, given by the secondary EU law. The fourth chapter gives comparison and examines the differences between the cross border-and-supranational mergers and their significance for the corporate mobility in EU. The fifth and final chapter focuses on the proposal of the 14th directive on cross-border transfer of the registered office and the proposal of the European private company.

The conclusion contains the summary, author's own opinions and several suggestions regarding the examined subject. It is argued that although the real seat theory was not

completely overruled by the Court of Justice of the EU, it is evident that the incorporation theory suits much better the purpose of the common market and the corporate mobility in general.