European Added Value Assessment
on a Directive on the cross-border transfer of company seats
(14th Company Law Directive)

ANNEX II

Economic and Social Effects
of the Requested Legislative Instrument

Research paper
By London Economics

Abstract
At the present time, there exist only two indirect mechanisms for a company wishing to move cross-border its registered office within the EU without having to wind up the company in its home country. The company can either adopt the legal form of a Societas Europaea if it is a public company or undertake a cross-border merger with a company (already existing or specially established for this purpose) in the host country.

A Directive which provides for a simple, cost-efficient process for transferring cross-border the registered office of a company would yield significant savings for companies wishing to do so.
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List of abbreviations

EC European Commission
ECJ European Court of Justice
EU27 European Union with 27 Member States
EAVA European Added Value Assessment
IA Impact Assessment
OJEU Official Journal of the European Union
SE Societas Europaea
TFEU Treaty on the Functioning of the European Union

Member State abbreviations

BE Belgium  LU Luxembourg
BG Bulgaria  HU Hungary
CZ Czech Republic  MT Malta
DK Denmark  NL Netherlands
DE Germany  AT Austria
EE Estonia  PL Poland
EL Greece  PT Portugal
ES Spain  RO Romania
FR France  SI Slovenia
IE Ireland  SK Slovakia
IT Italy  FI Finland
CY Cyprus  SE Sweden
LV Latvia  UK United Kingdom
LT Lithuania
Executive Summary

The present European Added Value Assessment discusses the potential impact of a European Directive on the Cross-Border Transfer of Company Seats. It supports the legislative own-initiative report of the Committee on Legal Affairs with recommendations to the Commission on a 14th Company Law Directive on the cross-border transfer of company seats, voted in Plenary in January 2012.

At the present time, Member States apply different principles to determine which company law applies to a company.

In some Member States, the applicable company law is based on the principle of incorporation. According to this principle, a company is governed by the law of the country where it has its registered office (i.e. where it is incorporated).

In some other Member States, it is the real seat of the company (i.e. the place where the company has its headquarters or which is its principle place of business) which determines which company law is applicable to the company.

Finally, a few Member States have adopted a mixed system which incorporates characteristics of both approached described above.

Currently, there exist only two mechanisms for a company wishing to move cross-border its registered office, without having to wind up the company in its home country.

The first such mechanism is the registration of the company as Societas Europaea (SE), a statute which provides for the creation of a truly pan-European company and which allows the company to move its registered office cross-border by simple notification of the company registers in the home and host Member States. Thus, a cross-border move of the company’s registered office under the SE does not require a winding up of the company in its original home country. A limitation of this approach is that only public companies can become a SE.

Alternatively, the company wishing to move cross-border its registered office can merge with a company in the host country, either an established subsidiary or a new company created de novo for the explicit purpose of the cross-border move. The Cross-Border Directive, which became fully applicable on 16 December 2007, gives all limited companies, including SMEs, the possibility to transfer the registered office of a company.

While the complexity of the situation has given rise to a number of landmark law cases which have clarified to some extent the existing scope within EU law for transfers of company seats. Nevertheless, at the present time, in a number of Member States it remains very difficult or even practically impossible for companies to move the head
office or the registered office cross-border to another Member States without resorting to
the incorporation as a SE or a cross-border merger.

A number of European Court of Justice cases have established that inbound cross-border
establishment cannot be refused by the host Member State (Centros (1999), Überseering
(2002), Inspire Art (2003) and SEVIC (2005)) while outbound cross-border establishment
cannot be considered a per-se-right conferred by the TFEU Treaty to companies in the
country in which they originally had their registered office (Daily Mail (1988) and
Cartesio (2008)).

In particular, a Member State can no longer use the real seat doctrine (under which a
compANY’S real seat is the place where the company’s centre of administration and
control is located and not the place where it is registered) for denying recognition to a
foreign company which is formed in accordance with the law of another Member State.

In summary, a company validly incorporated in a Member State must be recognised in
any other Member State to which it decides to move its real seat of operations. This
applies even to a move into a real seat country - the host has to recognise the arriving
company as a company registered in its Member State of origin. This conclusion,
crucially, does not deal with the situation where the migrating company originates in a
real seat country for, as it moves its real seat elsewhere, it ceases to be validly
incorporated in its origin Member State.

Despite the rulings by the European Court of Justice, and despite the expectations of the
European Commission that case law would help to address the various legal
impediments to cross-border mobility of company seats, there remain a number of
circumstances that are not currently covered either by legal text or by jurisprudence.

Data on the number of cross-border transfers of registered offices are extremely limited.
The number of SE having moved their registered office cross-border is small even if it is
easier for a SE than for a company incorporated under national law to move its registered
office. Such cross-border moves of SE accounted for less than 5% of new SE notifications
in 2011 and 2012.1 A search of other economic information databases identified only 14
headquarter transfers by non SE companies over the period 2007-2012.2 The available
information does not inWhile it is likely that not all the cross-border headquarter moves
that actually took place were in fact identified through the search process, it is unlikely
that many cases were overlooked.

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1 The source for this information is the European Trade Union Institute database which provides
information on cross-border transfers of registered offices of SEs, complemented by review and
2 See section III in Chapter 4 for more details. The information was gathered through a Bloomberg
and Google search of announcements by companies and a review of a database of FDI into Europe
which provides the reason for the FDI. No information is publicly available on whether the
registered office was transferred when the headquarters were moved.
The bottom line is that, at the present time, the data currently available on the actual number of cross-border transfers of registered offices are poor due to the fact that information such transfers is not systematically collected. However, this does not mean that companies do not wish to move their registered office cross-border. Many companies may be deterred to do so by the costs and complexity of the current legal regime, especially in the case on companies which are not SEs.

Firms will benefit in a number ways from a system which makes it easier to move their registered office cross-borders. These potential benefits include easier access to capital, closer proximity to core markets/clients/ may be easier and, perhaps a lower regulatory and tax burden.

A Directive which facilitates the cross-border transfer of the registered office of a company could yield significant on-going savings of the order of €200 to €210 million.

The actual cost of implementing a Directive incorporating the recommendations of the European Parliament would be rather limited as it would involve mainly the legislative cost of a) passing the Directive at the EU level and b) transposing the Directive at the national level. The administrative costs would be nil to very small as the company registers would largely continue to operate as they are at the present time. Companies wishing to move their registered office would be able to use a much more cost-effective procedure than the more expensive and circuitous routes of first having to become a SE or undertake a cross-border merger.
Chapter 1 – Introduction

The present note assesses the potential impact of a European Directive on the Cross-Border Transfer of Company Seats. Its purpose is to support the legislative own-initiative reports of the Committee on Legal Affairs\(^3\) with recommendations to the Commission on a 14th company law directive on the cross-border transfer of company seats, voted in Plenary in January 2012.

This EAVA presents information on the potential economic and social impacts of such Directive and discusses why such a Directive would have clear European added value in strengthening the Single Market.

It should be noted at outset that there exists very little empirical data and literature on the economic and social impacts of a transfer of seat. In fact, most of the literature on this topic is of legal nature. Nevertheless, the limited evidence base allows one to draw useful conclusions on the merits of a Directive on the Cross-Border Transfer of Company Seats.

The note is structured as follows:

- Chapter 2 provides background information on the issue of the transfer of a company’s seat.
- Chapter 3 summarises the key court cases relating to the transfer of a company’s seat and shows that a Directive would contribute to provide legal clarity and certainty for transfers of company seats.
- Chapter 4 provides information on company mobility within the European Union.
- Chapter 5 discusses the drivers of business mobility. This provides an understanding of the key factors which influence business mobility.
- Chapter 6 reviews the potential benefits and costs for the various stakeholders of a Directive facilitating the transfer of company seats.
- Chapter 7 discusses the costs to business of the alternative routes open to them in the absence of a Directive.
- Chapter 8 provides a commentary on the European Commission’s 2007 impact assessment.
- Chapter 9 concludes by summarising out the reasons why the adoption of a Directive on the cross-border transfer of a company’s registered seat would be desirable.

Chapter 2 – Background

As noted in the European Commission’s 2007 Impact Assessment on a Directive on the cross-border transfer of registered office, the approach taken by Member States to a transfer of a company seat from the company’s original home country to a new host country varies across the EU. This is due to the fact that Member States apply different principles to determine which company law applies to a company.

- In some Member States, the applicable company law is based on the principle of incorporation. According to this principle, a company is governed by the law of the country where it has its registered office (i.e. where it is incorporated).
- In some other Member States, it is the real seat of the company (i.e. the place where the company has its headquarters or which is its principle place of business) which determines which company law is applicable to the company.
- Finally, some Member States have adopted a mixed system which incorporates characteristics of both approached described above.

The different legal regimes result in an unlevel playing field between companies wishing to move their real seat, i.e. their headquarters or principle place of business.

- In general, companies from Member States with a principle of incorporation approach can move their real seat cross-border without dissolution or a change in the legal regime applying to the company as the applicable law is determined by the place of the company’s registration.
- In contrast, companies from Member States where the applicable company law is determined on the basis of the real seat have to be dissolved in the original home country and re-incorporated in the host country to which the company is moving its real seat.
- In both cases, a transfer of registered seat would require a winding up of the company in its original home state followed by a registration in its new home state (host state).

At the present time, there exist two mechanisms for a company wishing to move cross-border its headquarters from a Member State using the real seat approach or its registered office without having to wind up the company in its home country.

- The first such mechanism is the registration of the company as Societas Europaea (SE)⁴, a statute which provides for the creation of a truly pan-European company.

and which allows the company to move its registered office cross-border by simple notification of the company registers in the home and host Member States. Thus, a cross-border move of the company seat under the SE does not require a winding up of the company in its original home country. It is important to note that only public limited companies can register as a SE. While a Regulation\textsuperscript{5} to provide a similar status for private companies was proposed by the European Commission in 2008, it was never adopted.

- Alternatively, the company wishing to move cross-border its registered office can merge with a company in the host country, either an established subsidiary or a new company created \textit{de novo} for the explicit purpose of the cross-border move. The Cross-Border Merger Directive\textsuperscript{6}, which became fully applicable on 16 December 2007, gives all public and private limited companies the possibility to transfer the registered office of a company.

The complexity of the situation has given rise to a number of landmark law cases which have clarified to some extent the existing scope within EU law for transfers of company seats. However, at the present time, in a number of Member States it remains very difficult or even practically impossible for companies to move the head office or the registered office cross-border to another Member States without incorporating as a SE or carrying out a cross-border merger.

In 2004, the European Commission consulted on a planned proposal for a 14th Company Law Directive on the cross-border transfer of the registered office of limited companies. In announcing the consultation, the European Commission noted that

\begin{quote}
1. Two public consultation exercises in 1997 and 2002 highlighted a pressing need on the part of market operators for legislation at EU level allowing companies governed by Article 48 of the EC Treaty to transfer their registered office from one Member State to another without first having to be wound up in their home Member State. For such a transfer, a company has to acquire legal personality in the host Member State and lose it in the home Member State in order to avoid any complications arising from its being registered in two countries. The advantage to be gained by a company from transferring its registered office on these terms from one Member State to another stems from the twofold need for the company:

(a) to be able to adapt its location or organisational structure both to market changes and to changes in its position on those markets by choosing the national law which, in its view, best meets its requirements;
\end{quote}


In its final report of 4 November 2002\textsuperscript{7}, the High-Level Group of Company Law Experts recommended that the Commission should urgently consider adopting a proposal for a Directive on the transfer of the registered office. It also suggested that certain aspects of the transfer of the de facto head office should be clarified.\textsuperscript{8}

The responses to the consultation showed an overwhelming support of a cross-border transfer of seat process which does not involve a winding up of the company. Overall, 88\% of the consultation participants were of the view that “The transfer of the registered office should not entail the company’s being wound up in the home Member State.” (question 13 of the consultation).\textsuperscript{9}

The impact assessment (IA) on the Directive on the cross-border transfer of registered office undertaken by the Commission Staff in 2007 concluded that “both a ‘no action’ option and a directive would be suitable to achieve the policy objectives. However, when the proportionality test is applied it is not clear that adopting a directive would represent the least onerous way of achieving the objectives set”.\textsuperscript{10}

The objectives defined in the IA were to “improve the efficiency and competitive position of the European companies by providing them with the possibility of transferring their registered office more easily, and hence choose a legal environment that best suits their business needs while at the same time guaranteeing the effective protection of the interests of the main stakeholders in respect of the transfer.”\textsuperscript{11}

Based on these conclusions, the Commission decided to not move forward with a 14th Company Law Directive focusing on the cross-border transfer of registered office. In essence, the expectations were that the use of the SE statute and the cross-border merger directive would help achieve the objective of permitting the cross-border transfer of a registered office without having to implement a special directive on this issue.

Since 2007, case law has developed with 3 new cases decided by the European Court of Justice (see next section) and the European Parliament adopted in October 2007, March 2009 and January 2012 reports setting out recommendations to the Commission on the

\begin{itemize}
  \item \textsuperscript{7} See Report of the High Level Group of Company Law Experts on a Modern Regulatory Framework for Company Law in Europe, Brussels, 4 November 2002.
  
  \item \textsuperscript{8} See webpage of EC DG Internal Market and Services http://ec.europa.eu/internal_market/company/seat-transfer/2004-consult_en.htm.
  
  \item \textsuperscript{9} See webpage of EC DG Internal Market and Services http://ec.europa.eu/yourvoice/results/transfer/index_en.htm.
  
  \item \textsuperscript{10} See European Commission (2007) p.6.
  
  \item \textsuperscript{11} See European Commission (2007) p. 5.
\end{itemize}
cross-border transfer of the registered office of a company. In its follow-up to the 2009 report from the European Parliament, the European Commission stated that the case law of the Court of Justice already allowed for company mobility, though limited to specific cases, and that existing legislation provided a framework for mobility. More recently, in response to the 2012 report, the European Commission noted that there was not enough evidence to take legislative action in the field.

Therefore, the European Parliament requested that the different options set out in the 2007 IA be re-assessed in light of developments since when the IA was prepared. As the case law about transfer of a company’s registered office forms an integral part of the assessment of the value added of a European directive, the key cases are summarised in the next section.
Chapter 3 - The Legal Context

I – Some terminology

Before proceeding to an analysis of relevant court decisions, this sub-section explains some terms commonly used in the policy discussion of company mobility.

First, it is important to determine what ‘parts’ of the company are moving across Member States. Here, it is important to distinguish between “registered office” and “real seat”. The registered office is the company’s official address in the State where it was incorporated and that which is registered in the official registry. This is conceptually similar but may not be identical to the “statutory seat”. The statutory seat is merely the place indicated in the company’s statutes where its seat is supposed to be located. Some authors use these terms interchangeably. By contrast, the company’s real seat is the place where the company’s centre of administration and control is located. This term is often used interchangeably with “central headquarters” and “head office”.

The term pseudo-foreign company is used in relation to a company formed by nationals of a Member State in a different Member State, possibly for the purpose of benefiting from more advantageous national law in the host Member State, compared to that in the Member State where the company has its main activities.

There are two competing approaches to determining which national laws will govern a company’s internal affairs when it has contacts with more than one jurisdiction: "the place of incorporation", according to which the company is governed by the law of the country where it is incorporated (registered) and "the real seat", according to which the company is governed by the law of the country where its headquarters or principal place of business or head office are located. Some Member States have adopted a mixed system having some characteristics of both of these.

II – The principle of freedom of establishment

The principle of freedom of establishment for companies is set out in articles 49 and 54\(^\text{12}\) of the Treaty on the Functioning of the European Union (TFEU). Together they allow free movement of EU companies across the EU internal market, granting exception to Member States only if there is a violation of the general principle of national public interest (public order), such as the prevention of abuse or fraudulent conduct, or protection of the interests of creditors, minority shareholders, employees or the tax authorities.

\(^{12}\) Articles 43 and 48 in the EC Treaty.
However, implementing the principle of free establishment of companies as enunciated in Articles 49 and 54 of the TFEU is difficult in practice due to the great differences in the Member States' national laws with regard to company law matters.

Moreover, Article 293 of the EC Treaty stated: "Member States shall, so far as is necessary, enter into negotiations with each other with a view to securing for the benefit of their nationals (...) the mutual recognition of companies or firms within the meaning of the second paragraph of Article 48 (of the EC Treaty), the retention of legal personality in the event of transfer of their seat from one country to another, and the possibility of mergers between companies or firms governed by the laws of different countries (...)". This Article 293 of the TEC has not been reproduced in the TFEU. However, the general provisions of Article 4 (3) TFEU prescribe that Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.13

The European Court of Justice has issued a number of decisions which we discuss in more detail below and these offer some guidance to how freedom of movement of companies across the EU may be expected to operate in practice. In particular the ECJ has confirmed that a company incorporated in a Member State may travel freely within the EU without losing its identity, but it still has to decide whether the EC Treaty also affords companies the freedom to change their nationality by moving their registered office to another Member State.

### III – Other legal measures supporting freedom of establishment

As already noted, some EU measures, in particular the SE and the European Cooperative Society, already facilitate the cross-border transfer of registered offices. However, the practice to date has shown that not many companies decide to transfer their registered office on the basis of the SE Statute (over the period January 2007-September 2012 a total of 73 transfers were observed among 1,669 firms).

In addition, Directive 2005/56/EC of 26 October 2005 on cross-border mergers entered into force on 16 December 2007. The Directive sets up a framework in which, as a general rule, each merging company is governed by the provisions of its national law applicable to domestic mergers. A firm can undertake the cross-border transfer of its registered office by setting up a subsidiary within a potential host Member State (that it wants to move to) and merging into that subsidiary.

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IV – European Court of Justice (ECJ) decisions


The case concerned the UK’s Treasury intention to prevent the transfer of the Daily Mail’s centre of administration to the Netherlands whilst retaining its legal personality and continuing to be subject to UK company law.

The ruling asserted that Articles 43 and 48 of the EC Treaty on the right of free establishment and the right to leave the Member State of origin cannot be interpreted as conferring on companies incorporated under the law of a Member State a right to transfer their central management and their central administration to another Member State while retaining their status as companies incorporated under the legislation of the first Member State.

Traditionally, a company, which was registered in one state and moved its actual head office to a real seat doctrine state, was denied recognition as a legal person. The decision of the Court in the Daily Mail case in 1988 was interpreted by a majority of, primarily German writers, as evidence that the real seat doctrine did not constitute a violation of community law.

In Daily Mail, the Court left the possibility of emigration of a company’s head office from one Member State to another to be ruled under the national laws of the origin country.

2. Centros (1999)

The case concerned a refusal by the Danish commercial registry to recognise a company that was registered in the UK but carried out all of its business in Denmark.

The ECJ asserted that “(...) a situation in which a company formed in accordance with the law of a Member State in which it has its registered office desires to set up a branch in another Member State falls within the scope of Community law. In that regard, it is immaterial that the company was formed in the first Member State only for the purpose of establishing itself in the second, where its main, or indeed entire, business is to be conducted.

(...) companies are entitled to carry on their business in another Member State through an agency, branch or subsidiary. The location of their registered office, central administration or principal place of business serves as the connecting factor with the legal system of a particular State in the same way as does nationality in the case of a natural person.”

However, the authorities of the Member State concerned are not precluded from adopting appropriate measures for preventing fraud.

14 Articles 49 and 54 of the TFEU respectively.
After Centros, some legal writers put forward the ‘extreme view’ that there was now an unconditional requirement for all Member States to recognise any company which is validly incorporated in a Member State as a legal person, even though the company’s actual head office (real seat) was transferred to another Member State. To the extent that this interpretation was found to be correct, the real seat doctrine used primarily in French and German law could no longer be used to deny recognition of a company. This “extreme view” interpretation of Centros is put to the test in Überseering.

3. Überseering (2002)

Überseering concerned the transfer of the actual centre of administration of an existing company from one Member State (the Netherlands) to another Member State (Germany). Dutch law accorded legal personality to that company after the transfer of its head-office to Germany (the Netherlands follows the incorporation theory). German law, on the contrary, by virtue of the real seat theory, denied the company legal capacity, namely to bring legal proceedings in Germany.

So the question is how to deal with a company that starts its life in a country where the location of the registered office determines the firm’s nationality but then moves its centre of administration to a country where it is the location of the centre of administration that determines the firm’s nationality.

The Überseering ruling determined that if a company, formed in accordance with the law of a Member State (‘A’) in which it has its registered office, is deemed, under the law of another Member State (‘B’), to have moved its actual centre of administration to Member State B, Articles 43 and 48 of the EC Treaty\(^\text{15}\) preclude Member State B from denying the company legal capacity and, consequently, the capacity to bring or be party to legal proceedings before its national courts.

As a result, every company in the EU, as long as it is regarded in its Member State of origin as an existing and validly incorporated company, has the right to be fully recognised, as such, and conduct its activity in any other Member State to where its centre of administration and control has, meanwhile, been transferred.


Like Centros, Inspire Art concerned a private limited company incorporated in the UK which had all its activity in the Netherlands and none in the UK. Unlike Danish law in Centros, Dutch law allowed the registration of Inspire Art’s branch in the Netherlands. However, the Dutch law on formally foreign companies determined that Inspire Art, being a company that did business only in the Netherlands, had to indicate in its name that it had the status of a pseudo foreign company. As a pseudo foreign company Inspire

\(^{15}\) Articles 49 and 54 of the TFEU respectively.
Art had, therefore, among other rules, to comply with Dutch minimum capital demands which have to be observed by Dutch private limited companies.

The Court ruled that it is contrary to Articles 43 and 48 of the EC Treaty\(^{16}\) for national legislation to impose on the exercise of freedom of secondary establishment in that Member State by a company formed in accordance with the law of another Member State certain conditions provided for in domestic company law in respect of company formation relating to minimum capital and directors' liability. The reasons for which the company was formed in that other Member State, and the fact that it carries on its activities exclusively or almost exclusively in the Member State of establishment, do not deprive the company of the right to invoke the freedom of establishment guaranteed by the EC Treaty, save where the existence of an abuse is established, on a case-by-case basis.

The decision thus further reinforced the freedom of establishment by holding that rules submitting pseudo-foreign companies to the company law of the host state were inadmissible. It laid down that a foreign company is not only to be respected as a legal entity having the right to be a party to legal proceedings, but furthermore has to be respected as such, that is, as a foreign company that is subject to the company law of its state of incorporation.

5. Legal situation after the four rulings

Centros, Überseering and Inspire Art allowed for wide mobility of companies’ head offices from ‘incorporation’ Member States to ‘real seat’ Member States: every host Member State, even if it follows a strict version of the real seat theory, has to accept that a company incorporated in another Member State conducts all its business activity in the host Member State, while continuing to be subject to the \textit{lex societatis} of the company’s home Member State.

After these rulings, the Court of Justice has put in question the notion that the real seat doctrine is compatible with EU law. Instead, the Court’s ruling implies that any company formed in accordance with the law of a Member State which has its registered office, central administration or principal place of business within the Community, must be recognised as such in all other Member States, regardless of the place of its head office.

The marked differences between the Daily Mail ruling and the trilogy of Centros / Überseering / Inspire Art cases can be attributed to the latter being concerned with ‘inbound’ situations while the former was an ‘outbound’ case. The Member State of origin of a company can effectively prohibit its emigration if, in accordance with national company law, the firm ceases to exist if it moves across the border. On the contrary, a host Member State must recognise a foreign company as a company governed by the law of the Member State where it was incorporated as long as that company has legal

\(^{16}\) Articles 49 and 54 of the TFEU respectively.
personality there (which, therefore, entitles it to the right of establishment provided for in the Treaty).

As regards ‘start up’ companies, these judgments have triggered regulatory arbitrage among Member States by allowing company founders to set up their company in the Member State with the most attractive company law. This led, in particular, to a large increase in cross-country incorporations in the UK by companies from other EU Member States. The number of private limited companies incorporating in the UK per year increased from 4,400 firms pre-Centros to 28,000 firms post-Centros. These numbers refer only to firms that incorporated in the UK without any operational activity there. The largest flows of such companies were from Germany and France.


This case concerned a cross-border merger between the German company SEVIC and a Luxembourg company, where the Luxembourg company was dissolved without liquidation and the whole of its assets were transferred to SEVIC. The merger was rejected as German law only provided for mergers between resident German companies and cross-border mergers were not recognised.

The Court found that cross-border merger operations constitute particular forms of exercise of the freedom of establishment and, therefore, fall within those economic activities in respect of which Member States are required to comply with the freedom of establishment laid down by Article 43 of the EC Treaty.

The Court noted that a difference in treatment between companies according to the internal or cross-border nature of the merger constitutes a restriction on the right of establishment and can be allowed only if it pursues a legitimate objective compatible with the Treaty and is justified by imperative reasons in the public interest, such as protection of the interests of creditors, minority shareholders and employees, preservation of the effectiveness of fiscal supervision and the fairness of commercial transactions. Such a restrictive measure must also be appropriate for ensuring the attainment of the objectives pursued and not go beyond what is necessary to attain them.


The case concerns the Cadbury Schweppes group establishing two subsidiaries in Ireland in order that profits related to the internal financing activities of the Cadbury Schweppes group might benefit from the more favourable tax regime there.

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17 Becht et al. (2006).
18 Articles 49 and 54 of the TFEU respectively.
The ECJ ruled that national measures restricting freedom of establishment may be justified where they specifically relate to wholly artificial arrangements aimed at circumventing application of the legislation of the Member State concerned. The ECJ considered that freedom of establishment requires a stable and continuing basis in the economic life of a Member State other than the state of origin. Therefore a company cannot invoke freedom of establishment in another member state for the sole purpose of benefiting from more advantageous legislation unless the establishment in the other member state is intended to carry on genuine economic activity. According to the ECJ a restriction of freedom of establishment is therefore possible in cases of a ‘letterbox’ or ‘front’ subsidiary.

With this ruling the ECJ seems to move away from Centros, where the company founders set up a company that had never engaged in any economic activity in its founding State and was aimed solely at avoiding Danish company law.


Cartesio is a Hungarian limited partnership whose application for registration of the transfer of its seat to Italy was rejected by the Hungarian Court of Registration. Cartesio intended only to transfer its de facto head office to Italy, while continuing to operate under Hungarian company law.

The ECJ was called to determine whether Articles 43 and 48 of the EC Treaty\(^\text{19}\) preclude a Hungary from imposing an outright ban on a company incorporated under its legislation transferring its de facto head office to another Member State without having to be wound up in Hungary first, and to have the seat transfer entered in the Hungarian Company Register. It should be underlined that the Cartesio case is to a considerable extent similar to the ECJ’s Daily Mail Decision, since it also raises the question of the transfer abroad of the de facto head office.

The Court did not overrule its Daily Mail decision, which allows Member States’ national law to restrict the transfer of the central administration of a company abroad. On the contrary, the ECJ reaffirmed its Daily Mail doctrine. The court stated that, as Community law now stands, Articles 43 and 48 of the EC Treaty\(^\text{20}\) are to be interpreted as not precluding legislation of a origin Member State from baring the transfer of seat of domestic companies to another Member State whilst retaining their status as companies governed by the law of the Member State of incorporation.

On the question of whether freedom of establishment also covers the possibility of a company converting itself into a company governed by the law of another Member State – which is a de facto the transfer of the registered office – the Court sees “(...) the question whether – and, if so, how – the registered office (siège statutaire) or real seat (siège réel) of a

\(^{19}\) Articles 49 and 54 of the TFEU respectively.
\(^{20}\) Articles 49 and 54 of the TFEU respectively.
company incorporated under national law may be transferred from one Member State to another as problems which are not resolved by the rules concerning the right of establishment, but which must be dealt with by future legislation or conventions’ (para 108). 

By admitting that, as they currently stand, articles 43 and 48 of the EC Treaty are powerless to resolve certain disputes, the ruling in Cartesio leaves much in the hands of national legislation and thus may lead to different treatment between emigrating and immigrating companies and between companies emigrating from ‘real seat’ countries and ‘incorporation’ countries.


Vale is a mirror image of Cartesio. An Italian company wanted to dissolve in Italy and re-incorporate in Hungary, and it wished its Italian predecessor to be recognised as its legal predecessor, meaning all rights and obligations of the old company to be transferred to the new. This procedure is allowed in Hungary for Hungarian companies, in particular by changing company form. Vale’s application for registration was rejected because under Hungarian law it is not possible to register a company moving into Hungary (with a predecessor in another Member State).

At issue therefore were a transfer of ‘seat’ to a host Member State, deregistration from the Member State of origin and adoption of a new instrument of constitution under the laws of the host Member State with registration in the respective commercial register.

The Court decided in favour of Vale arguing that, if nationally incorporated companies in Hungary may convert and transfer all rights and obligations to the new company, any restrictions on foreign companies employing this mechanism come within the reach of Article 49 TFEU (former Article 43 EC Treaty) and therefore contravene EU law.

V – Current legal status after the eight ECJ decisions

The Court’s decisions uphold the distinctions between outbound versus inbound and primary versus secondary freedom of establishment and accepts differences in treatment of cross border movement of companies depending on whether the Member States involved are ‘real seat’ or ‘incorporation’ States.

Essentially, inbound establishment cannot be refused by the host Member State, as determined in Centros, Überseering, Inspire Art and SEVIC, while outbound establishment cannot be considered a per se right conferred to Member State companies by the EC Treaty, as ruled in the Daily Mail case and confirmed in Cartesio.

21 Judgment of the Court (Grand Chamber) of 16 December 2008, CARTESIO Oktató és Szolgáltató bt, Case C-210/06.
22 Articles 49 and 54 of the TFEU respectively.
If a company is registered in a Member State with a view to carrying on business activities through a branch in another Member State (State of establishment), so that the company law of the registration State applies to the company rather than the company law of the Member State of the establishment, this is neither an abuse of Community law, nor an unlawful evasion of national company law (Centros). The establishment of a branch in another Member State shall continue to be regarded as secondary establishment, regardless of whether the company carries on its activities exclusively or almost exclusively in the Member State of establishment, and regardless of the reasons for which the company was formed in the Member State of incorporation. An exception to this rule applies only where abuse is established on a case-by-case basis by the Member State of establishment (Inspire Art).

It follows from the above that a Member State can no longer use the real seat doctrine as a legal instrument for denying recognition to a foreign company which is formed in accordance with the law of another Member State (Überseering).

Imposition by a Member State of duty to comply with mandatory company law rules of the Member State of establishment on companies formed in accordance with the law of another Member State is an unjustifiable restriction on the companies in question (Inspire Art) and an infringement of the right of establishment. Only in those cases where the existence of an abuse is established on a case-by-case basis, can a Member State deprive a foreign company of the right to invoke the freedom of establishment, which is otherwise guaranteed by the Treaty, or impose a duty on the foreign company to comply with company law rules of the Member State of establishment.

The Court accepts that the existence of a company depends on the law of the State where it was created and Member States remain exclusively competent to determine the relevant factor connecting the company to a given legal order (the place of incorporation in some countries; the place where the company has its real seat in others). As such, Treaty provisions on freedom of establishment cannot apply to an emigrating company when, in light of the company’s national legal provisions, this move puts in question its very existence as a legal entity (Cartesio) as would be the case if a company tries to move its head office away from a real seat home State.

Companies which want to change their registered office from a Member State to another, can only either wind themselves up and establish a new legal entity in the host Member State, or establish a new legal entity in the host Member State and then merge both undertakings across the border. An exception is where a change of registration is specifically allowed to national companies in the host Member State (Vale). In that case, the principle that a Member State cannot in any way discriminate between national companies and companies from other Member States takes precedence and the re-incorporation of the migrating company in the host State has to be accepted.

Finally, it is important to highlight that the Court is not blind to the possibility of abuse and, therefore, explicitly allows for exceptions to freedom of establishment even in the most favourable case where companies move their head offices from ‘incorporation’
States. This point is noted in Advocate General Maduro’s comments on how the Court allows for special treatment of cases where there is a suspicion that companies are ‘abusing’ the rights granted to them by the freedom of establishment articles:

"[D]espite what the rulings in Inspire Art and Centros suggest, it may not always be possible to rely successfully on the right of establishment in order to establish a company nominally in another Member State for the sole purpose of circumventing one’s own national company law. In its recent judgment in Cadbury Schweppes, the Court reiterated that ‘the fact that [a] company was established in a Member State for the purpose of benefiting from more favourable legislation does not in itself suffice to constitute abuse of [the freedom of establishment]. However, the Court emphasised that Member States may take measures to prevent “wholly artificial arrangements which do not reflect economic reality” and which are aimed at circumventing national legislation. […] In particular, the right of establishment does not preclude Member States from being wary of “letter box” or “front” companies. In my view this represents a significant qualification of the rulings in Centros and Inspire Art, as well as a reaffirmation of the established case-law on the principle of abuse of Community law, even though the Court continues to use the notion of abuse with considerable restraint – and rightly so.”

In summary, a company validly incorporated in a Member State must be recognised in any other Member State to which it decides to move its real seat or operations. This applies even to a move into a real seat country - the host has to recognise the arriving company as a company registered in its Member State of origin. This conclusion, crucially, does not deal with the situation where the migrating company originates in a real seat country for, as it moves its real seat elsewhere, it ceases to be validly incorporated in its origin Member State.

In contrast to the expectations of the European Commission that case law would help to address the various legal impediments to cross-border mobility of company seats, there remain a number of circumstances that are not currently covered either by legal text or by jurisprudence.

There is also no legal framework permitting the transfer of seat in conjunction with a change of applicable law to the law of the host Member State. In light of the disparity of requirements imposed by Member States for both inbound and outbound cross-border transfers of seat, the creation of a harmonised regime governing the cross-border transfer of seat through a cross-border conversion would certainly be one of the important aims of an eventual 14th Directive.

The Reflection Group on the Future of Company Law set up by EC DG Internal Market and Services came to the same conclusions. It notes that:

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23 Opinion of Advocate General Maduro delivered on 22 May 2008 in Cartesio, C-210/06.
“This present condition of the Union provides for paradoxical outcomes. When considering the formation of a company, the founders may take advantage of the company law regime of any Member State in the Union and are free to choose between them, but once the company has been formed, it cannot directly change its company law regime to that of another Member State. A Member State may prevent its national companies from moving their real seat out of its territory, but it cannot prevent a company of another Member State from operating in its territory irrespective of where its real seat is located. Member States can prevent their national companies from transferring to a different national company law regime and require them to keep their real seat in their territory, but they cannot prevent them from engaging in a merger with a company of another Member State which may effectively result in the adoption of a new company law regime and a transfer of the real seat as a result of the merger. The result is an uneven distribution of rights that requires companies to expend considerable resources and costs in order to enjoy the flexible freedom of movement within the Union that should be the birth right of all citizens and companies in the Union; a loss of resources that could be put to better use by the companies in creating jobs and is often outside the reach of SMEs.”

Chapter 4 - The 2007 Impact Assessment

The 2007 IA of the European Commission considered the following five policy options:

- No action
- Action by Member States alone which would involve the signature of a convention on mutual recognition of companies;
- A Recommendation;
- A Directive;
- A Regulation.

Among the various policy options involving some policy action, the Directive was found to be a suitable way forward in addition to a “no action” stance.

This conclusion was based on an assessment of the policy options on the basis of three criteria, namely legal certainty, proportionality and adequacy (see table below).

It is interesting to note that, even in the IA of the Commission, a Directive dominates overall the “no action” policy approach as it is more highly rated for 2 of the 3 criteria. In other words, the test applied by the IA was exceptionally strong as the Directive option would have to dominate the “no action” policy on the basis of all criteria for it to be identified as the best way forward.

Table 1 - Assessment of the policy options in the IA

<table>
<thead>
<tr>
<th>Policy instrument choice</th>
<th>Legal certainty</th>
<th>Proportionality</th>
<th>Adequacy</th>
</tr>
</thead>
<tbody>
<tr>
<td>No action</td>
<td>++</td>
<td>+++</td>
<td>++</td>
</tr>
<tr>
<td>Recommendation</td>
<td>-</td>
<td>++</td>
<td>-</td>
</tr>
<tr>
<td>Directive</td>
<td>++</td>
<td>++</td>
<td>+++</td>
</tr>
<tr>
<td>Regulation</td>
<td>+++</td>
<td>--</td>
<td>--</td>
</tr>
</tbody>
</table>

Source: EC (2007) p.52

The “no action” was rated more highly with respect to the proportionality criterion as it was found to be the less onerous approach. This was based on a view that the cross-border merger Directive (whose effects were not yet know at the time the IA was prepared) and the evolving case law would help address the issue of the cross-border transfer of registered offices. In fact the IA noted that “it might be advisable to wait until the impacts of those developments can be fully assessed and the need and scope for the EU action better defined”.

However, as of February 2013, the case law still does not allow for full cross-border mobility of registered offices of companies in Europe. It is ironic that while there is full pan-European mobility at the time of the registration of the company, the scope for mobility is considerable reduced once registered.
Chapter 5 - Cross-Border Mobility of Companies

The present section presents some facts about actual mobility of companies within the EU. The section provides first some information on take up of the freedom of establishment.

Next, it provides information on the mobility of SEs and finally it discusses the mobility of non-SE companies in Europe.

I – Take-up of the freedom of establishment

While a detailed analysis of the nationality of new companies having registered in the various Member States since the Centros ruling was well beyond the scope of the present study, it suffices to note that a 2006 study found that between 2002 and 2005, 52,000 new private limited companies have been set up from other EU Member States in the United Kingdom. Of these 52,000 companies, Germany accounted for 24,000 companies, France for 6,000 companies, the Netherlands for 4,800 companies and Cyprus for 4,100 companies.

These figures clearly show that companies are using the freedom of establishment to register outside the country from which they originate.

II – Mobility of SEs

This section analyses the cross-border transfer of registered offices by SE firms in the period 2007-2012. The SE statute allows companies in different Member States to merge, form a holding company or joint subsidiary, whilst avoiding the constraints that arise from the different legal systems across Europe. Therefore, the following analysis should provide some insight into the demand for transfers of registered offices.

The number of transfers that took place is highlighted, as well as the characteristics of the moves/movers. In general, very few SE firms moved. Over 2007-2012, this figure was 73 out of 1,669 (or, 4.4%) of SE firms. If SE firms are similar to non-SE firms, this suggests that demand for the cross-border transfer of registered offices is not very high.

To identify the SE firms that transferred their registered office from one Member State to another, two sources were used:

25 Becht et al. (2006).
26 Some of these SEs are shelf SEs (i.e. they have no employees and no operational activities) or empty SEs (i.e., they have no employees at the time of creation). A study by Ernst & Young (2009) found that of the 369 SEs that were registered as of 15 April 2009, 139 were shelf SEs and 90 were empty SEs.
27 The home and host Member States are identified and the sectors of the firms involved.
28 The detailed list of the 73 transfers by SEs of their registered office is provided at Annex I.
The European Trade Union Institute’s European Company (SE) database was used primarily to obtain key information on established SE firms. The company name, the country of the registered office and whether a cross-border registered office transfer has occurred were noted. If such a transfer occurred, the home and destination countries were recorded, as well as the year of the move. Additionally, notifications of (re-)incorporations of the registered offices of firms were used (which firms are obliged to report in the Official Journal of the European Community) to retrieve similar information to that collected from the European Trade Union Institute’s European Company (SE) database for verification purposes. This complementary search of information yielded a few more cases.

The analysis below then identifies the sector in which these firms operate and the reasons for their move. For the former element, the analysis uses Bureau van Dijk’s Orbis database, whilst the latter element uses a combination of press releases by the firm and news articles.

1. Analysis of cross-border transfers of registered office by SEs broken down by Member State

In total, 73 cross-border registered office transfers by SE firms occurred between 2007 and 2012. Cross-border transfers between particular Member State pairings were not very frequent with many moves associated with a different pair of countries.

The notable transfers concerning the same Member States were: from the Netherlands to France (7), from the Netherlands to the United Kingdom (5), from Luxembourg to Austria (4), from Luxembourg to the UK (4).

2. Analysis of cross-border transfers of registered office by SEs broken down by year

Table 2 highlights the proportion of cross-border registered office transfers by SE firms to the total number of notifications of (re-)incorporations of the registered offices of SE firms by year.

The total number of notifications has grown substantially in the five-year period under study with approximately 298 new SE firms in 2012 in comparison to 67 new SE firms in 2007.

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29 http://ecdb.worker-participation.eu/.
30 These were available from www.tenders.co.uk and were identified if there was a change in the place of registration.
31 For more details, see Annex 1.
32 It should be noted that the total number of notifications also includes those which concern a domestic move of registered office. However, the total number of such transfers is small and does not affect the main insight regarding the ratio of total cross-border transfers by SE firms to the newly established SE firms.
2007. On the other hand, the total number of cross-border registered office transfers has followed no particular trend during the period considered.

The proportion of total cross-border transfers to the total number of notifications has declined, with an average of 4.0% in the last three years compared to an average of 14.4% during the prior three years. This may suggest that a fewer number of firms are undertaking a cross-border registered office transfer. However, the number of SE firms to the total number of firms is very small, which makes it difficult to draw firm conclusions.

Table 2 - Proportion of cross-border registered office transfers by SEs, by year

<table>
<thead>
<tr>
<th>Year</th>
<th>Total notifications</th>
<th>Total cross-border transfers</th>
<th>Proportion of total cross-border transfers to total notifications</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>67</td>
<td>6</td>
<td>8.96%</td>
</tr>
<tr>
<td>2008</td>
<td>105</td>
<td>16</td>
<td>15.24%</td>
</tr>
<tr>
<td>2009</td>
<td>106</td>
<td>20</td>
<td>18.87%</td>
</tr>
<tr>
<td>2010</td>
<td>183</td>
<td>7</td>
<td>3.83%</td>
</tr>
<tr>
<td>2011</td>
<td>286</td>
<td>13</td>
<td>4.55%</td>
</tr>
<tr>
<td>2012</td>
<td>298</td>
<td>11</td>
<td>3.69%</td>
</tr>
<tr>
<td>Not known</td>
<td>620</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

Source: London Economics analysis of data from Official Journal of the European Union and European Trade Union Institute’s European Company (SE) database

3. Analysis of cross-border transfers of registered office by SEs broken down by age of SEs

Table 3 identifies the age of the SE firm when it moves its registered office to another country. The publication date is taken as an indicator of the year in which the firm initially registers itself as an SE firm. It is clear that a large number of firms moved within 1 year of registering as an SE firm as 55 out of the 73 firms transferred their registered office in this period.

Table 3 - Age of SE firm when it transfers its registered office

<table>
<thead>
<tr>
<th>Age</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under a year*</td>
<td>30</td>
</tr>
<tr>
<td>1</td>
<td>25</td>
</tr>
<tr>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>Not known</td>
<td>6</td>
</tr>
</tbody>
</table>

* Moves in which the publication date and the year of the move are the same.

Source: London Economics analysis of data from Official Journal of the European Union and European Trade Union Institute’s European Company (SE) database
4. Analysis of cross-border transfers of registered office SEs broken down by sector

Using the broad structure of the revised NACE classifications (NACE Rev. 2), Table 4 below shows the economic activities of the SE firms that moved their registered office in the five-year period of 2007-2012. These were identified using the Orbis database provided by Bureau van Dijk.

The two sectors in which most registered office transfers occurred were the financial and insurance activities and the professional, scientific and technical activities sectors. The former totalled to 25 SE firms, whilst the latter totalled 23.

Table 4 - Economic activity of SE firms that transferred their registered office

<table>
<thead>
<tr>
<th>Sector</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>K - Financial and insurance activities</td>
<td>25</td>
</tr>
<tr>
<td>M - Professional, scientific and technical activities</td>
<td>23</td>
</tr>
<tr>
<td>C - Manufacturing</td>
<td>7</td>
</tr>
<tr>
<td>G - Wholesale and retail trade; repair of motor vehicles and motorcycles</td>
<td>4</td>
</tr>
<tr>
<td>J - Information and communication</td>
<td>4</td>
</tr>
<tr>
<td>N - Administrative and support service activities</td>
<td>3</td>
</tr>
<tr>
<td>L - Real estate activities</td>
<td>2</td>
</tr>
<tr>
<td>R - Arts, entertainment and recreation</td>
<td>1</td>
</tr>
<tr>
<td>S - Other service activities</td>
<td>1</td>
</tr>
<tr>
<td>D - Electricity, gas, steam and air conditioning supply</td>
<td>1</td>
</tr>
<tr>
<td>B - Mining and quarrying</td>
<td>1</td>
</tr>
</tbody>
</table>

Note: Unable to find Spirall Solution SE on Orbis database.

Source: London Economics analysis of data from Official Journal of the European Union, and European Trade Union Institute's European Company (SE) and ORBIS databases

5. Reasons identified for registered office transfers

In general, firms carry out the cross-border transfer of registered office to their preferred legal regime (preferred law) and legal enforcement regime – including court systems (preferred forum).

In most cases, it was not possible to find press releases or news articles highlighting the reasons behind each individual move.

However, high-level information was available in one case: The firm believed that a move to its preferred law and forum combination would lead to more efficient capital distributions and reduce operational costs without affecting the rights of its shareholders (Company transferring from Luxembourg to Malta, 2012).
An earlier study by Ernst & Young (2009) on the operation and the impacts of the SE statute found as of 15 April 2009, 38 SEs had transferred cross-border their registered office. Some these transfers related to “former shelf SEs that have been sold and supposedly activated after the transfer ….Even for SEs that were not shelf companies, the change of control is one of the major five factors for the transfers of the registered office. Apart from the cases of change in control, the argument often put forward to explain the transfer of the registered office is the possibility to locate the company in a Member State allowing higher flexibility than the Member State of incorporation, the flexibility being widely interpreted as encompassing the corporate, tax and social area”.

The Ernst & Young study concluded that “… when interviewed the SEs unanimously explained that the possible transfer of the registered office was considered to be a major incentive to choose the SE status, The difference between the intentions expressed by the SEs and the actual number of cross-border transfers of their registered office may lie in the fact that the SE Regulation does not cover the tax issues related to the transfer. In this area in particular, they are still considered to be national companies for tax purposes”.

III – Mobility of other European companies

1. Information on cross-border transfers of registered offices from national business registers

There is very little publicly available information from national business registers on cross-border transfer of registered seat. National business registers were contacted to determine whether EU cross-border registered office moves could be identified in one of the following two ways:

- Direct identification of firms re-registering from elsewhere within the EU; and,

- Indirect identification of firms re-registering from elsewhere within the EU by matching de-registrations in one Member State with registrations elsewhere.

A sample of business registers was initially contacted to determine the feasibility of these approaches. These were the national business registers of Denmark, France, Ireland, Malta, Slovenia, Spain, Sweden and the UK.

Direct identification of firms re-registering from elsewhere within the EU was largely unsuccessful because almost no business register provided information on the previous registration of a firm.

33 See Ernst & Young (2009), pp. 213 to 215.
The one exception was Malta, for which data on ‘re-domiciled’ firms is recorded at an aggregate level. The figure below shows that the number of cross-border transfers of registered offices from the EY into Malta fluctuated between 20 and 25 over the period 2009-2011.

![Figure 1: Number of cross-border transfers of registered offices into Malta](image)

**Source:** London Economics analysis of data published in 2009, 2010 and 2011 Annual Reports of the Malta Financial Services Authority

Indirect identification using a matching process was problematic, among other reasons, even at a conceptual level. Firms de-registering in one Member State need not necessarily re-register elsewhere under the same name, making this de-registration-re-registration linking exercise cumbersome. Moreover, it is not the case that two firms with the same name necessarily relate to the same underlying entity.

In a further attempt to identify cross-border transfers of registered offices, the company information and business intelligence databases published by Bureau van Dijk were used to identify cross-border registered office transfers that may have occurred as a result of a cross-border merger.

The Zephyr database, providing information on mergers and acquisitions, was first used to identify EU27 cross-border mergers that had taken place over the period 2007-10. Acquirer country identifiers at the time of these mergers were retained. The Orbis database was then used to search for acquirer country identifiers today. If a difference in the acquirer country identifiers was observed between the time of a merger and today, the merger was investigated further to determine more firmly whether the transaction resulted in a registered office transfer (for example, by investigating changes in registered office listings in company annual reports).
In total, 3,675 EU27 cross-border transactions were identified (that involved a single acquirer and target). For these transactions, country identifiers, at the time of the mergers and today, were found for 3,500 unique acquirers. However, according to information from Orbis and Zephyr, none of these acquirers were shown in the databases as having transferred their registered office. This may well be because none of the cross-border transactions identified involved a registered office transfer. Or it may be that country identifiers in the databases only imperfectly identify the country in which a registered office is located.
Chapter 6 - The Determinants of Business Mobility

In order to assess whether greater mobility of companies within the single market would be beneficial, it is important to focus first on the drivers of business mobility and the impediments to mobility other than the legal one already discussed in an earlier section.

I – Determinants of entrepreneurial mobility

The majority of previous studies have addressed the initial location decision of a business rather than the decision of businesses to transfer. The determinants of transferring may be similar to initial location decisions, however. As such, this literature provides a useful framework in which to analyse transfer choices. However it is important to note that transfer choices differ in that they result from a series of previous decisions taken by the firm.\textsuperscript{35}

The focus of this location-decision literature is also on the firm's real seat as opposed to its registered office. However, this literature is relevant in the present context due to some options firms have (or may have in the future) for moving their registered office to another Member State also requiring the transfer of their real seat.

It is possible to identify three main approaches in location theory relating to real seat moves: neoclassical, behavioural and institutional\textsuperscript{36, 37, 38}. Under the neoclassical theory, firms are assumed to be rational and make their choices in order to maximise expected benefits. Under this model, the location decision is affected by push factors affecting profitability in the original location, and pull factors affecting possible profitability at the new site.

The behavioural approach is similar to the neoclassical model in its reliance on firms as individual agents. However, in contrast to the neoclassical approach, it assumes that entrepreneurs have cognitive limitations and hence fail to process information fully and rationally, settling for sub-optimal outcomes. Under this approach, both transfer costs and imperfect information are seen as significant barriers to firm transfers. The behavioural approach also tends to place greater emphasis on the importance of internal firm characteristics, such as age and size, in determining transfer decisions. In the present context, the behavioural approach is consistent with the notion that transfer costs (economic costs and perceived/real difficulties associated with the legal transfer) may lead to a sub-optimally low level of corporate mobility in the EU. For instance, due to the number of legal procedures required to move under the SE Regulation or Cross-Border Mergers Directive.

\textsuperscript{35} Carod and Antolin (2007).
\textsuperscript{36} Hayter (1997).
\textsuperscript{37} Brouwer, et al. (2004.)
\textsuperscript{38} Carod and Antolin (2007).
In contrast to both neoclassical and behavioural approaches, the institutional approach sees economic activity as operating within a socially shaped environment. As such, firms’ transfer decisions are a result of their negotiations with other bodies such as customers, suppliers and Government.

These three approaches identify a number of factors that underlie firms’ decisions to transfer, and their choice over where to transfer to. We discuss these factors below, distinguishing between two groups: those that are specific to the firm, and those that relate to the destination environment.

II – Internal firm factors

Firm-specific considerations are key factors in the decision to transfer. Lack of space at the existing location and accessibility of the site are particularly important in this respect\(^{39}\). An alternative set of obstacles, include: obstacles to using resources; availability of raw materials; availability of suitable workforce; information about resources (visibility); costs; delivery problems; and capacity problems.\(^{40}\) Further, it is argued that the primary obstacle faced by small firms is the shortage of resources, and in particular financial resources.\(^{41}\) On the other hand others stress the liabilities associated with ’smallness’ and ’inexperience’.\(^{42}\)

One study tests (and subsequently accept) four hypotheses regarding the characteristics of firms associated with firms’ likelihood of transferring.\(^{43}\) The first hypothesis considers that firms are thought to be more likely to transfer if they are smaller. As firms become larger, the costs of transferring become greater both because they are faced with a greater loss through sunk costs in the original site and also due to greater organisational difficulties. Larger companies on the other hand are able to manage expansion better through the development of a network of plants or through acquisition.\(^{44}\) These two findings suggest a Directive on the cross-border transfer of registered office may be more relevant to smaller firms.

Secondly, older companies are thought to be less likely to transfer than younger companies. This prediction is based on the institutional approach discussed above, and the expectation that older firms are more likely to be embedded in local networks. The relevance of this finding is that a Directive on the cross-border transfer of registered office may be utilised by a narrow segment of firms, namely young firms, but also only young firms that have a so-called ’change of heart’ about their best location of incorporation over a short time span.

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\(^{39}\) van Dijk and Pellenbarg (1999).
\(^{40}\) Lichtenstein and Lyons (1996).
\(^{41}\) Malecki (1997).
\(^{42}\) Wright, Westhead and Ucbasaran (2007).
\(^{44}\) Van Dijk and Pellarberg (1999).
Third, firms are thought to be more likely to transfer if they serve larger markets. Larger markets provide firms with a wider spread of customer links. In addition, it also presents the opportunity to partially transfer operations, without suffering sunk costs in the additional market. Under this logic, firms may have a mix of operations across Member States with one of these determining any given firm's real seat. If firms then wish to transfer their registered seats, there may be (significant) costs associated with also moving their real seats - direct costs as well as costs associated with transfer benefits lost (e.g., being close to key markets).

The final hypothesis relates to the impact of firm growth on the likelihood of transferring. As firms grow they are required to find a new site. In the particular case of start-ups, once a company has passed through the “initial survival” stage, mobilising and generating additional resources is likely to mean that a more appropriate business location needs to be found. This finding is particularly relevant in the present context because it suggests that firms have real seat transfer needs. If they are hindered by the requirement of having a coincident registered office, there could be material costs associated with a lack of corporate mobility.

III – Environmental factors

The discussion above has highlighted the findings of the literature regarding which types of firms are more likely to choose to transfer their operations. However, it does not consider explicitly where entrepreneurs choose to transfer - or whether they choose to transfer within the same region, within the same country or internationally. In fact, the literature identifies a number of characteristics that promote entrepreneurial behaviour, and which make a location attractive (or unattractive) to entrepreneurs.

One study, for instance, argued that some areas have environmental deficiencies that hinder entrepreneurship. In particular, these “sparse environments” were found to include a lack of entrepreneurial culture, traditions of entrepreneurship, family businesses, or innovative industries. In addition, they also suffered from weak infrastructure, weak capital markets, few effective government incentives and the absence of networks and support services.

We consider the important environmental factors in the decision of where to transfer in more detail below.

1. Business climate

One driver of entrepreneurial activity is whether the system of government regulations in a given economy assists or hinders economic activity. The ability to establish a business

at low cost and the ease with which firms are able to access credit are key pull factors for entrepreneurs as poor business climates stifle business performance. Particularly in the case of high technology sectors, where product lifecycles are short, the ability to establish a business rapidly may be an important determinant of success.

The World Bank ease of doing business index attempts to capture regulations that assist entrepreneurs to conduct economic activities, particularly those operating small- and medium-sized enterprises (SMEs). Ten indicators are used in total and these relate to:

1. starting a business;
2. dealing with construction permits;
3. employing workers;
4. registering property;
5. getting credit;
6. protecting investors;
7. paying taxes;
8. trading across borders;
9. enforcing contracts; and
10. closing a business.

The index ranks countries on the basis of each of these indicators and the overall average is used to determine the ease of doing business index across 183 countries. The results show significant dispersion across the EU27 countries in terms of many aspects, implying potential demand for transfers that may not be realised under the present legal arrangements firms can use.
Table 5 - Various aspects of Doing Business rankings, 2010/11, EU countries

<table>
<thead>
<tr>
<th>Economy</th>
<th>Ease of Doing Business Rank</th>
<th>Starting a Business</th>
<th>Getting Credit</th>
<th>Protecting Investors</th>
<th>Paying Taxes</th>
<th>Trading Across Borders</th>
<th>Enforcing Contracts</th>
<th>Resolving Insolvency</th>
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Note: Data for Malta not available
Source: World Bank (www.doingbusiness.org)
2. Agglomeration / clusters

As indicated above, agglomeration or already-formed industrial sectors may be an important pull factor for businesses to transfer. This is because transferring firms may be able to tap into an array of knowledge-based resources that other firms make available to them, including access to innovative ideas, customers, investors, highly skilled employees, etc. In addition, there may be competitive benefits associated with agglomeration/clusters insofar as observing one's competitors' drivers stimulate internal innovation.

One of the most observed features of entrepreneurial location is the propensity for entrepreneurs to cluster geographically. Whilst little is known about the conditions and the factors that lead to the establishment of clusters, once established, clusters become virtuous circles that are self-reinforcing.

Five factors have been suggested for knowledge-based clusters to arise, with each of the five factors subject to policy influence.

1. research funding;
2. a systemic method of supporting clusters of new businesses;
3. incubators for new firms;
4. venture capital; and
5. policy intervention to build clusters outside large metropolitan areas.

Notably, one study finds that foreign location choices are often governed by agglomeration economies and proximity to major urban centres.

The benefits derived from agglomeration/clusters imply firms may wish to transfer to Member States where such agglomeration/clusters arise. Moreover, once a part of such an agglomeration/cluster, firms may wish to remain where they are. Both of these motivations suggest that the necessity in some Member States of requiring the coincidence of registered office and real seat may be at odds with firms' needs – as agglomeration/cluster-motivated reasons for moving one's real seat may be at odds with motivations for registered office moves.

3. Venture capitalists and financing opportunities

Research conducted by the OECD highlights that funding assistance targeted at SMEs venturing across borders is central to achieving economic growth. This view is based on

48 Cooke (2002).
50 OECD 2009.
two stylised facts. Firstly, that cross-border venturing has a significant effect on economic growth. Secondly, smaller, newly internationalising SMEs face credit constraints due to factors such as a lack of international contacts from whom to access external finance.

Venture capital organisations, in addition to providing funds to businesses, serve as a distinct pull factors to firms considering transferring for many other reasons through the provision of advice and assistance to their portfolio companies.\textsuperscript{51} One study refers to this as ‘relational expertise’\textsuperscript{52}, arguing that it is a key contribution provided by venture capitalists. In fact, the management advice that comes with venture finance is often as important as the funding as the venture can fail without either.\textsuperscript{53}

Unlike capital markets such as Euronext or NASDAQ, in which publicly available information is the primary basis on which investment decisions are made, markets for angel or venture capital (VC) funding rely primarily on private information ascertained through networks. It has been shown that VC firms with better networks are more likely to have invested in a more successful portfolio of firms (gauged by number of successful “exits”) and equally, these firms are more likely to survive in the future.\textsuperscript{54} The authors of the study show that a one-standard deviation increase in network centrality leads to a 2.5% average increase in the internal rate of return on an investment and a 5.6% average increase in survival probability from the time of the first VC funding round).

In essence, similar to agglomeration/clusters above, the need for networks motivates firms to transfer and settle in Member States that may be different to their real seats. If there are impediments to doing this, firms, especially young firms, may be credit-constrained influencing their prospects and the wider economic benefits (namely, growth) that may result from their activities.

\textbf{IV – Evidence focusing explicitly on the transfer of headquarters}

The evidence base presented thus far has relied on the literature on firms’ initial location decisions as a means to understanding the factors that may drive firms’ transfer decisions. The two studies considered below provide evidence explicitly on firms moving their corporate headquarters. As noted in the previous section, depending on the approach taken by the Member State in which a company is registered, it is may not be always necessary to move cross-border the headquarters of a company in order to achieve the expected benefits of a cross-border transfer of the company’s registered office.

Of note is the fact that the findings of studies focusing on the reasons why a company moves its headquarters are generally consistent with the literature on firms’ initial location decision.

\textsuperscript{51} Malecki (2009).
\textsuperscript{52} Maleck (2009).
\textsuperscript{53} Garnsey and Heffernan (2005).
\textsuperscript{54} Hochberg, Ljungqvist and Lu (2007).
Strauss-Kahn and Vives (2005) consider the question of why (and where) headquarters move explicitly in the US for the period 1996-2001. They find headquarters are more likely to move, if they are:

1. Larger -- this may be due to the possibility that larger headquarters carry out global activities and are attracted by active business centres (as opposed to smaller headquarters that are tied to their plants). Additionally, the authors hypothesise that larger firms may be able to afford the costs of a move more easily and are more likely to consider moving as they pursue global strategies (a part of which is deciding on the most profitable locations).

2. Younger -- this finding is due to results that shows firms established in the late 1800s and early 1900s are more reluctant to move.

3. Subject to higher corporate taxation -- a 1% increase in the level of corporate tax leads to a 2.7% increase in the probability of a headquarter move. Interestingly, the higher the corporate tax rate the more likely a headquarter move will occur for a 1% increase in the corporate tax rate.

4. Subject to higher wages -- a 10% increase in wages is linked to a 10% increase in the likelihood of a move.

5. Not subject to agglomeration factors -- that is, firms which are presently located among same-industry headquarters or in a specialised business centre are less likely to move.

Birkinshaw et al. (2005) explore the differences in firms’ motivations in moving business versus corporate headquarters. Interestingly, while business unit headquarter-moves are linked to internal factors such as the unit's activities and product markets, corporate headquarter moves are driven by demands of external stakeholders such as global financial markets and shareholders.
Chapter 7 - The Potential Benefits of a Directive Facilitating the Cross-Border Transfer of a Registered Office

This section highlights the impacts of a Directive on the cross-border transfer of registered office, given that it brings about an increase in this activity on three key sets of stakeholders: firms (including SMEs), employees and creditors. In so doing, it covers the following topic areas: economic growth, co-determination, tax and labour market implications. Additionally, where relevant, short- and long-run consequences are highlighted.

I – Firms or shareholders

1. Reduced capital requirements (access to internal finance)

Firms are required to maintain a minimum level of share capital in accordance with the relevant Member State legislation. In the UK, for instance, the minimum level of share capital is provided in the Companies Act 2006, which requires private limited companies to hold £1 of share capital and public limited companies to hold £50,000 (or, €51,700) of share capital. Share capital is used to determine shareholder ownership.

Reduced capital requirements may motivate the cross-border transfer of registered offices ceteris paribus, as there are substantial differences in minimum capital requirements across Member States (ranging from 0% to 52% of income per capita in 2010/11). Details of paid-in minimum capital (as a percentage of income per capita) for EU Member States are shown in Table 9.

Capital that would otherwise be used to meet minimum capital requirements could be put to productive use. This (productive use of capital) may bring about an increase in the level but not the growth rate of economic activity.

SMEs may benefit disproportionately, as they tend to have less access to external finance and therefore gain more than larger firms (that may have more access to external finance) from the freeing-up of internal finance. On the basis of sample of 1,600 firms, one study shows, for instance, that a small increase of internal finance generates relatively large asset growth for financially constrained firms compared to other firms.\(^{55}\)

Further, the cross-border transfer of registered offices would also be beneficial to the functioning of the Internal Market insofar as firms across Member States would have equal access to reduced capital requirements.

\(^{55}\) Carpenter and Petersen (2002).
Access to reduced capital requirements may not have a detrimental effect on creditors because minimum capital requirements (even in Member States where they are relatively large) presently, according to one view, do not serve a material creditor protection function.

However, it is important to note that for the abovementioned benefits to be realised creditor covenants must not require firms to hold capital equivalent to or in excess of the minimum capital requirement of their (present) home Member State. If creditors do impose this covenant (and it applies still if a firm moves its registered office cross-border) then no additional capital would become available as a result of a Directive on the cross-border transfer of registered office.

2. Access to external Finance

The cross-border transfer of registered offices may allow firms greater access to external finance as a result of substantive aspects of insolvency law and bankruptcy procedures that make firms more attractive to investors (potential equity- and debt-holders).

Significant variation across Member States in terms of recovery rates in the event of insolvency indicate that there is potential for firms to access greater external finance through transferring registered offices across Member States. This, combined with estimates for the present value of the costs of bankruptcy, suggest that firms may be able to access materially higher levels of external finance under better legal arrangements for insolvency/bankruptcy.

3. Added value of legal certainty

The value of firms benefits from legal certainty. Company law determines investors' rights and managers' duties (with some company law regimes demarcating investors' rights and managers' duties more effectively than others). Cross-border transfers of registered offices to company law regimes with greater legal certainty therefore serve to reduce agency costs (and therefore increase firm values). This represents a gain in economic efficiency. Operating under legal certainty may also be associated with lower administrative and legal expenses.

In the short run, firms that transfer registered offices to Member States with greater legal certainty may benefit disproportionately. In the longer run, all firms may benefit from legal certainty. In other words, the disproportionate advantage conferred on firms that undertake to transfer registered offices cross-border first is diminished. But, it should be noted that the gain in economic efficiency of firms transferring registered offices would remain.

However, differences in legal certainty across Member States may not be objectively determined, insofar as certain company law configurations (and applications by firms)
may be beneficial to some stakeholders while being detrimental to others. Depending on the decision-making processes involved, the choices made have different implications for firm value and the division of firm value among its stakeholders (among others, shareholders and labour). The quantitative implications of choice over company law therefore cannot be determined ex-ante.

4. Tax implications

The tax implications need to be considered in terms of both a) the explicit and/or implicit tax liabilities accumulated by a company up to the time of the cross-border transfer of the registered office and b) the tax liabilities arising after the transfer.

With regards to the accumulated explicit and/or implicit tax liabilities (including potential capital gains taxes on assets on the books of a company transferring its registered office cross-border), a Directive providing for tax-neutrality of the transfer of the registered office of a company will ensure that any taxes owed to the source Member State can be collected by that Member States. Such tax-neutrality could be achieved by requiring a company transferring its registered office cross-border to leave sufficient assets in the source country or establish an explicit reserve to pay outstanding taxes to the source Member State when they become due. Such an approach, from the company’s perspective, is more flexible and less burdensome in terms of cash-flow management than an approach requiring full payments of all unrealised capital gains at the time of the cross-border transfer of the registered office.

In contrast, the cross-border transfer of registered offices by whatever means (using the SE Statute, the Cross-Border Mergers Directive or via a Directive) is unlikely to be tax neutral in terms of future tax liabilities (i.e. tax liabilities arising after the cross-border transfer of the registered office). The tax burden on firms differs across Member States; and, therefore, if a firm moves its registered office from a higher tax burden Member State (A) to a lower tax burden Member State (B), the change will be associated with lower total tax revenues (across Member States A and B) and a redistribution of tax revenues (from Member State A to B).

II – Employees

The potential implications for employees of a cross-border transfer of registered office will likely differ depending on whether:

a) only the registered office is transferred cross-border;

b) the registered office and the real seat of the company are transferred but no economic activity is transferred; or,

c) the registered office and the real seat of the company and some economic activity are transferred.
The actual implications of the various routes open to companies for effecting a cross-border transfer of registered office vary somewhat:

- The first route involves the winding up of the existing company in the source country (i.e. the country for the company’s registered office is located prior to the cross-border transfer) and the registration as a de novo company in the host country (i.e. the country to which the company is transferring its registered seat). Employees of a company using this route do not benefit from any particular rights and protection except those provided in the source country in national legislation for cases when companies are being wound up and in national legislation in the host country for employees of the newly registered company. Because of the legal implications and complexities of such a winding-up/re-registration approach, the use of this route likely to be very rare.

- The second route involves first a conversion to a SE in the source country and then notification of both the source and host countries’ business registers of the cross-border transfer of the registered office.

A Directive accompanying the SE Regulation sets out the rules on the involvement of employees in a SE and its provisions form an “indissociable complement to this Regulation and must be applied concomitantly”57. However, “other social and labour legislation questions, in particular the right of employees to information and consultation as regulated in the Member States, are governed by the national provisions applicable, under the same conclusions, to public limited liability companies”58.

Thus, the protection of the rights of employees of a SE in the case of a cross-border transfer is limited to those related to the involvement of employees in the SE as set out in Council Directive 2001/86/EC. Any other employee rights flowing from national legislation may change with the cross-border transfer of the registered office if employees are actually physically moving from the source country to the host country when the cross-border transfer of the registered office occurs. As noted earlier, the use of the SE status to undertake a cross-border transfer of a registered office is open only public limited liability company.

- The third route involves a cross-border merger by the company from the source country with an already existing company or a new company created explicitly for this purpose in the host country. The cross-border merger directive (Council Directive 2005/56/EC) specifies that the employee’s participation rights are those in force in the host country (i.e. the Member State where the merged company

has its registered office) unless these rights are more limited than the employee participation rights set out in national law of the source country/ies. Employee rights other than rights of participation remain subject to national provisions referred to in various Directives. The cross-border merger route is open to both public and private limited liability companies.

In order to assess the benefits of protecting employees’ participation rights it is useful to consider the benefits that such participation brings about. In this regard, of note is a recent overview by Jirjahn (2010) of the latest studies on the economic impact of the German workers’ participation system. This overview shows that such studies typically conclude that the present system in Germany has clearly the potential to increase the performance of companies in terms of:

- productivity;
- employment;
- innovation;
- equal opportunities for women and men; and,
- work-life balance.

In contrast the impact of wages is less clear-cut with different studies finding diverging results.

In light of the findings of the studies on the economic impact of employee participation, the benefits for employees of a Directive allowing for the cross-border transfer of the registered office of a company while ensuring that employees’ participation rights are protected are two-fold.

- First, to the extent that the transfer of the registered office improves the competitiveness of the company by ensuring that the company can fully enjoy the benefits of the freedom of establishment, it will over the longer run stimulate employment at the company.


61 It is possible that, in the short run, the increase in competitiveness is results in some decreases in employment. However, over the longer run, only financially healthy and competitive companies are sustainable sources of employment growth.
One important strand of the evidence base relating firm competitiveness and job creation builds on the premise that competitive firms share certain characteristics such as being involved in the take-up of new technologies or being particularly innovative. Such studies show that more competitive firms are also associated with more positive employment effects than other firms. Almus and Nerlinger (1999) and Weigand and Audretsch (1999), for example, make this finding in connection to small firms.

- Second, the protection of employee participation rights would any ensure that employees continue to benefit from the same level of participation rights as prior to the cross-border transfer of registered office.

Not only does the protection of employee participation rights benefit employees (and companies) directly, but it also contributes to mitigate any potential negative reactions to the cross-border transfer of the registered office. Overall, the benefits for employees of a Directive facilitating the transfer of the registered office of a company are clear and, depending on the actual level of cross-border transfers of registered office that will materialise following the implementation of such a Directive, these benefits could be substantial.

It would be desirable to consider adopting in a Directive on the cross-border transfer of a company’s registered office the same level of protection of employee participation rights as in the Directive on cross-border mergers. This would ensure a level playing field with regards to employee protection rights between the two directives and avoid situations where companies prefer one approach for cross-border transfers of registered office over the other simply because of differences in the protection of employees’ rights and / or employees are worse off in one approach than in the other.

III – Creditors

The extent to which creditors are impacted by the cross-border transfer of a registered office by a firm depends on the extent to which the rights and ranking of creditors varies across Member States.

For example, in instances of financial distress, creditor covenants determine the ranking of some creditors – holders of senior debt are paid ahead of holders of junior debt, etc. This relative ranking will be preserved across Member States. However, issues may arise insofar as other creditors (and credits) are concerned – namely, salaries owed to employees, amounts owed to the government, trade credits owed to other firms, etc. – as the rights of such creditors and their rankings may vary across jurisdiction.

A number of studies have shown that legal (and financial) uncertainty increases the cost at which a company can raise funds from investors and lenders, and the cost of trade credits and any other source of funds.
High-quality corporate governance and hence high legal certainty (and, by turns, legal uncertainty), affects firms’ ability to access capital markets and the costs associated with doing so.

While there exist no studies focusing on the legal uncertainty created by the potential of changes in creditors rights as a result of a cross-border transfer of a registered office, one can infer the financial impact of such uncertainty from the studies focusing on the quality of corporate governance as poor corporate governance is giving rise to uncertainty for creditors.

Studies consistently find that high-quality corporate governance is linked to lower costs of funds for firms.

For example, Bozec and Bozec (2011) find that the cost of equity/debt decreases statistically significantly as the quality of corporate governance practices increases for a sample of Canadian quoted firms over the period 2002-5. Chen, Chen and Wei (2009) make a similar finding for firms in different emerging markets. And, in the European context, various McKinsey & Company surveys show that institutional investors are willing to pay a premium for firms with good corporate governance, at the firm and country levels (McKinsey and Company, 2000). Moreover, Mansi et al. (..) show, on the basis of an analysis of publicly traded bond data for a sample of large US firms, that, \textit{ceteris paribus}, firms incorporated in states with more restrictive dividend payout statutes (e.g., New York and California), have over the period 1987 – 2003 better credit ratings and significantly lower yield spreads (about 8.7%) relative to firms incorporated in less restrictive states (e.g., Delaware).

The results from all these studies suggest that the cross-border transfer of a registered office to a host country with less protection for creditors will have an impact on the cost of funds for firms.

The adoption of a Directive facilitating the cross-border transfer of the registered office of a company will increase the legal (and financial) uncertainty for creditors unless mitigating measures are being implemented. Such mitigating measures could include the following:

- Prevention of insolvency forum shopping by ensuring that a) companies against which proceedings for winding-up, liquidation, insolvency or suspension of payments or other similar proceedings have been brought are not allowed to undertake a cross-border transfer of seat and b) for the purposes of ongoing judicial or administrative proceedings which commenced before the transfer of seat, the company is regarded as having its registered office in the home Member State.

- Information rights for creditors so that creditors are, on a timely basis, properly informed about the cross-border transfer that is contemplated by the company.
While this may reduce the risks faced by the creditors somewhat, they still face substantial legal and financial risks as their scope to take mitigating measures may be limited.

- Provision of security for claims. Such security could be made automatic for certain types of claims (for example, tax and social security liabilities). To limit the additional cost resulting from such a measure to companies wishing to transfer cross-border their registered office, the obligation to provide a security could be waived in cases where a) there are no creditors in the source country or b) the company leaves a branch with significant assets in the source country following the cross-border transfer of the registered office and creditors can access these assets for any claims that may crystallise after the cross-border transfer.

In short, a Directive which facilitates the cross-border transfer of a company’s registered office may give rise to significant legal and financial uncertainty. Ceteris paribus, this would increase the cost of funds to companies and potentially negate, at least partially, the positive effects that may accrue to a company as a result of such a cross-border transfer of registered office.

In fact, making it easier to transfer cross-border the registered office of a company may raise the cost of funds for all firms if investors cannot distinguish a priori between firms which are more likely to transfer cross-border their registered office from those which are less likely. Asymmetric information between the managers of firms and investors raises the risk for investors and hence the price at which the latter are prepared to invest in or lend to the company.

Therefore, it would be desirable to consider including in the Directive measures aiming at protecting, at least to some extent, creditors from the potentially negative consequences for them of any cross-border transfer.
Chapter 8 - The Costs of the Alternatives to a Directive Facilitating the Cross-Border Transfer of a Registered Office

As already noted, if firms desire to carry out the cross-border transfer of registered offices, they can presently attempt to do so through one of two imperfect legislative measures: (i) the Societas Europeae (SE) Regulation; or, (ii) the Cross-Border Mergers Directive.

The Societas Europaea (SE) Regulation

The transfer of registered office under the SE Regulation requires two procedures for non-SE firms:
- Conversion to SE status in home Member State
- Transfer registered office to host Member State

The cost of carrying out the convert-to-SE-status-in-home-Member-State step depends on the size of the firm involved and can be sizable.
- For example, BASF estimates its cost of re-incorporation under the SE corporate form at €5m (0.007% of operating turnover in 2010).
- Another example is Allianz, which estimated its cost of re-incorporation under the SE corporate form at €95m (this figure is 0.08% of the value of gross premiums written in 2010).\(^62\) \(^63\)

In contrast, the cross-border transfer of registered office under a Directive would require only one procedure, namely the transfer of the registered office.

Further, assuming that the cost of deleting a registration in the home country and registering in the host country were small under a Directive, said Directive would yield significant savings for businesses relative to the two step process currently available via the SE route.\(^64\)

Finally, it important to recall that only public company can adopt the statute of a SE. Thus, the route of becoming a SE to undertake a cross-border transfer of a registered office is closed to the vast majority of companies in Europe as they are private companies. These companies are mostly SMEs.\(^65\)

\(^62\) See Eidenmüller, Engert and Hornuf (2009).
\(^63\) In the case of this example, however, it should be noted that the conversion was consummated as part of a major cross-border merger, which would always entail considerable transaction costs.
\(^64\) An additional cost/benefit of the SE Regulation route is that it sees the firm finish – once re-incorporated – as an SE firm, which may be associated with marginal economic costs/benefits compared to if they were a non-SE firm (e.g., due to uncertainty regarding the SE legal form).
**The Cross-Border Merger Directive**

Under the Cross-Border Merger Directive, a firm can undertake the cross-border transfer of its registered office by setting up a subsidiary within a potential host Member State (that it wants to move to) and merge into that subsidiary.

Firms are able to carry out such a procedure for the cross-border transfer of their registered offices whether the host Member State adheres to the 'real seat' or 'incorporation' view. However, in the latter case firms are able to transfer only their registered offices (without their real seats) if they wish to do so, thereby potentially saving considerable expense. This confers greater mobility to firms wishing to transfer to some Member States over other Member States.

The cross-border transfer of registered office under a Directive would be similar to the Cross-Border Merger Directive in the rights that it bestows on firms.

The key difference between the two approaches, however, is potential cost. The route of the Cross-Border Merger Directive entails substantial costs for firms such as, for example, the costs associated with setting up a company in the host Member State and carrying out a merger. These costs may be particularly important for SMEs. In contrast, with a Directive, firms could transfer their registered offices directly.

Provided the costs of registering a new company or an existing company moving cross-border are identical, relative to a cross-border merger, a Directive would entail significant savings for business wishing to transfer cross-border their registered office as they would not have to bear cost associated with a merger.

In summary, while the SE Regulation and Cross-Border Mergers Directive provide avenues for the cross-border transfer of registered offices, they are imperfect measures relative to a Directive insofar as they likely entail a greater number of procedures, procedures of greater complexity and larger costs.
Chapter 9 – Costs that a Directive would help to avoid

The present chapter provides high level estimates of some of the current costs associated with the transfer of a registered office and which a Directive would reduce or eliminate.

The analysis below distinguishes between the costs of the SE route and the costs of the cross-border merger route.

I – Costs avoided by not having to use the SE route for a cross-border transfer of a registered office

The cost of becoming an SE can be very significant. For example, according to the Ernst & Young study (2009):

- the average set-up costs for the SEs interviewed for the study was €784,000 (including the tax and legal advisory costs, translation costs and registration costs);
- for individual companies this figures ranged from €100,000 to between €2 and €4 million

Thus, a Directive which provides for a simple mechanism for transferring cross-border the registered office of a company would yield significant savings, especially for the larger companies for which the cost of becoming a SE can be substantial. For example, the previous chapter noted the very high costs incurred by Allianz and BASF in becoming as SE.

Obviously, these savings will only materialise if the formalities required by the source and host countries’ business registers are simple and not subject to large fees and levies.

II – Costs avoided by not having to undertake a cross-border merger to transfer cross-border a registered office

The analysis below distinguishes two cases.

- In the first case, the company wishing to transfer cross-border its registered office has already a subsidiary in the country to which it wishes to transfer its registered office. In such a case, the company will only face costs related to a cross-border merger.

- In the second case, the company needs to establish first a subsidiary in the country to which it wishes to transfer its registered office. Once the subsidiary has been legally created, the company can then undertake a cross-border merger with this subsidiary to undertake the transfer of its registered office.
1. Costs avoided by not having to merge with an existing company in the host country.  

A merger that facilitates the cross-border transfer of registered offices involves a firm, based in a home Member State, merging into a shell company based in a host Member State. This transaction bears similarities to a reverse merger insofar as each involves a shell company. In a reverse merger, a company merges with a shell public company and operates as a subsidiary of the public company, with the public company serving as a holding company.

Reverse mergers are in some cases used as a cost-effective means for companies to go public (for instance, in comparison to going public via a Direct IPO). There is some evidence on the costs of reverse mergers as a route for companies to go public, which we can use as a guide on the costs of transferring registered offices cross-border under the Cross-Border Merger Directive.

Two caveats should be borne in mind, however.

- Firstly, information on the costs of reverse mergers is drawn from the US. As such, there may be differences between these figures and what they might be in Europe. In particular, it is expected that legal costs are higher in Europe than in the US, therefore these estimates may reflect a lower bound for merger costs.
- Secondly, the mergers are not cross-border, and therefore may underestimate the merger costs of interest.

The abovementioned caveats notwithstanding, merger cost information serves as a guide on merger costs that may be avoided as a result of firms not having to use the Cross-Border Merger Directive to affect a registered office transfer.

A reverse merger involves, among others things, the following:

- Adequate legal documentation, e.g., relating to new company structures;
- Regulatory filings relating to the nature of the merger transaction and the new activities carried out by what was previously the shell company. In additional to legal activities and costs, as this step entails submission of audited financial statements, accounting activities and costs;
- Affiliate filings are required for firm stakeholder (including, officers, directors and shareholders) – the cost of which are usually borne by the firm;
- Changing the name of the shell company and capital structure.

Several approaches were pursued to quantify potential merger costs. These are outlined in Annex V. The results presented in this section relate to the only approach that yielded quantitative results.
The Lebrecht Group\textsuperscript{67}, a law firm, estimate these costs to be in the order €35,000. For smaller firms particularly, this expense may dissuade transferring cross-border their registered office.

In order to derive the savings that a Directive on the cross-border transfer of registered offices would yield, it is necessary to make an assumption about the number of businesses that would make use of a Directive is used to provide an estimate for the aggregate costs of starting up a business avoided per year. Given the uncertainty regarding the number of businesses that would use a Directive, high-, medium- and low-use scenarios are given, as per the table below.

Each of these scenarios is cautious. For instance, the high scenario only involves 1 in 100 firms choosing to move, which is far lower than the number of SE firms choosing to move (as a proportion of SE firm notifications, the total cross-border transfers was in the range 3.7%-18.9% over the period considered above).

Data on the active population of firms and firm births for the latest year available\textsuperscript{68} are provided by Eurostat and available in Annex IV.

\begin{table}[h]
\centering
\begin{tabular}{l|c}
\hline
Scenario & Percentage of firms moving per year (%)\
\hline
High & 1\% \\
Medium & 0.5\% \\
Low & 0.1\% \\
\hline
\end{tabular}
\caption{Table 6 - Scenarios for Firms’ Use of a Directive on the Cross-Border Transfer of Registered Offices}
\end{table}

\textit{Note: *For active population and new firms}

Source: London Economics analysis of Eurostat data

Based on these scenarios, the merger costs avoided per year if firms were to use a Directive would be in the €39.4 million to €394 million range.

\begin{table}[h]
\centering
\begin{tabular}{l|c}
\hline
Scenario & Merger costs avoided per year (€mn) \\
\hline
High (1% of firms move) & 394 \\
Medium (0.5% of firms move) & 197 \\
Low (0.1% of firms move) & 39.4 \\
\hline
\end{tabular}
\caption{Table 7 - Merger costs avoided per year through use of a Directive for the cross-border transfer of a registered office, €mn}
\end{table}

\textit{Source: London Economics}

\textsuperscript{67} http://www.thelebrechtgroup.com/.

\textsuperscript{68} 2009.
2. Costs avoided by not having to create first a subsidiary in the host country and then merge with the subsidiary

If firms wishing to transfer cross-border their registered office do not have access to a company with which they can merge in the host country, they will have first to establish a subsidiary in that country. This will entail additional costs over and above those associated with the merger.

Creating a new company involves a number of steps and procedures which generate costs. The exact number and nature of these procedures vary across the EU. For illustrative purposes, the table below lists the main steps and procedures as reported by the European Commission in the 2007 impact assessment of a Directive on the cross-border transfer of registered office. It is important to note that this steps and procures were those which prevailed in 2001. 69

Table 8 - List of the main mandatory procedures for setting up a company in EU Member States

| 1. Formal approval of proposed name |
| 2. Confirm skills/qualifications with authorities (if applicable to all new enterprises) |
| 3. Obtain certificate of no outstanding taxes |
| 4. Obtain certificate of “good character” (no criminal record, etc.) |
| 5. Obtain overall permit to conduct economic activity (if applicable to all new enterprises) |
| 6. Complete management training course (if applicable to all new enterprises) |
| 7. Registration of domicile of business |
| 8. Formal validation of signatures of representatives of the business |
| 9. Notary draws up (or confirms) formal deed of incorporation/partnership agreement/registration deed |
| 10. Founders (or advisers) draw up formal deed of incorporation/partnership agreement/registration deed |
| 11. Appoint Board Members/Manager |
| 12. Open bank account and deposit capital |

69 The source for this list of steps and procedures provided in the 2007 impact assessment was the study ‘Benchmarking the administration of start-ups’ prepared by the Centre for Strategy and Evaluation Services for EC DG Enterprise.
13. Obtain certificate from bank of capital deposited
14. Audit report on deed of incorporation/foundation report or equivalent
15. Create financial plan to show viability
16. Hold statutory meetings (shareholders/ subscribers, approval of foundation report by board, etc.)
17. Shares offered for subscription
18. Lawyer or notary certifies documents for submission to registration authorities
19. Prepare dossier for registration authorities
20. Certificate of all social security charges paid
21. Certificate of all compulsory healthcare paid
22. Obtain certificate of management skills

*Source: European Commission (2007) – information taken from the study “Benchmarking the administration of start-ups” prepared by the Centre for Strategy and Evaluation Services for EC DG Enterprise*

An estimate of these additional costs related to setting up a new subsidiary in the host country is derived below, using information from the *Doing Business* survey.

The results from the *Doing Business* survey provide the latest estimates for the costs of starting up a business by Member State (except for Ireland and Malta, for which data are not available) as a percentage of income per capita in US dollars.

Using data on per capita income (also drawn from the *Doing Business* survey) and the average annual EUR/USD exchange rate (drawn from Eurostat), the average annual cost of starting up a business is computed by Member State. These data are shown in the table below.

**Table 9: Average annual cost of starting up a business is computed by Member State**

<table>
<thead>
<tr>
<th>Member State</th>
<th>Cost (€)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>3,490</td>
</tr>
<tr>
<td>Belgium</td>
<td>3,340</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>140</td>
</tr>
<tr>
<td>Cyprus</td>
<td>5,580</td>
</tr>
<tr>
<td>Cyprus</td>
<td>2,170</td>
</tr>
<tr>
<td>Denmark</td>
<td>170</td>
</tr>
</tbody>
</table>
The result of the analysis, which uses the same scenarios for the number of firms transferring their registered office cross-border as in the case without creation of a subsidiary, shows that:

- the start-up costs avoided as a result of a Directive are, on average, €10.4 million per year assuming 0.5% of presently active and new firms move.
- in the high scenario, in which the number of firms moving is 1% of all firms, the costs avoided are €22.7 million per year.
- in the low scenario, in which the number of firms moving is 0.1% of all firms, the costs avoided are €2.27 million per year.

Note: *Reported cost per capita of starting up a business is 0.0

Source: London Economics analysis of World Bank survey Doing Business (www.doingbusiness.org)
Table 10: Start-up costs avoided per year through use of a Directive for the cross-border transfer of a registered office, €mn

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Start-up costs avoided per year (€mn)</th>
</tr>
</thead>
<tbody>
<tr>
<td>High (1% of firms move)</td>
<td>22.7</td>
</tr>
<tr>
<td>Medium (0.5% of firms move)</td>
<td>10.4</td>
</tr>
<tr>
<td>Low (0.1% of firms move)</td>
<td>2.27</td>
</tr>
</tbody>
</table>

Source: London Economics

Thus, overall, a Directive allowing firms to transfer their registered office cross-border to a host country without having to create first a subsidiary in that host country and then merge with this subsidiary will yield significant savings, the precise amount of which will depend on the number of firms undertaking such a transfer (see table below).

Table 11: Start-up and merger costs avoided per year through use of a Directive for the cross-border transfer of a registered office, €mn

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Start-up costs avoided per year (€mn)</th>
</tr>
</thead>
<tbody>
<tr>
<td>High (1% of firms move)</td>
<td>417</td>
</tr>
<tr>
<td>Medium (0.5% of firms move)</td>
<td>207</td>
</tr>
<tr>
<td>Low (0.1% of firms move)</td>
<td>42</td>
</tr>
</tbody>
</table>

Source: London Economics

III – Summary of findings

Given the costs of introducing a Directive, ongoing savings in the order of €200 to €210 million per year\(^70\) can be achieved in the form of start-up costs and merger costs avoided by firms transferring their registered office cross-border between Member States. Even assuming very few firms make use of the Directive (that is, 1 in 1000) the magnitude of costs avoided is about €40 million per year.\(^71\)

A Directive may be more of an effective route for firms wishing to transfer their registered offices cross-border within the EU than others available in additional ways. Firms that would make use of the Cross-Border Merger Directive do not have to wind up their businesses in their home Member States. And, in the case of the SE regulation, firms would have to incur the costs of changing to SE status.

\(^70\) €197 million in merger costs and €10.4 million in start-up costs if a new company has to be created prior to the merger.

\(^71\) €39.4 million in merger costs and €2.27 million in start-up costs if a new company has to be created prior to the merger.
Chapter 10 - Conclusions

As of January 2013, the case law still does not allow for full cross-border mobility of registered offices of companies in Europe, the use of the Cross-Border Merger Directive to effect such a change is a complex and expensive route for companies, especially for SMEs. The SE route can only be used by public companies. It is ironic that, while there is full pan-European mobility at the time of the registration of the company, the scope for mobility is considerable reduced once registered.

While there exist only limited data on the current level of cross-border mobility of registered offices of companies which are not SEs, the indicative costs avoided as a result of a Directive for non-SE firms would be in the order of €200 to 210 million per year in the form of start-up costs (if a new company has to be created) and merger costs avoided. And, based on a ‘low’ scenario, in which only 1 in 1,000 firms move per year, the magnitude of costs avoided is about €40 million per year.

Moreover, it is important to note the actual cost of implementing a Directive incorporating the recommendations of the European Parliament would be rather limited as it would involve simply the cost of a) adopting the Directive at the EU level and b) implementing the Directive at the national level. The administrative costs would be nil to very small as the company registers would largely continue to operate as they are at the present time. Companies wishing to move their registered office would be able to use a much more cost-effective procedure than the more expensive and circuitous routes of first having to become a SE (if they are a public company) or undertake a cross-border merger.

Overall, it would seem that, even with regards to the proportionality criterion, a Directive would be superior to a “no action” policy as it is overall a less onerous route for companies to move cross-border their registered office. Thus, a Directive would be on all counts a better policy approach and, therefore, would be more likely to achieve the single market benefits of greater company mobility.
References


• Ernst & Young (2009). ‘Study on the operation and the impacts of the Statute for a European Company (SE)’, Final Report, 9 December.


• OECD (2009), 'The SME Financing GAP', Paris: OECD.


Annex I - Cross-Border Registered Office Transfers by SE firms

Table 12 - Cross-border registered office transfers by SE firms, by Member State

<table>
<thead>
<tr>
<th>Member State</th>
<th>From</th>
<th>To</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>NL</td>
<td>FR</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>NL</td>
<td>UK</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>LU</td>
<td>AT</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>LU</td>
<td>UK</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>DK</td>
<td>LU</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>DE</td>
<td>IE</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>UK</td>
<td>AT</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>DE</td>
<td>UK</td>
<td>2</td>
<td></td>
</tr>
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<td>AT</td>
<td>2</td>
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*Source: London Economics analysis of SE notices in OJEU*

### Table 13 - Cross-border registered office transfers by SE firms

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<td>N - Administrative and support service activities</td>
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*Source: London Economics analysis of SE notices in OJEU, Orbis*
Annex II - Starting a Business

Table 14 - Procedures, time, cost and paid-in minimum capital of starting a business in 2010/11

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<th>EU Member State</th>
<th>Procedures (number)</th>
<th>Time (days)</th>
<th>Cost (% of income per capita)</th>
<th>Paid-in min. capital (% of income per capita)</th>
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Note: Data on Ireland and Malta not available

Source: World Bank (www.doingbusiness.org)
### Annex III - Resolving Insolvency

**Table 15 - Time, cost and recovery rate of insolvency in 2010/11**

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<th>Recovery rate (%)</th>
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</tr>
<tr>
<td>Finland</td>
<td>0.9</td>
<td>4</td>
<td>89.1</td>
</tr>
<tr>
<td>France</td>
<td>1.9</td>
<td>9</td>
<td>45.8</td>
</tr>
<tr>
<td>Germany</td>
<td>1.2</td>
<td>8</td>
<td>53.8</td>
</tr>
<tr>
<td>Greece</td>
<td>2</td>
<td>9</td>
<td>41.8</td>
</tr>
<tr>
<td>Hungary</td>
<td>2</td>
<td>15</td>
<td>39.2</td>
</tr>
<tr>
<td>Ireland</td>
<td>0.4</td>
<td>9</td>
<td>86.9</td>
</tr>
<tr>
<td>Italy</td>
<td>1.8</td>
<td>22</td>
<td>61.1</td>
</tr>
<tr>
<td>Latvia</td>
<td>3</td>
<td>13</td>
<td>56.2</td>
</tr>
<tr>
<td>Lithuania</td>
<td>1.5</td>
<td>7</td>
<td>50.9</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>2</td>
<td>15</td>
<td>43.5</td>
</tr>
<tr>
<td>Netherlands</td>
<td>1.1</td>
<td>4</td>
<td>87.7</td>
</tr>
<tr>
<td>Poland</td>
<td>3</td>
<td>15</td>
<td>31.5</td>
</tr>
<tr>
<td>Portugal</td>
<td>2</td>
<td>9</td>
<td>70.9</td>
</tr>
<tr>
<td>Romania</td>
<td>3.3</td>
<td>11</td>
<td>28.6</td>
</tr>
<tr>
<td>Slovak Republic</td>
<td>4</td>
<td>18</td>
<td>54.3</td>
</tr>
<tr>
<td>Slovenia</td>
<td>2</td>
<td>4</td>
<td>51.1</td>
</tr>
<tr>
<td>Spain</td>
<td>1.5</td>
<td>11</td>
<td>75.6</td>
</tr>
<tr>
<td>Sweden</td>
<td>2</td>
<td>9</td>
<td>75.8</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>1</td>
<td>6</td>
<td>88.6</td>
</tr>
<tr>
<td>Austria</td>
<td>1.1</td>
<td>18</td>
<td>72.7</td>
</tr>
<tr>
<td>Belgium</td>
<td>0.9</td>
<td>4</td>
<td>87.3</td>
</tr>
</tbody>
</table>

*Source: World Bank (www.doingbusiness.org)*
Annex IV - Active Population of Firms and Firm Births by Member State

Table 16 - Active population of firms and firm births by Member State

<table>
<thead>
<tr>
<th>Member State</th>
<th>Population of active firms</th>
<th>Number of firm births</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>526,013</td>
<td>24,099</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>327,647</td>
<td>57,741</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>933,760</td>
<td>102,021</td>
</tr>
<tr>
<td>Germany (including former GDR from 1991)</td>
<td>2,937,202</td>
<td>244,199</td>
</tr>
<tr>
<td>Estonia</td>
<td>72,734</td>
<td>7,229</td>
</tr>
<tr>
<td>Ireland</td>
<td>199,241</td>
<td>13,810</td>
</tr>
<tr>
<td>Spain</td>
<td>3,194,175</td>
<td>229,540</td>
</tr>
<tr>
<td>France</td>
<td>2,901,100</td>
<td>445,382</td>
</tr>
<tr>
<td>Italy</td>
<td>3,998,096</td>
<td>288,834</td>
</tr>
<tr>
<td>Cyprus</td>
<td>57,378</td>
<td>1,746</td>
</tr>
<tr>
<td>Latvia</td>
<td>79,742</td>
<td>13,093</td>
</tr>
<tr>
<td>Lithuania</td>
<td>121,404</td>
<td>17,869</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>26,686</td>
<td>2,474</td>
</tr>
<tr>
<td>Hungary</td>
<td>559,414</td>
<td>51,308</td>
</tr>
<tr>
<td>Netherlands</td>
<td>808,679</td>
<td>97,875</td>
</tr>
<tr>
<td>Austria</td>
<td>334,099</td>
<td>23,649</td>
</tr>
<tr>
<td>Poland</td>
<td>1,910,364</td>
<td>245,331</td>
</tr>
<tr>
<td>Portugal</td>
<td>761,565</td>
<td>85,794</td>
</tr>
<tr>
<td>Romania</td>
<td>498,127</td>
<td>47,247</td>
</tr>
<tr>
<td>Slovenia</td>
<td>119,653</td>
<td>13,557</td>
</tr>
<tr>
<td>Slovakia</td>
<td>362,928</td>
<td>59,290</td>
</tr>
<tr>
<td>Finland</td>
<td>283,955</td>
<td>26,224</td>
</tr>
<tr>
<td>Sweden</td>
<td>651,917</td>
<td>46,240</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>2,109,610</td>
<td>212,830</td>
</tr>
</tbody>
</table>

Source: Eurostat
Annex V - Approaches for Identifying Cross-border Mergers Involving Cross-Border Transfers of Registered Offices and Quantifying Merger Costs

An assumption regarding mergers, using the Cross-Border Merger Directive and for the sole purpose of transferring their registered office cross-border within the EU, is that the costs involved are relatively low. That is, they are cheaper than more complex mergers, for instance, involving dissimilar companies because at their minimum they only involve an acquirer merging with a shell target subsidiary.

With this in mind, various approaches were adopted to quantify the merger costs that may be incurred as a result of firms using the Cross-Border Merger Directive to transfer registered offices cross-border. These are described presently.

In brief, the Bloomberg and National Business Register routes sought to identify mergers using the Cross-Border Merger Directive directly. This approach was unfruitful. On the one hand, news articles sourced from Bloomberg did not provide information on the legal nature of mergers, for example, whether they involved any change of registered office or not. On the other hand, national business registers, while recording new registrations, did not account for whether these were in-fact re-registrations of firms previously established elsewhere.

As an alternative therefore, the Zephyr and legal firm routes were used to gauge merger costs that would be comparable to merger costs involving the use of the Cross-Border Merger Directive. Zephyr was used to identify low value mergers in the hope that acquirer company reports may detail merger costs. Unfortunately, they did not.

Finally, a legal firm outline on the costs of a reverse merger was used as a comparator for the costs of a merger under the Cross-Border Merger Directive on the basis that each involves an established firm merging with a shell company. This yielded quantitative estimates of merger costs avoided.

I – Identification of mergers using the Cross-Border Merger Directive

The Bloomberg Company News and Research function was used to identify cross-border registered office moves in the EU over the period of 2007 to 2012. Bloomberg’s search function reports from a number of sources including the Financial Times.

To identify cross-borders transfers of registered offices, a combination of keywords were used, including merger, headquarters, real seat, relocation and seat transfer. In total, seven moves were identified, however it was difficult to pinpoint whether these moves involved a move of the registered office.
Moreover, the mergers identified were not of the nature needed to hone in on the costs of moving a registered office cross-border via the Cross-Border Mergers Directive, stripping out other merger costs.

II – Identification of mergers that may have similar costs to mergers using the Cross-Border Merger Directive

1. **Zephyr (for low-value cross-border mergers)**

Low value mergers were identified as their costs may be similar to the costs incurred by firms using the Cross-Border Merger Directive with the aim of transferring their registered office cross-border within the EU.

The Bureau van Dijk Zephyr database was used as a starting point to identify M&A activity with the following characteristics:

1. EU cross-border deals  
2. Completed  
3. Merger or acquisition  
4. Between 2007 and 2012

This yielded a sample of 5,724 deals, which were ordered by deal value to hone in on the smallest. Once the smallest deals were identified (worth less than €250,000) acquirer annual reports were collected to understand whether information on merger costs was made available. Unfortunately, while merger details were reported, merger cost details were not.

2. **Legal firms (for reverse mergers)**

The final approach used for identifying mergers that may have similar costs to mergers using the Cross-Border Merger Directive involved an investigation of reverse mergers.

As abovementioned, a merger that facilitates the cross-border transfer of registered office involves a firm, based in a home Member State, merging into a shell company based in a host Member State. This transaction bears similarities to a reverse merger insofar as each involves a shell company. In a reverse merger, a private company merges with a shell public company and operates as a subsidiary of the public company, with the public company serving as a holding company.

Reverse mergers are in some cases used as a cost-effective means for companies to go public (for instance, in comparison to going public via a Direct IPO).
There is some evidence on the costs of reverse mergers as a route for companies to go public, which we can use as a guide on the costs of transferring registered offices cross-border under the Cross-Border Mergers Directive.

Two caveats should be borne in mind, however. Firstly, information on the costs of reverse mergers is drawn from the US. As such, there may be differences between these figures and what they might be in Europe. In particular, it is expected that legal costs are higher in Europe than in the US, therefore these estimates may reflect a lower bound for merger costs. Secondly, the mergers are not cross-border, and therefore may underestimate the merger costs of interest further.

The abovementioned caveats notwithstanding, merger cost information serves as a guide on merger costs that may be avoided as a result of firms not having to use the Cross-Border Merger Directive to affect a registered office transfer.

A reverse merger can involve, among others, the following steps:

- Merger necessitates adequate legal documentation, e.g., relating to new company structures
- Regulatory filings relating to the nature of the merger transaction and the new activities carried out by what was previously the shell company. In additional to legal activities and costs, as this step entails submission of audited financial statements, accounting activities and costs are also involved.
- Affiliate filings are required for firm stakeholder (including, officers, directors and shareholders) – the cost of which is usually borne by the firm
- Changing the name of the shell company and capital structure

_The Lebrecht Group_, a law firm, estimate these costs to be in the order €35,000. For smaller firms particularly, this expense may dissuade a cross-border registered office transfer. This result was used to quantify the annual merger costs avoided for firms that would use the Cross-Border Mergers Directive if a Directive on the cross-border transfer of registered offices were not available.
Annex VI - Information of cross-border moves of company headquarters.

Information on cross-border transfers of headquarters can provide additional background information on the mobility of companies, this section discusses the transfer of the main headquarters of firms across Member States over 2007-2012. Such a transfer of headquarters may not always be accompanied by a transfer of the registered office.

For example, if the home and host countries apply the principle of incorporation, the company moving its headquarters may also move its registered office if it wishes to be subject to the corporate governance laws of the host country. The analysis seeks to provide insights into the types of firms moving their headquarters and the countries they target for this.

Unfortunately, there exist no comprehensive databases which would allow one to identify all the cross-border moves of company headquarters and associated transfers of registered office. While the most comprehensive database on European companies, namely the Orbis database published by Bureau Van Dijk provides information on the address of the registered office of a company, it does not provide information on previous addresses of a company’s registered office.

In order to complement the information from such a database, it would have been necessary to identify from the national company registers in the Member States, which use the incorporation approach to determine the applicable company law, all those companies which have changed their registered office, a research activity which was beyond the scope and resources of the current study. There is no need to undertake such a research in Member States using a real seat approach as a cross-border transfer of registered office is not feasible in such cases.

As far as we are aware, there exists only 1 study\textsuperscript{72} which examines the cross-border moves of headquarters of European companies using the Orbis database. Due to the absence of direct information on headquarters moves, the study defines a cross-border headquarters move as either a sale by the headquarter firm of its assets to a foreign company or a sale by the firm’s shareholders of their shares to a foreign company.

Thus, a change in foreign ownership is viewed as a headquarter move. Unfortunately, on one hand, such an approach will overstate the number of actual moves of headquarters because ownership by foreign shareholders does not imply a move of headquarter of the company. This is the case, for example, for European companies whose majority shareholder(s) are sovereign wealth funds, foreign private equity firms, foreign venture capital firms, etc. The headquarters of such European companies have not moved as a result of the foreign ownership. On the other hand, such an approach will underestimate

\textsuperscript{72} Voget (2011).
the number of cross-border headquarter moves when such a move occurs without a change in shareholder composition or an asset sale.

Therefore, in the absence of a comprehensive database on cross-border transfers of headquarters, a search of announcements by companies of such moves was undertaken on Bloomberg and Google. A variety of search words were used to identify potentially relevant cases. The keywords used were a combination of the following terms: relocation, headquarters, seat transfer, HQ and registered office. In addition, the Ernst & Young European Investment Monitor (EIM) database was used to identify headquarter moves carried out as FDI projects from EU27 sources countries with France, Germany, Italy and the United Kingdom as destination countries.

The table below shows the 14 headquarter moves that were identified during the period 2007-2012 and the Member States that were involved in these moves. The available information does not specify whether the headquarter move was associated with a transfer of the registered office.

The table also provides the sector in which the firms operate.

### Table 17 - Main headquarter moves 2007-2012

<table>
<thead>
<tr>
<th>Company Name</th>
<th>Year</th>
<th>Member State To</th>
<th>Member State From</th>
<th>Sector</th>
<th>Motivation</th>
</tr>
</thead>
<tbody>
<tr>
<td>AGRIARGO UK LIMITED</td>
<td>2009</td>
<td>IT</td>
<td>UK</td>
<td>G - Wholesale and retail trade; repair of motor vehicles and motorcycles</td>
<td>-</td>
</tr>
<tr>
<td>TE KLOEZE BRUYL GMBH</td>
<td>2009</td>
<td>NL</td>
<td>DE</td>
<td>N - Administrative and support service activities</td>
<td>-</td>
</tr>
<tr>
<td>FLINTEC UK LIMITED¹</td>
<td>2011</td>
<td>SE</td>
<td>UK</td>
<td>G - Wholesale and retail trade; repair of motor vehicles and motorcycles</td>
<td>-</td>
</tr>
<tr>
<td>COMSOL LIMITED²</td>
<td>2011</td>
<td>SE</td>
<td>UK</td>
<td>J - Information and communication</td>
<td>-</td>
</tr>
<tr>
<td>CINT UK LIMITED</td>
<td>2009</td>
<td>SE</td>
<td>UK</td>
<td>M - Professional, scientific and technical activities</td>
<td>-</td>
</tr>
<tr>
<td>BENNEX LIMITED</td>
<td>2008</td>
<td>NO</td>
<td>UK</td>
<td>M - Professional, scientific and technical activities</td>
<td>-</td>
</tr>
<tr>
<td>ENTANDO LIMITED³</td>
<td>2012</td>
<td>IT</td>
<td>IE</td>
<td>J - Information and communication</td>
<td>-</td>
</tr>
<tr>
<td>REVOLT TECHNOLOGY GMBH⁴</td>
<td>2010</td>
<td>CH</td>
<td>DE</td>
<td>C - Manufacturing</td>
<td>-</td>
</tr>
<tr>
<td>STIEBEL ELTRON CHARTER</td>
<td>2008</td>
<td>DE</td>
<td>UK</td>
<td>N/A</td>
<td>Tax</td>
</tr>
<tr>
<td></td>
<td>2008*</td>
<td>IE</td>
<td>UK</td>
<td>M - Professional, scientific and technical activities</td>
<td></td>
</tr>
<tr>
<td>Company Name</td>
<td>Year</td>
<td>Member State</td>
<td>Sector</td>
<td>Motivation</td>
<td></td>
</tr>
<tr>
<td>-----------------------</td>
<td>------</td>
<td>--------------</td>
<td>--------</td>
<td>------------</td>
<td></td>
</tr>
<tr>
<td>REGUS</td>
<td>2008*</td>
<td>LU</td>
<td>UK</td>
<td>L - Real estate activities</td>
<td>Tax</td>
</tr>
<tr>
<td>HENDERSON</td>
<td>2008</td>
<td>UK</td>
<td>UK</td>
<td>K - Financial and insurance activities</td>
<td>Tax</td>
</tr>
<tr>
<td>SHIRE</td>
<td>2008</td>
<td>IE</td>
<td>UK</td>
<td>M - Professional, scientific and technical activities</td>
<td>NK</td>
</tr>
<tr>
<td>UNITED BUSINESS MEDIA</td>
<td>2008</td>
<td>IE</td>
<td>UK</td>
<td>M - Professional, scientific and technical activities</td>
<td>Tax</td>
</tr>
</tbody>
</table>

Note: *Announcement date Not known (NK). Revolt Technology GmbH moved their European headquarters.

Source: Bloomberg search and Ernst and Young European Investment Monitor database. 1Load cell manufacturer Flinted expands with new HQ, 2011. 2Cambridge HQ for global software firm, 2011. 3Emerging software company Lentando moves headquarters from Sardinia to Dublin, 2012. 4ReVolt Technology moves European headquarters from Switzerland to Dortmund, Germany, 2010.

The reasons reported for a subset of these moves were generic, with firms mainly attracted by the environment of the destination country and their personal objectives. However, for some of the firms, the motives behind their moves were influenced by the laws and regulations they were subject to.

Charter's move was motivated by dissatisfaction with the tax regime. In detail, Charter outlined that not very much of its activity took place in the UK, and therefore (implicitly) it should not be bound by the UK tax regime. The company noted that it had invested about GBP100mn outside of the UK in Central Europe, China and South America and UK sales represent 5% of turnover. Further, it cited the merits of the tax regime in Ireland explicitly for its decision to move, namely: the tax systems relative lack of complexity and the fact that it does not impose tax on the unremitted profits of subsidiary companies in other jurisdictions. United Business Media cited the same two reasons for its decision to leave the UK. Regis, Henderson and Brit Insurance also cited tax reasons as their motivation to move. In the case of Henderson, the chief executive stated the motivation for the firm's move as uncertainty about the long-term structure of tax in the UK.

More recently, a number of Greek companies have announced the move of their registered office to outside Greek to avoid being affected by the various fiscal and tax measures aiming to address the sovereign debt crisis. For example Coca-Cola Hellenic and Face (Greece's largest dairy product producer) have recently announced such a move. Many other Greek firms are expected to follow suit

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73 Two More Firms Join UK Tax Exodus (2008, 1 September).
74 Uproar as UK firm to move tax base here (2008 28 April).
75 See footnote
76 See article in Luxenburger Wort of 13 October 2012.
Other recent announcements of cross-border headquarter move is the one by the Danish logistics company Damco which is moving its headquarters from Copenhagen to Rotterdam to be “closer to the heart of the European logistics community”\textsuperscript{77}

Overall, few companies were identified as having moved cross-border their headquarters over the period January 2007-September 2012. While the search approach adopted for the present study may not have identified all the cross-border headquarter transfers, it is unlikely to have missed many and any such omission is unlikely to change the overall picture of limited cross-border transfer activity.

\textsuperscript{77} Press communiqué of Damco of September 2011.