

# Corporate Mobility in Europe: An Empirical Perspective

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One of the fundamental freedoms introduced by the Treaty of Rome has been the freedom of establishment for companies to move and conduct business throughout the EU. In this regard, a corner stone has been the introduction of the European Single Market following the signing of the Maastricht Treaty in 1992, which promoted a deepening of mobility for companies in the EU. Since then the EU legislator has introduced major legislative acts, such as the Cross-Border Mergers Directive<sup>1</sup> and the SE Regulation<sup>2</sup> supporting cross-border corporate mobility, and different proposals are discussed on

the European level (and the national level) to introduce further legislation in this area. Further to this, the Court of Justice of the European Union (CJEU) has had a crucial impact with cases such as *Cartesio*,<sup>3</sup> *Vale*<sup>4</sup> and *Polbud*<sup>5</sup> obliging Member States to allow company mobility within certain limits.

Yet, an important matter had remained unaddressed in the legislative discussions: solid evidence as to the state of corporate mobility in the EU. Such evidence is crucial for an evidence-based approach to legislation, for example in order to determine the risk for stakeholders and the need to provide protective legislation for them. Without such data, a policy debate amongst academics, practitioners and policy-makers is difficult. To provide a concrete example very familiar to many readers: for many years a Directive for cross-border seat transfers, allowing companies to move from one Member State to another, has been on the EU legislator's agenda of the EU (as well as several national legislators) and has been discussed by many academics. However, such discussions, whether academic or political, had taken place without empirical data.

We have attempted to fill this gap with the project called 'Corporate Mobility in Europe' in which, with the help of a network of experts in the EU Member States as well as a number of enthusiastic students, cross-border transfers of the registered office of a company, cross-border mergers, cross-border divisions as well as operations as to the *Societas Europaea* are collected. Overall, the project attempts to collect data for the years 2000 to 2020 in order to have data for a significant period of time and in order to be able to examine the impact of the freedom of establishment on the corporate mobility of companies in the EU.

The project will publish biannual reports, the first of which we have published on 1 February 2018. It examined particularly cross-border mergers taking place in the EU between 2012 and 2017 based on data collected from the official journals of Austria, Finland, France, Germany, Italy Luxembourg, Netherlands, Spain and the

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1 Directive 2005/56/EC of the European Parliament and of the Council of 26 Oct. 2005 on cross-border mergers of limited liability companies, [2005] OJ L 310/1. The Directive is not in force anymore. It has been incorporated into Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law.

2 Council Regulation (EC) No 2157/2001 of 8 Oct. 2001 on the Statute for a European company (SE), [2001] OJ L 294/1.

3 Case C-210/06 *Cartesio*, EU:C:2008:723.

4 Case C-378/10 *VALE Építési*, EU:C:2012:440.

5 Case C-106/16 *Polbud - Wykonawstwo sp. z o.o.*, EU:C:2017:804.

United Kingdom as well as cross-border seat transfers for the period of 2013 to 2017 based on data collected from the official journals of Germany, France, the Netherlands and the United Kingdom.<sup>6</sup>

In respect to cross-border mergers, 1,163 CBMs were found until the publication of the report and could be verified between 2013 and 2017, compared to 1,227 CMBs that were presented in the Study on the Cross-Border Mergers Directive that was commissioned by the European Commission for the period 2008 to 2012 and which was published in 2013.<sup>7</sup> The number of cross-border mergers has therefore stayed similar, and should increase in follow-up reports, in which data from the official journals of the other EU Member States will be added.

In respect to cross-border transfers of the registered office, a remarkable result was found: only based on the limited number of official journals from which the data was obtained, a significant number of cross-border transfers of the registered office was found to and from Member States, which do not have legislation in place such as Austria, Germany, The Netherlands and the UK. For example Germany had forty-four exit cases and eighty-one entry cases,, the Netherlands ninety-one exit cases and eight entry cases, the United Kingdom had no exit cases and seven entry cases and

Austria had four exit cases and one entry case. Whilst the authors cannot substantiate their point of view with empirical evidence, it is their understanding that such is the case due to the impact of the CJEU cases in *Cartesio* and *Vale*.

The data should therefore have significance for the policy debate in view of the Corporate Mobility Package currently still under preparation by the European Commission. Whether one is a proponent or an opponent to a legislative proposal by the European Commission in the area of corporate mobility, most important is that cross-border transfers of the registered office are a reality even between Member States that do not have legislation on such matter. The question is therefore less whether the European Union should legislate to enable cross-border transfers of the registered office, but whether legislation should be introduced to enable adequate stakeholder protections.

In any case, as project leaders we look forward to the next years and next publications. As much as possible within the limits of the resources available to us, we will expand and deepen the data in respect to cross-border corporate operations in Europe and would also like to take the opportunity to thank all experts, which participate in this project, for their support!

<sup>6</sup> See T. Biermeyer & M. Meyer, *Cross-Border Corporate Mobility in the EU: Empirical Findings 2017* (1 Feb. 2018), available at SSRN: <https://ssrn.com/abstract=3116042>, at 3–4 for more details.

<sup>7</sup> T. Biermeyer, *Study on the Cross-Border Mergers Directive*, conducted with Lexidale and Bech-Bruun, commissioned by the European Commission, 2013.