ECJ Judgment in Cartesio

The much awaited judgment of the European Court of Justice in *Cartesio* was delivered yesterday.

In this case (C-210/06), the ECJ discussed whether Articles 43 EC and 48 EC are to be interpreted as precluding legislation of a Member State under which a company incorporated under the law of that Member State may not transfer its seat to another Member State whilst retaining its status as a company governed by the law of the Member State of incorporation.

Cartesio was a company which was incorporated in accordance with Hungarian legislation and which, at the time of its incorporation, established its seat in Hungary, but transferred its seat to Italy and wished to retain its status as a company governed by Hungarian law. Under the relevant Hungarian Law, the seat of a company governed by Hungarian law is to be the place where its central administration is situated.

The European Court ruled that "**As Community law now stands, Articles 43 EC and 48 EC are to be interpreted as not precluding legislation of a Member State under which a company incorporated under the law of that Member State may not transfer its seat to another Member State whilst retaining its status as a company governed by the law of the Member State of incorporation.**"

A critical part of the judgment reads as follows:

> *110 Thus a Member State has the power to define both the connecting factor required of a company if it is to be regarded as incorporated under the law of that Member State and, as such, capable of enjoying the right of establishment, and that required if the company is to be able subsequently to maintain that status. That power includes the possibility for that Member State not to permit a company governed by its law to retain that status if the company intends to reorganise itself in another Member State by moving its seat to the territory of the latter, thereby breaking the connecting factor required under the national law of the Member State of incorporation.*
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> *111 Nevertheless, the situation where the seat of a company incorporated*

under the law of one Member State is transferred to another Member State with no change as regards the law which governs that company falls to be distinguished from the situation where a company governed by the law of one Member State moves to another Member State with an attendant change as regards the national law applicable, since in the latter situation the company is converted into a form of company which is governed by the law of the Member State to which it has moved.

112 In fact, in that latter case, the power referred to in paragraph 110 above, far from implying that national legislation on the incorporation and winding-up of companies enjoys any form of immunity from the rules of the EC Treaty on freedom of establishment, cannot, in particular, justify the Member State of incorporation, by requiring the winding-up or liquidation of the company, in preventing that company from converting itself into a company governed by the law of the other Member State, to the extent that it is permitted under that law to do so.

The full judgment can be found here.

Many thanks to Andrew Dickinson for the tip-off.