

# Nagy on the law of companies and freedom of establishment

Csongor István Nagy (Budapest University of Technology and Economics) has posted **The Personal Law of Companies and the Freedom of Establishment Under EU Law. The Enthronement of the Country-of-Origin Principle and the Establishment of an Unregulated Right of Cross-Border Conversion**, published in the *Hungarian Yearbook of International Law and European Law 2013* on [SSRN](#).

*This paper presents, from a critical perspective, the development of the CJEU's case-law on the collision between the personal law of companies and the freedom of establishment with special emphasis on the CJEU's recent judgment in VALE.*

*It is argued that this ruling treats the incorporation theory as 'the law of the land', putting an end to the explanation that EU law does not establish a connecting factor, the determination of which is a Member State competence, but simply precludes some plights that frustrate the freedom of establishment. Furthermore, the case-law on the personal law of companies is put in the context of the country-of-origin concept as a general and fundamental principle of EU law. It is argued that although the incorporation theory fits better the system of the internal market characterised by free movement rights, as a general proposition, the categorical application of this principle to all fields of private law suppresses conflicts analysis and, as such, is a dubious development. Conflicts problems should receive a conflicts law answer. The oversimplified application of the country-of-origin principle, though certainly warranted in the field of public law, does away with private international law problems without carefully examining and adequately solving them.*

*Furthermore, it is also argued that in Cartesio and VALE the CJEU seems to have created an unregulated right of cross-border conversion. In Cartesio, the Court established a right of 'departure', i.e. companies have the right to move their seat to another Member State in order to convert into the*

legal person of the receiving country, while losing their original legal personality. In VALE, the CJEU seems to have established a right of 'arrival', derived from the principle of non-discrimination. However, EU law prescribes only the theoretical possibility of conversion ('departure' and 'arrival'), and leaves the technicalities of this conversion to national law.