

ECJ Judgment in Case C-378/10, VALE Építési Kft

The Italian company VALE COSTRUZIONI S.r.l. was incorporated and added to the commercial register in Rome in 2000. On 3 February 2006, that company applied to be deleted from that register as it wished to transfer its seat and business to Hungary, and to discontinue business in Italy. On 13 February 2006, the company was removed from the Italian commercial register, in which it was noted that 'the company had moved to Hungary'.

Once the company had been removed from the register, the director of VALE COSTRUZIONI and another natural person incorporated VALE Építési Kft. The representative of VALE Építési Kft. requested a Hungarian commercial court to register the company in the Hungarian commercial register, together with an entry stating that VALE COSTRUZIONI was the predecessor in law of VALE Építési kft. However, that application was rejected by the commercial court on the ground that a company which was incorporated and registered in Italy could not transfer its seat to Hungary and could not be registered in the Hungarian commercial register as the predecessor in law of a Hungarian company.

The Legfelsőbb Bíróság (Supreme Court, Hungary), which has to adjudicate on the application to register VALE Építési Kft., asks the Court of Justice whether Hungarian legislation which enables Hungarian companies to convert but prohibits companies established in another Member State from converting to Hungarian companies is compatible with the principle of the freedom of establishment. In that regard, the Hungarian court seeks to determine whether, when registering a company in the commercial register, a Member State may refuse to register the predecessor of that company which originates in another Member State.

In its judgment delivered on 12 July, the Court notes, first of all, that, in the absence of a uniform definition of companies in EU law, companies exist only by virtue of the national legislation which determines their incorporation and functioning. Thus, in the context of cross-border company conversions, the host Member State may determine the national law applicable to such operations and apply the provisions of its national law on the conversion of national companies

that govern the incorporation and functioning of companies.

However, the Court of Justice points out that national legislation in this area cannot escape the principle of the freedom of establishment from the outset and, as a result, national provisions which prohibit companies from another Member State from converting, while authorising national companies to do so, must be examined in light of that principle.

In that regard, the Court finds that, by providing only for conversion of companies which already have their seat in Hungary, the Hungarian national legislation at issue, **treats**, in a general manner, **companies differently according to whether the conversion is domestic or of a cross-border nature. However, since such a difference in treatment is likely to deter companies which have their seat in another Member State from exercising the freedom of establishment, it amounts to an unjustified restriction on the exercise of that freedom.** In other words, EU law precludes the authorities of a Member State from refusing to record in its commercial register, in the case of cross-border conversions, the company of the Member State of origin as the predecessor in law of the converted company, if such a record is made of the predecessor company in the case of domestic conversions.

Source and further developments: Press release