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Press and Information

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Advocate General's Opinion in Case C-210/06

Cartesio Oktató és Szolgáltató Bt.

ADVOCATE GENERAL POIARES MADURO CONSIDERS THAT A COMPANY REGISTERED IN A MEMBER STATE CAN TRANSFER ITS OPERATIONAL HEADQUARTERS TO ANOTHER MEMBER STATE

Additionally, addressing issues related to the preliminary ruling procedure, the Advocate General states that national appellate courts may not oblige lower courts to revoke a request for a preliminary ruling.

For a company to be incorporated under Hungarian law, its operational headquarters must be in Hungary.

Cartesio is a limited partnership registered in Hungary. In November 2005, it asked the commercial court to record in the commercial register the transfer of its operational headquarters from Hungary to Italy. Cartesio wished, nonetheless, to remain incorporated in Hungary and thus subject to Hungarian company law.

The commercial court rejected this application on the basis that Hungarian law did not permit Hungarian companies to transfer their operational headquarters to another Member State. It stated that, in order to change its operational headquarters, Cartesio would first have to be dissolved in Hungary and then reconstituted under Italian law.

Cartesio brought an appeal against the decision of the commercial court before the Szegedi Ítéltábla (Court of Appeal, Szeged) which has asked the Court of Justice if Hungarian legislation preventing a Hungarian company from transferring its operational headquarters to another Member State is compatible with Community law.

In his Opinion delivered today, Advocate General Poiares Maduro states that the Treaty provisions on **the freedom of establishment** clearly apply to the case at hand. In this respect he points out that the Hungarian rules in question treat cross-border situations less favourably than purely national situations since they allow a company to transfer its operational headquarters only within Hungary. He notes, in addition, that Cartesio intends to pursue an economic activity in another Member State.

The Advocate General then highlights that, despite companies existing only by virtue of national laws and profoundly different rules of incorporation having been adopted in the Member States,

these latter do not enjoy an absolute freedom to determine rules relating to companies constituted under their domestic law, irrespective of the consequences for the freedom of establishment.

For small and medium-sized companies especially, an intra-Community transfer of operational headquarters may be a simple and effective form of taking up genuine economic activities in another Member State without having to face the costs and the administrative burdens inherent in first having to wind up the company in its country of origin and then having to resurrect it completely in the new Member State.

Moreover, the process of winding up a company in one Member State and then reconstituting it under the law of another Member State can take considerable time, during which **the company at issue may be prevented from operating altogether**. The Advocate General considers therefore that **preventing a company from transferring its operational headquarters from one Member State to another amounts to a restriction on the right of establishment**.

Such a restriction could nevertheless be justified on grounds of general public interest, such as the prevention of abuse or fraudulent conduct, or the protection of the interests of, for instance, creditors, minority shareholders, employees or the tax authorities. In the case at hand, however, Hungarian law **completely precludes** the transfer of the operational headquarters of a Hungarian company to another Member State **without any grounds of justification**. For these reasons, **the Advocate General suggests that the Court rule that the Hungarian rules in question are not compatible with the principle of freedom of establishment**.

Addressing issues related to the **preliminary ruling procedure**, the Advocate General opines that **national procedural rules and national appellate courts may not oblige lower courts to revoke a request for a preliminary ruling** and to resume the national proceedings which have been suspended. Community law gives, in effect, any court in any Member State the authority to refer questions for a preliminary ruling to the Court and this authority cannot be qualified by national law.

IMPORTANT: The Advocate General's Opinion is not binding on the Court. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court of Justice are now beginning their deliberations in this case. Judgment will be given at a later date.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: ES, CS, DE, EN, FR, HU, IT, NL, PL, PT, RO, SK

The full text of the Opinion may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-210/06>

It can usually be consulted after midday (CET) on the day of delivery.

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