



Press and Information

Court of Justice of the European Union

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Judgment in Case C-378/10
VALE Építési Kft.

Where a Member State grants national companies the right to convert, the same right must also be granted to companies incorporated in another Member State

Hungarian law authorises Hungarian companies to convert¹, but does not allow a company governed by the law of another Member State to convert to a Hungarian company.

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 today’s judgment, 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**

¹ The conversion at issue in this case concerns the changing of the seat of a company, together with the national law applicable to it.

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.**

Next, the Court notes, firstly, that the implementation of a cross-border conversion requires the consecutive application of two national laws to that legal operation. Secondly, the Court states that specific rules capable of substituting national provisions cannot be inferred from Articles 49 TFEU and 54 TFEU. **In such circumstances, national provisions must be applied in compliance with the principles of equivalence and effectiveness** designed to ensure the protection of the rights which individuals acquire under EU law.

Consequently, the Court finds, firstly, that the application by Hungary of the provisions of its national law on domestic conversions governing the incorporation and functioning of companies, such as the requirements to draw up lists of assets and liabilities and property inventories, cannot be called into question.

Secondly, where a Member State requires, in the context of a domestic conversion, strict legal and economic continuity between the predecessor company which applied to be converted and the converted successor company, such a requirement may also be imposed in the context of a cross-border conversion.

However, the Court finds, thirdly, that 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.

Finally, the Court answers that, when examining a company's application for registration, the authorities of the host Member State are required to take due account of documents obtained from the authorities of the Member State of origin certifying that, when it ceased to operate in the Member State of origin, that company did in fact comply with the national legislation of that Member State.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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