

Concluding conference on Cross-border Corporate Mobility in the EU: Harnessing empirical data to explore the impact of corporate mobility in Europe

On 26.09.2019 the concluding conference of the Jean Monnet project (EAC/A03/2016) on cross-border corporate mobility in the EU took place at the UM Campus in Brussels. The conference was organised in collaboration with the ITEM and ICGI Institutes, with prof. Mieke Olaerts opening the conference with a core question of the subject matter, namely “Is there indeed a need to protect stakeholders or is Europe overprotective and in that way hindering an EU without borders?”.



The opening was followed by a presentation of the empirical findings of the corporate mobility project by Marcus Meyer, who is leading the project together with Thomas Biermeyer. The presentation focused on one of the two main objectives of the project, namely identifying *where* corporate mobility by means of cross-border mergers, conversion, divisions and SE-seat transfers is taking place. The project successfully mapped 13 years of corporate mobility within a temporal scope extending between 2000 and 2019, with the first cases being identified in 2006 (with the exception of SE-registrations). The results show four main findings:

- I. Corporate mobility in Europe is a phenomenon of the 21st century and has increased steadily since 2005.
- II. Corporate Mobility is concentrated in few EU Member States and not the same for all types of mobility.
- III. Corporate Mobility is a result of legislative change, of the case-law of the CJEU and reacts to historic events.
- IV. Corporate Mobility concerns very often holding companies, but there are significant exceptions.



The presentation of the empirical results was followed by a first panel, which focused on the policy implications and the pending Corporate Mobility Package: what are the challenges and opportunities for corporate mobility in Europe? This first panel, chaired by prof. Steef Bartman, discussed the opportunities of corporate mobility through the adoption of a uniform framework for all types of corporate mobility. Evelyn Regner, Member of the European Parliament, stressed that an important compromise was reached that allows company mobility by also taking into account stakeholder rights and employee rights in particular. Susanne Knöfel, Deputy Head of Unit Company Law at DG Justice of the European Commission, added that, in light of the case-law of the Court of Justice and the *Polbud* judgement in particular, only a certain room for manoeuvre was available and that the compromise reached in the trilogue in a very short timeframe was positive overall.

Isabelle Schömann, Confederate Secretary of the European Trade Union Confederation, added that safeguards for employees and other stakeholders are not only of importance for the area of company mobility, but for social cohesion in the EU in general. The compromise should therefore be accompanied by a further strengthening of the Social Pillar. The trilogue resulted in a clear link to the existing *acquis* on information and consultation rights as well as European Works Councils, which was not self-evident at the beginning of the negotiations. Catherine Cathiard, partner at Wildgen in Luxembourg, focused on the artificial arrangements clause in the draft Recast Directive 2017/1132. She emphasised the fact that the new mechanism is creating legal uncertainty and posing significant challenges in practice due to the prolonging of the assessment by the national authority and the broad scope of the indicators to be analysed in the assessment. Dirk van Gerven, Partner at NautaDutilh Brussels and Chairman of the Supervisory Board of the FSMA, focused on the opportunities of modernising legal frameworks by outlining the process of the development of the new Belgian Company Code.



The second panel, which focused on national perspectives on corporate mobility, was chaired by Federico Mucciarelli, SOAS University of London and University of Bologna. Prof. Mathias Siems, Durham University and the European University Institute, who led the 'Study on the Law Applicable to Companies' together with Federico Mucciarelli, presented the study's findings, which focused on cross-border conversions of companies. The study shows that mobility is taking place even in the absence of a clear legal framework and that most cases identified were inbound cases into the United Kingdom. Stephan Rammello, Associate Professor at Maastricht University, focused on the challenges of corporate mobility in light of private international law rules and the conflict of laws in this context.

Thomas Papadopoulos, Assistant Professor at the University of Cyprus and Visiting Professor at the International Hellenic University, focused on the Cypriot system and the interesting opportunities that the Cypriot regime could provide in the case Brexit occurs, due to the fact that the regime is based on the old English Companies Act of 1948. Aline Hoffmann, Head of Unit Europeanisation Industrial Relations at the European Trade Union Institute, finally focused on the employee perspective from a national viewpoint. She highlighted the fact that it is very difficult, in light of the fragmented legal framework, to ascertain which rights of employees are affected and possibly altered as a result of a cross-border transaction. This was the main driving factor for her institute to provide the seed money for the corporate mobility project.



The conference was concluded with the closing keynote “The end of history of corporate mobility?” by the second project leader, Thomas Biermeyer. In his key-note he linked the famous article by Francis Fukuyama ‘The end of history’, published in the National Interest journal in 1989, to the history of corporate mobility and examined topics in which further development may be possible or expected in the future, such as the harmonisation of connecting factors, case-law of the Court of Justice of the European Union, corporate mobility towards third countries, Brexit and regulatory competition between Member States.