



A basic compass for orienteering in European Company Law

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European Company Law

- Words are meaningful
 - European...
 - Company...
 - Law!

Each word is a key issue. Let's start with a basic lexicon.



Basic Lexicon (1)

- Company... and Corporation, Partnership and Firm
- Shareholders... and members
- Shares and Stocks
- Directors and Officers
- Branches and Subsidiaries
- Mergers and Divisions
- Capital (Share Capital, Legal Capital, Authorised Capital, Paid-up Capital...)
- Articles of Association, Articles of Incorporation, Articles (or Deed) of Partnership, Instrument of constitution, Charters, Bylaws and Company Statutes
- Nullity



Basic Lexicon (2)

- Agency
- Disclosure
- Bond and Debenture
- ...

- Not a single English, but many English(es)
 - UK English
 - American (US) English
 - «Commonwealth» English (Canada, India, Australia, South Africa...)
 - [- European/“Brussels” English]



European **Company** Law

Thus, **Company**

- What's a company?
- Key elements (Hansmann *et al.*):
 - a) Legal personality
 - b) Limited liability
 - c) Transferable shares
 - d) Delegated management
 - e) Investor ownership



Companies & co.

First of all: company or corporation?

Second: companies and partnerships
But also sole entrepreneur

Third: companies and cooperatives

Fourth: companies and no-profit sector



The idea of a company...

- More parties (not valid any longer)
- Starting from the limited liability as a mean to make investments easier
 - Commenda in the Middle Ages
 - East India Companies (Dutch, French and British) – 17th Century
- Exception to a general rule: no limited liability (seizure and sale of debtor's personal assets)
 - Who is entitled to limit a debtor's liability?
 - Are there conditions to do so (public protection purpose)?
 - Capital
 - Form
 - ...



Legal personality (1)

- *Entity shielding* for a **separate patrimony**

It operates two ways

1. Protect company's asset from shareholders' personal creditors; &
2. Protect company's asset from unjustified shareholder's withdrawal (much stronger in Companies than in Partnerships)



Legal personality (2)

- As it is a separate entity, company needs individuals who have authority to buy & sell assets in the name of the company (*agency and direction*)
 - Pay attention: each party is likely to have its own interest to pursue...
- Third parties are to have the possibility to know who these individuals are (disclosure)
 - Why? They need to know who has the power to make business lawfully *on behalf of the company*



Liability limitation (1)

- **Universal** feature of company law
- «*Owner shielding*»...
 - Together with «entity shielding»...
 - ...a complete asset partitioning is created
- **Asset partitioning** enables a better allocation of risks in a company's different businesses
 - i.e.: I can decide to pursue a risky activity, without risking directly all my personal belongings
- [contractual limited liability, but NOT *tort* limited liability: e.g. directors' liability]



Liability limitation (2)

- Possible fraud to creditors
 - See 1-euro companies all over the EU
- A basic problem: **piercing (or lifting) the veil**
 - Hard definition: who must pay?
 - Shareholders/members/owners?
 - Directors?
 - ... or just the creditors?
 - Different approaches in the US/UK and civil law systems



Transferable shares

- Transferable \neq *freely* transferable
- Very much depending on the single actual case (closely held/closed or widely held/open); and
- The nature of the company (public or private – see below)
- The underlying idea: the transfer of the company shares' ownership (and therefore of the company's itself) should be made possible by law and makes the transfer of investment easier



Delegated management

- Shareholders (commonly) *are not* who manages the company, but **they appoint the directors**
- As **directors** are ≠ shareholders, they can **serve also interests other than those of appointing shareholders** (e.g. employees, minority shareholders...)
 - I am not discussing if this is good or bad... that's not a matter of morality...
- «The board is separated from the operational managers» of the company
 - Sub-delegation
- The board has usually more members (mutual monitoring)



Investor ownership

- Who is the Owner?
 - a) Who has the **right to control the company** (decision); and
 - b) Who **benefits of company's earnings** (subjective profit) (and who risks...)

This means that there is a **direct link**, at least as a default rule between the **investment** and the **power in/gain** from the company. A company's structure is less flexible than a partnership's one for preserving the investor ownership.



More about companies

- Publicly/widely held companies vs. Privately/closely held companies (*de facto*)
- Open vs. Closed companies (agreements)
- Public vs. Private companies (company forms)

- Key element is always the so-called **corporative structure**



European Company Law

What **purpose** for Company Law?

- **Common reliance** on **common rules** (for both mandatory and default rules) ► from a **substantive** and **judicial** point of view
- Foundation for **contractual provisions** (for both mandatory – limits – and **default** – options – rules)



Company Law(s)?

- **Regulatory competition**
 - In particular in the field of **private companies** (less harmonisation)
- Where is the **best law** for my purposes?
- Race to...
 - the **top**?
 - the **bottom**?
 - the **diversity**?



The function of Company Law

- **Maximise profit?** At which cost?
 - The entire topic of sustainability in Company Law, and therefore...
- **Serve whose interest?** Shareholders? Employees? Environment? The «society» as a whole?...
- The «**enlightened shareholders' value**»
 - See, e.g., Section 172 UK Companies Act 2006: "Duty to promote the success of the company"

(1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to—

- a) the likely consequences of any decision in the long term,
- b) the interests of the company's employees,



The function of Company Law

- c) the need to foster the company's business relationships with suppliers, customers and others,
- d) the impact of the company's operations on the community and the environment,
- e) the desirability of the company maintaining a reputation for high standards of business conduct, and
- f) the need to act fairly as between members of the company.

(2) Where or to the extent that the purposes of the company consist of or include purposes other than the benefit of its members, subsection (1) has effect as if the reference to promoting the success of the company for the benefit of its members were to achieving those purposes.

(3) The duty imposed by this section has effect subject to any enactment or rule of law requiring directors, in certain circumstances, to consider or act in the interests of creditors of the company."

- In any case: the intermediate goal is to **minimise conflicts** and **agency costs**



Agency costs?

- Yes: **agency costs** between the constituencies (different stakeholders) of the company:
 - Majority/minority shareholders
 - Shareholders/directors
 - Company/employees
 - ...

Company law's purpose is (should be?) – among the others – to **lower them**, in order to gain more **efficiency**



Company Law: its borders

- No-profit – Social enterprise Law (?)
 - Well, insofar it is enterprise...
- Association (private) Law (?)
- Cooperatives' Law (?)
- Capital Markets Law (?)
- Banking Law (?)
- Bankruptcy Law (?)
- Competition & IP Law (?)



Company Law... alone?

- Not just **hard law**
 - Statutory law
- Increasing importance of **soft law**
 - **Voluntarily applicable** codes, best practices...
 - E.g.: corporate governance codes
- And relevance of companies' **internal rules**
 - **Internal regulations**, bylaws, articles...
 - E.g.: internal privacy or ethical codes
- That's **corporate governance**, overall considered



European Company Law

- So what does “European” mean?
- At least two meanings:
 - **Geographic**
 - **Institutional**
- This makes it clear that we have two different (and sometimes overlaying) dimensions:
 - **Institutional ECL**
 - **Comparative CL**, where the different domestic solutions in MSs are compared



«Institutional» European CL

- Refers to the **direct intervention** of **European institution** in the **Member States (MS) Company Law**
- **Different means of action**; foundations in the TFEU (and principles in TEU)
- «**Incomplete**» **system**: ECL has not provisions regarding every profile of a «national» company law. For this reason...



«Geographic» European CL

- Each country, its own CL
 - **Comparative company law** is king
- Some **profiles are different**, even very different; some are similar, since the very concept of company
 - Let's think about the difference company/partnerships, and the recent Lithuanian simplified partnerships
- **Similarity** comes from three reasons:
 1. Common background
 2. Diffusion and/or transplant of legal models
 3. **Harmonisation**



Finally: ECL!

- CL is **not an exclusive competence** of EU; it is just a competence **shared with the MS**, usually in the macro-area of Internal Market
- Any initiative of the EU in the field is subject to **two basic principles** (besides conferral from Member States to the Union):
 1. **Proportionality**
 2. **Subsidiarity**



Art. 5.3 & .4 TEU

3. Under the principle of **subsidiarity**, in areas which do not fall within its exclusive competence, the Union shall act **only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level**, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

[...]

4. Under the principle of **proportionality**, the content and form of Union action **shall not exceed what is necessary to achieve the objectives** of the Treaties.

[...]



Basic principles in EU Law (1)

- Art. 26.1 & .2 TFEU

1. *The Union shall adopt measures with the aim of **establishing or ensuring the functioning of the internal market**, in accordance with the relevant provisions of the Treaties.*

2. *The **internal market shall comprise an area without internal frontiers** in which the **free movement of goods, persons, services and capital** is ensured in accordance with the provisions of the Treaties.*



Basic principles in EU Law (2)

- Freedom to provide services

Art. 56 TFEU

*Within the framework of the provisions set out below, **restrictions on freedom to provide services** within the Union shall be **prohibited in respect of nationals of Member States** who are **established in a Member State other than that of the person for whom the services are intended.***

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the Union.



Basic principles in EU Law (3)

- Freedom of establishment

Art. 49 TFEU

*Within the framework of the provisions set out below, **restrictions on the freedom of establishment** of nationals of a Member State in the territory of another Member State **shall be prohibited**. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.*

*Freedom of establishment shall **include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 54, under the conditions laid down for its own nationals by the law of the country where such establishment is effected**, subject to the provisions of the Chapter relating to capital.*



Art. 54 TFEU

*Companies or firms **formed in accordance** with the law of a Member State and **having their registered office, central administration or principal place of business within the Union** shall, for the purposes of this Chapter, **be treated in the same way as natural persons who are nationals** of Member States.*

*'Companies or firms' means **companies or firms** constituted under **civil or commercial law**, including **cooperative societies**, and **other legal persons** governed by **public or private law**, **save** for those which are **non-profit-making**.*



Key issues of Art. 54.2

- **Not only companies**, also firms, and even cooperatives
- Under **civil** or **commercial law**
- Governed by either **public** or **private law**
- **Save for no-profits.**
 - So, just profit companies & firms are considered, because they are supposed to pursue business, and thus economic, activities
 - Caution 1: no-profit entities could pursue economic activity as well
 - Therefore: exclusion is a political decision
 - Caution 2: what about hybrid/low-profit companies?



Corollary principle regarding capital

Art. 55 TFEU

*Member States shall accord nationals of the other Member States the same treatment as their own nationals as regards **participation in the capital of companies or firms** within the meaning of Article 54, without prejudice to the application of the other provisions of the Treaties.*

Art. 63.1 TFEU

*Within the framework of the provisions set out in this Chapter, **all restrictions on the movement of capital** between Member States and between Member States and third countries **shall be prohibited.***



Critical issues of Art. 54

- When is a company an Italian company? Or French? Or German?
- It must be «...formed in accordance...» *AND* «having their registered office, central administration **or** principal place of business...»
- Cumulative? Alternative?
- The point is the...



Connecting factor (1)

- MS rules as for constitution: «formed in accordance»
- MS rules as for granting citizenship to a company, according its own rules of **Private International Law of companies**
- The two **mainstream theories** are:
 1. **Incorporation** theory
 2. **Real seat** theory



Connecting factor (2)

- **Incorporation theory:** the company belongs to (*i.e.: is governed by the law of*) the MS where it has been incorporated or has lawfully transferred its registered office ([UK,] Ireland, Netherland, Italy; preferred by ECJ – see *Überseering* case)
- **Real seat theory:** the company is governed by the law of the place where the central management and control is located (France, Germany, Hungary)
- Combinations are possible.



What is in concrete ECL's goal?

Art. 50 TFEU

1. In order to **attain freedom of establishment** as regards a particular activity, the European Parliament and the Council, acting in accordance with the **ordinary legislative procedure** and after consulting the Economic and Social Committee, shall **act by means of directives.**



Art 50.2 TFEU (1)

2. The European Parliament, the Council and the Commission shall carry out the duties devolving upon them under the preceding provisions, in particular:

[...]

(c) by abolishing those administrative procedures and practices, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to freedom of establishment;



Art 50.2 TFEU (2)

[...]

(f) by effecting the progressive abolition of restrictions on freedom of establishment in every branch of activity under consideration, both as regards the conditions for setting up agencies, branches or subsidiaries in the territory of a Member State and as regards the subsidiaries in the territory of a Member State and as regards the conditions governing the entry of personnel belonging to the main establishment into managerial or supervisory posts in such agencies, branches or subsidiaries;

(g) by coordinating to the necessary extent the safeguards which, for the protection of the interests of members and others, are required by Member States of companies or firms within the meaning of the second paragraph of Article 54 with a view to making such safeguards equivalent throughout the Union;

[...]



In addition: Art. 115 TFEU

*Without prejudice to Article 114, the **Council** shall, acting unanimously in accordance with a **special legislative procedure** and after consulting the European Parliament and the Economic and Social Committee, issue **directives** for the **approximation of such laws, regulations** or **administrative provisions** of the Member States as **directly affect** the establishment or functioning of the internal market.*



So...

- Art. 50 is **ordinary** for **progressive abolition of restrictions**, and **Parliament and Council** work together, while...
- ...Art. 115 is for **extraordinary removal**, by the **Council alone**, of MS' provisions which directly affect the freedom of establishment (*principle*) or the functioning (*concrete*) of the internal market.



Is that all, folks?

NO!

By means of **Arts. 114** and **352 TFEU**, EU Institutions are also entitled to adopt **Regulations**, in order to **enact the objectives of art. 26** (Parliament and Council, art. 114), or any objective set out in the Treaties, «and the Treaties have not provided the necessary powers» (Just the Council, art. 352)





In addition to that...

...the **European Court of Justice** is entitled to judge over the **alleged failure, by a MS** «to fulfil an obligation under the Treaties» (art. 258 TFEU), called **by the EU Commission**, or **by any MS' court or tribunal** (art. 267 TFEU)

- The issue is the scope of application of ECJ Decisions, and the possibility to its extension to similar cases outside the judgment



Three pillars, three (joint?) actions

1. Directives: **Harmonisation**
2. Regulations: **Standardisation**
3. Decisions: **Interpretation**



The pillars and the ages

ECL's formation has not been uniform in its development.
There has been a «**golden age**» between 1965 and 1990...

...then a «**quasi stalemate**» in the 1990s...

...and an «**apparent recovery**» in the 2000s



An incomplete system

Again, **ECL does not draw** – and even cannot draw, due to the principle of subsidiarity – a **complete CL system**

European institutional interventions are «**spot-by-spot**», according to an original project, with many changes of mind, political oppositions, abandoned tasks, eventual amendments to original texts and so on...



It sounds like a crime series

- There are **murders**...
 - **Fifth and Ninth draft Directives; SPE draft Regulation**
- There are **hidden motivations**...
 - SUP draft Directive
- There is a **continuous fight for the power**...
 - All the Regulations, with **EU competences clashing with MS' ones**



Harmonisation

- By means of **Directives**
 - **Common standards** addressed to the MS, **not** common directly applicable **rules**
 - MS have the **option** to choose among the possible solutions offered by the Directive
 - Original project of **14 EC-CL** directives
 - **Differential scope of application** (Partnerships & Companies, Just companies, Just some company forms...)



The original project (1961-1964)

#	Subject	First adoption	Current version
1 st	Disclosure, nullity, interest of third parties (acting on behalf of the company)	68/151/EEC	2017/1132/EU (2009/101/EC)
2 nd	Capital formation and maintenance	77/91/EEC (1976)	2017/1132/EU (2012/30/EU)
3 rd	Mergers of domestic companies	78/855/EEC	2017/1132/EU (2011/35/EU)
4 th	Annual accounts	78/660/EEC	2013/34/EU
5 th	Corporate governance	--	1972-1993-1991 †
6 th	Divisions of domestic companies	82/991/EEC	2017/1132/EU (previously amended by Dir 2007/63/EC)
7 th	Consolidated accounts	83/349/EEC	2013/34/EU



The original project (1961-1964)

#	Subject	First adoption	Current version
8 th	Audit of annual and consolidated accounts	84/253/EEC	2006/43/EC (amended by dir 2014/56/EU) + Reg2014/537/EU
9 th	Groups of companies	--	1974-1984 †
10 th	Cross-border mergers	2005/56/EC	2017/1132/EU
11 th	Branches	1989/666/EEC	2017/1132/EU
12 th	Single members companies	89/667/EEC	2009/102/EC
13th	Takeover bids	2004/25/EC	=
14th	Cross-border transfer of registered office	--	2017/1132/EU (2019/2121/EU)



And beyond...

- **Online constitution** (Companies – mainly private – Directive 2019/1151/EU)
- **Prospectus** (Financial Markets, 2003/71/EC)
- **Admission to Stock Exchange Listing** (Financial Markets, 2001/34/EC)
- **Shareholders' rights in listed companies** (Financial Markets, SRD1 2007/36/EC, SRD2 2017/828/EU)
- **MiFiD** (Markets in Financial Instruments Directive (Financial Markets, 2004/39/EC -> 2014/63/EU + Reg. 600/2014/EU)



A couple of notes

- In the most recent directives, there is not the ordinal number anymore (e.g.: the so called 13th directive is not «officially» the 13th directive)
- The same for the amendments, or codified versions of directives that originally had the ordinal number (so for the First directive, or the Fourth and Seventh, or the Twelfth...)
 - The problem does not exist any longer for rules included in the codified directive



Major news from 2017 on

- First, Second, Third, Sixth, Tenth and Eleventh Directives have been **codified** in Directive (EU) 2017/1132 (June 14, 2017), hereinafter: CodDir
- **Digitalisation (in the establishment)**: Directive (EU) 2019/1151, amending CodDir
- **Cross-border conversion and division**; amendment to cross-border mergers: Directive (EU) 2019/2121, amending CodDir
- **SRD2** (2017/828/EU)
- **New initiatives on sustainability** (NFS in 2014, revised 2022; Gender quotas in the board, 2022; Corporate Sustainability due diligence proposal, February 2022, expected 2024)



Scope of application

Directive	Public companies	Private companies	Partnerships
1 st CODI	Yes	Yes	NO
2 nd CODI	Yes	NO	NO
3 rd CODI	Yes	NO	NO
4 th – 7 th	Yes	Yes	Yes – NO
6 th CODI	Yes	NO	NO
8 th	depending	depending	depending
10 th CODI	Yes	Yes	NO
11 th CODI	Yes	Yes	NO
12 th	Yes	Yes	NO
13 th	Yes	NO	NO
Beyond	Yes (only listed)	NO	NO



This means that...

- **Top-down harmonisation** only works where a **directive** provides for that
- **Partnership** are basically **not harmonised**... but perhaps they do not need it
- **Private companies** are «freer» than public ones... but nothing prevents **bottom-up harmonisation**...
- To sum up: harmonisation is for many, but not for everyone!



Harmonised... but not the same!

Regulatory competition reigns over...

- Private companies
- Public companies as for...
 - **Minimum capital requirement** (just above EUR 25,000...)
 - **Structure** (one-tier/two-tier)
 - **Debentures**
 - **Lifting the corporate veil**
 - ...



Who has interest in harmonisation?

- **Third parties** (disclosure)
- **Investors** (Capital markets [prospectus, MiFiD, Takeover bids, ...], shareholders' rights, ...)
- The **system as a whole** (auditors)

- **SMEs?**
 - The answer is blowing in the wind of Corporate governance, Groups, and so on with failed initiatives...



Harmonisation via Directives

- **Opt-in/opt-out**
- An original system?
 - The kingdom of comparative law in action
 - Pieces from different national experiences: **almost nothing comes out of the blue**
- Some kind of Frankenstein's monster, but, perhaps...





In general, thus...

- Harmonisation should be seen as a sort of **cherry picking** of the best (or most meaningful) **European experiences** in different Company Law areas
- With a view to **attain[ing] freedom of establishment** by removing domestic obstacles



As the system is incomplete...

...it deals just with **a few topics**; among the others:

- **Disclosure**
- **Validity vs. third parties in general** (nullity, representation)
- **Extraordinary operations** (mergers, divisions, in their disclosure meaning, and with a view to cross-border dimension)
- **Accountings** and **auditing** (disclosure, again)
- **Digitalisation** (but not always)



As the system is incomplete...

- **Legal capital & shares**
- **Branches** (disclosure, again and again)
- **Single member companies**
- **Corporate governance & shareholders' rights** in listed companies
- **Takeover bids...**



No agreement (yet...) for a few key issues

- Corporate governance
- Groups of companies
- Cross-border private company forms



Therefore, three pillars!

EU action in MS' company law is based on **three pillars**.

1. Directives
2. Regulations
3. Decisions



Therefore, three pillars!

Art. 288 TFEU

To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions.

A **regulation** shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

A **directive** shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but **shall leave to the national authorities the choice of form and methods.**

A **decision** shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.

Recommendations and opinions shall have no binding force.



It looks quite easy, isn't it?

...but don't worry. It isn't.

For instance, on the one hand, **Regulations are not always directly self executive;**

on the other hand, **Directives could, sometimes, be directly applicable;**

and as for **Decisions**, one has to be patient...

...but they are the most meaningful part when it comes to the **interpretation of ECL**



2. Standardisation (in brief)

European organisational forms – semi-standard (Regulations)

- EEIG
 - Consortia between economic players
- SE
 - European Joint-stock company
- SCE
 - European cooperative society



3. Interpretation (even more in brief)

Freedom of establishment: several cases

- Daily Mail: Companies are creatures of national laws
- Centros: Companies' branches can be set up everywhere, even if the parent company does not carry out a proper economic activity in its home country
- Uberseering: Member States must recognise companies established in other MS, according to the rules applicable there
- Polbud: Cross-border conversion



Interpreting European Company Law

EUCJ case law (e.g.: Daily Mail, Centros, VALE, Polbud...)

...but also **national interpretation** of European rules
an **obstacle** to a complete harmonisation, sometimes

The key point is the creation of a **consistent system** in a
interjurisdictional dialogue



Who interprets what?

1. Interpreting ECL according to domestic law
2. Interpreting domestic law according to ECL
3. Interpreting ECL according to ECL (EUCJ)



1. Interpreting ECL according to domestic law

National courts as the main interpreter

Two main possibilities:

1. Jurisdiction of **origin of the rule**

Where does the EU rule come from?

Is the judge entitled/supposed to **consider the national interpretation** in that MS?

Constitutive comparative interpretation

2. Rule implemented in another MS

Bottom-up harmonisation is possible by this way, ex post



2. Interpreting domestic law according to ECL

EUCJ as main interpreter

Derivative domestic law, but also non-derivative (EU spirit)

A basic tool: the **preambles** and the **whereas**

- Not strict mandatory law function
- But always meaningful for **interpretation**



2. Interpreting domestic law according to ECL

Again: are **ECL principles** useful as a **compass** for the domestic judge in **deciding cases *non immediately related*** to derivative EU Law?

E.g.: **principles of freedom of establishment** in cases not previously decided by the EUCJ against that very MS (but maybe in the same terms against another MS)...

For instance: Commission v. Spain C-338/06, while Italy has the same rule as Spain...

Answer: reasonably, no, at least as mandatory law.

Even if there might be room for a different answer, if the **decision** sets down very clear basic principles



2. Interpreting domestic law according to ECL

And a question can be raised on the **EU Law under formation**, until it is formed...

An example might be the proposal on the due diligence
...or it is already formed but not yet implemented
e.g. Innovative startups formation in Italy

Again: **not mandatory**, but it might work as a form of **moral suasion**, and more for the formed and not implemented than the one in formation...



2. Interpreting domestic law according to ECL

Further problems when it comes to other issues, apparently not linked with ECL

E.g.: art. 10 CodDir and “due legal form” of the instrument of constitution if domestic laws
“do not provide for preventive administrative or judicial control”

How pervasive should this control be to be effective?

What does “due legal form” mean?

And again: **are each MS' company types to be defined by EU Law?**

See annex IIA CodDir

If you take it seriously, huge fallouts

But even: **is EU Law competent to decide what a company is**, in domestic law?

5th Whereas EEIG Regulation and German literature on *offene Handelsgesellschaft*



3. Interpreting ECL according to ECL (EUCJ)

Mainly **EUCJ**

How valuable is an *obiter dictum*?

E.g.: Cartesio case and its influence on Pulbud

How deal with **judgements' clashes**?

E.g.: Cadbury Schweppes v. Centros

Rules' succession in time: are they to be extended automatically?