REGIONAL TRENDS – INTEGRATION CHALLENGES – VARIOUS LEGAL MODELS OF BUSINESS REGISTRATION IN THE EU MEMBER STATES AS A COMPETITIVE FACTOR

REGIONÁLIS TRENDEK – INTEGRÁCIÓS KIHÍVÁSOK – AZ EU TAGÁLLAMOK KERESKEDELMI NYILVÁNTARTÁSAINAK JOGI MODELLJE, MINT VERSENYKÉPESSÉGI TÉNYEZŐ

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Abstract

There has been a long way from the paper-based registration systems to the electronic registration platforms in the business registration models of both for-profit and non-profit organisations in the market. The company register is not only a dominant form of registration for the legal entities (organisations), it is also a crucial business factor in the economy for the commercial participants. Major challenges in the development of modern registers may be categorised as follows: enforcement of market transparency, wide application of various possibilities imminent in the electronic schemes, guarantee of an as broad access to the market as possible (enhancement of the simplest possible way to enter the market) and the follow up of the new regional trends in the integration challenges of the EU (endeavour for harmonisation and integration or linking of the company registers). Notwithstanding these efforts, there is quite a difference among the models of the commercial registers in the EU Member States.
The following article demonstrates the still existing diversification in the EU Member States by showing certain selected legal models of company registers. In analysing these divergent models, the authors wish to study and posit the Hungarian model as well within the context of the EU.

Keywords: company register, data broker, electronic registration, market transparency, access to information, harmonisation, Hungary, EU

Absztrakt

A gazdaság for-profit és non-profit szervezeteinek nyilvántartási modellje a kezdetleges, jellemzően papír alapú nyilvántartó rendszerektől látványosan nagy utat járt be napjaink elektronikus nyilvántartási platformjaiig. A jogi személyek (szervezetek) nyilvántartásában kiemelkedő jelentőségű, bizonyos értelemben „húzó" ágazatnak is nevezhető a kereskedelmi nyilvántartások alapvető fajtája, a cégnyilvántartás. A nyilvántartó rendszerek modern kori evolúciójának jellemzői: a piaci transzparencia erősítése, az elektronizáció adta lehetőségek széles körű kihasználása, a piacra lépés akadálymentesítésének igénye (a vállalkozások alapításának egyszerűsítése), és az uniós integrációs törekvésekből eredő regionális kihívások megjelenése (egységesítés, törekvés a kereskedelmi nyilvántartások összekapcsolására). Európában ugyanakkor a mai napig jelentős eltérések jellemzik a tagállamok kereskedelmi nyilvántartásait. A szerzők – néhány kiválasztott ország példáján keresztül –az Európai Unióban fellelhető model-diverzifikációt kívánják szemléltetni, elhelyezve abban a jogi személyek hazai nyilvántartásának rendszerét, a lehetséges távlatok előre vetítésének nem titkolt szándékával.

Keywords: cégnyilvántartás, adat-ügynökök, elektronikus regisztráció, piaci transzparencia, piacra lépés akadálymentesítése, harmonizáció, Magyarország, EU

INTRODUCTION

Citizens of the EU in various Member States may sit wherever they want, Cafes, kitchens, saloons or dining rooms, and could easily found a company in any of the Member States directly via the electronic interconnected business registers in the digital single market through a web portal. But not only the formation could be achieved so easily but the management, or the disclosure of necessary business information may be carried out this way which further on could be accessed by the stakeholders, interested third parties. Briefly, the business registers throughout the EU are to be accessed *directly fully on-line* both by the uploaders, such as founders and managers and by the users, namely the shareholders, service providers, employees, or other creditors and stakeholders. So, moves on the new digital phase in the saga of the interconnecting of the business registers. But not without questions though. How much information, for what and at whose costs, under how much control, ex ante or ex post control, under which Members States' governing laws etc. Even if some would doubt the practical necessity of such possibilities, one could definitely support this idea, since this is a crucial step for a *digital and single* market.

The most important issues in the development of modern registers may be categorised as follows: (i) the enforcement of market transparency, (ii) a wide application of various possibilities imminent in the electronic schemes, (iii) the guarantee of an as broad access to the market as possible (enhancement of the simplest possible way to enter the market) and (iv) the follow up of the new regional trends in the integration challenges of the EU.

The following article focuses on the fourth problem, namely on the rivalry issues of the registration models among the Member States, especially within the various regions of the EU. For, notwithstanding the efforts to interconnect the business registers and let it be used by the interested parties for a smooth operation of companies throughout the single digital market, there is still quite a difference among the models of the commercial registers in the EU Member States (Pázmándi, 2015). Competitiveness at this level, in fact, has never been the problem of the EU, but that of the Some Member States. Some states have even separate registers for the businesses, such as the different types of companies distinct from the registers of the civil organisations and foundations (Hungary). It is quite naturally not the topic of the EU, it cannot be. Also, no wonder that the interconnecting model of the EU, the BRIS (Business Registers Interconnecting System), leaves the underlying substantive national laws intact. Hence the question is whether the laws of one Member State regarding the business registers may better promote the entering into the market and informing the market than those of another Member

State in the relevant region. So, it could be a legitimate query in a completely regional context, whether the pertinent regulations in one country are better or worse equipped to this sort of task than that of any other country, for instance, in the Central European region (Fehér, 2018).

In this article we argue, that the drive to implement a better model for a business register is rather triggered by the *regional* challenges, the traditional historical and cultural roots than by the legislative acts of the EU. Besides, we argue that notwithstanding these diverging drives, the case law of the EU does counterbalance this divergency and tends to create a field of convergency in the company law realm.

THE BLACK LETTER LAWS IN THE EU

Surely, it had been a long way to harmonise the commercial registers throughout the EU (Vutt, 1998; Holzborn & Leube, 2004; Gassen, 2008). And it has been a long way until several company law directives touching upon the trustworthiness of and the access to market information were compiled into one directive in 2017. The 2017/1132 EU directive relating to certain aspects of company law recodified the sixth, the eleventh, the cross-border merger and the various third parties' safeguards directives. These directives, like any other company law directives, roughly speaking, dealt with the protection of shareholders, creditors and employees also by guarantying transparency and getting information in the market.

This directive of 2017 is however being under revision again. The major motivation for this renewal, apart from a genuine need of the swiftly changing circumstances, is the claim for a more effective single market, especially the digital single market. This process also reflects Jean-Claude Juncker's promise of a work on the European digital agenda and the digital single market expressed in his statement called the "Time for Action" presented in the European Parliament right before the vote on his policy vision, in 22 October 2014.

The latest relevant impact assessment of the European Commission relies on various comparative studies and summaries regarding the availability of digital tools for company registration and filings within the EU. Although these data embrace the models of only 14 Member States, yet representing several regions, the findings are still very intriguing. According to these studies and the impact assessment there are quite a few Member States equipped with full digital registration systems. This would guarantee that the registration process be achieved in a so called *direct end-to-end manner* (Impact Assessment, 2018, 126-127).

THE COMPETING MODELS OF THE BUSINESS REGISTERS

Thus Estonia, France, Denmark, Poland, Portugal and the UK provide for a model, which enable the founders of a company to carry out the whole registration themselves via electronic devices through a web portal. In contrast, however in Belgium, Bulgaria, Germany, Hungary, Italy, Luxembourg, the Netherlands and Romania the system relies on neither a direct nor an end-to-end procedure (Impact Assessment, 2018, 127-129). The founders of the company need to visit a designated legal professional (lawyer, attorney, or notary) with the documents-in-paper in their hands and request a process of registration. In these latter systems the market actors cannot proceed without the compulsory legal aids who have the electronic access to the relevant registers.

By contrast, at further points of the lifecycle of the company, in case of the filing and disclosure of company information, the availability of digital tools is somewhat different. France and Italy change places. Estonia, Denmark, Poland, Portugal and the UK carry on with providing for a *direct end-to-end self-service*, and so does Italy. Quite the contrary, Belgium, Bulgaria, Germany, Hungary, Luxembourg, the Netherlands and Romania sticks to the indirect rather paper-based process in the disclosure procedures of the companies. And so does France. It is a rather paper based process even if the legal aids (the lawyer, the attorney, or the notary) would upload all the required documents so that they are to be filed in an electronic way too.

THE CULTURAL AND HISTORICAL REASONS OF THE MODELS OF THE BUSINESS REGISTERS IN THE EU

Yet the difference between the two groups does not end here. Founders of a company in Estonia, for example may directly set up a company in another Member State, like Portugal, if they registered as taxpayers in Portugal. And this could be done easily via an Estonian e-ID (ID kaart). Thus whichever Member State recognizes this e-ID and has the relevant infrastructure – including the pertinent laws –, may allow this possibility for Estonian founders of a company and probably *vice versa*.

Nevertheless, this model is not widespread in the EU. Even if there are strong evidences that a fully digitalized model, including a direct access to the registers from the part of the market participants, would save a lot of money (Impact Assessment, 2018), and not only for the society in large, this model is still not in use by the majority of the countries. The reasons could be categorized in three groups: *i)* antagonism of some stakeholders, *ii)* the traditional

administrative and/or legal design of a country and *iii)* a general distrust in market (un-controlled) solutions.

As for the first reason, certainly, there are stakeholders, who are not quite motivated to follow the streamline. There are various interests beyond these oppositions of course, such as existential concerns, lack of information or fear of globalisation. The existential concerns embrace most conspicuously the notaries in countries where it is compulsory to access the registers – even if it is via web portal – through legal professionals (especially but not exclusively: Germany, Austria and Hungary). The lack of information is a profile of the less educated employees and their representatives. The trade unions could well be categorized into this stakeholders' group who do fear globalization (Feedback Statements, 2018).

Secondly, one of the fundamental obstacles to the full digitalization of the interconnected registers may be addressed as the traditional administrative and legal design. Historically the legitimacy of the state derives in most countries in the continent from the task of creating a level playing field for its market actors, businesses or any kind of legal persons. The state interference is therefore an anticipated and well accepted *quid pro quo*. This is the state that grants the legal personality to the companies. This is the state that grants thereby the gist of capitalism to the business associations: the limited liability. And so, this is the state, that grants a shield over the members of the company protecting them from the creditors. This sort of legal personality is not only recognised, it is granted (Germany, Hungary, Poland, the Czech Republic, Slovakia). This attitude promotes that type of the business registers which provides for a *constitutive* effect (like Germany, Hungary, Poland, the Czech Republic). Constitutive effect means that the registered business association is granted a separate legal entity by the deed of the state authority (let it be court, an administrative body or a business chamber) and so the founders of the company are protected by the corporate veil. Therefore, founders of the companies have to file more detailed documents for registration which are also going to be quite plausibly fact-checked. In this business environment the intervention of the state – also as the representative of the notion of the ordo-liberalism – is not suspicious but expected and trusted. The opposite regime is a business register of a rather *declarative* in nature, where the deed of registration is just a recognition. This recognition needs to be disclosed, declared. Therefore, these types of business registers require less data to be public and even if they are disclosed, they are not necessarily fact-checked (like the UK and mostly France).

The third aversion towards the digitalized interconnected model of business registers stems from the previous concern of state dominance. Naturally, this sort of tradition creates a general

distrust in a market-based solution, such as the direct access and self-service of the founders of a company in the digitalized business registers.

The deep roots of such concerns are certainly well fed by some of the fraudulent cases in the EU, in the globalised markets, to be fair. The notaries and the trade unions may argue on firm grounds that the uncontrolled registrations provide an easy way to set up phony letter box companies. Or rather shell companies because the former may be legal, the latter may not (Hastings & Cremers, 2018). In these cases, the argument goes, the employees and the creditors are much more vulnerable. Further problems are triggered by the money-laundering regulations which require personal face-to-face identification in certain legal regimes.

The answer to this sort of concerns is not an easy one. Firstly, an easy access of the stakeholders to the salient disclosures of a company may counterbalance the fear from lack of administrative control. Yet, the degree of disclosed information, for free or not, could still be another issue to ponder upon. The basic available data are not always telling. The registers with the rather declaratory effect are much less informative, than the registers with the constitutive effect. It is not a negligible question, for instance, whether the director of a given company has full capacity to act alone or not. It may need clarification, especially in the internal market, where the underlying laws of the Member States may differ, whether the decisions of the sole director of the company needs approval of an elected employee or not. On the other hand, if the data are public the problem of data protection occurs. The recent issues of the merchandising of the data in the digitalized worlds leave many concerns unsolved (Crain, 2018). What information is being dissolved about someone, to whom? How to trust when sharing information (Marwick & Hargittai, 2019) and how to regulate the data brokers, if needed.

Secondly, and quite interestingly, the supervisory procedure is not of help. The supervision system of the registration, may it be so diverse as it is, has no role at all in the effectivity of the business model. Truly, the control over business registration is swifter and more efficient in some Member States than in the other ones but not due to the surveillance system. Hence, this may not necessarily mean that a system of company registers overseen by a court is better or worse. Countries with a court supervision are like Austria, Belgium, the Czech Republic, France, Germany, Hungary, Poland, Slovakia and Slovenia. Italy and the Netherlands have the Chambers to supervise this process, and so the rest, the majority, of the Member States designate an administrative authority for this task: Bulgaria, Cyprus, Denmark, Estonia, Finland, Greece, Ireland, Lithuania, Latvia, Luxemburg, Malta, UK, Portugal, Spain and Sweden. After all, the guarantees for a court surveillance is granted in all systems, so the

possible slowness of a court system may become the swiftest one if court control becomes a general rule in the other models.

In any event, although the models are challenged from various aspects, there is no need for a change of the models in the Member States from the digitalization point of view. On the other hand, the understanding of the underlying national rules when forming the company may demand a necessary convergence of the business registration models. Because the Court of Justice of the EU (CJEU) does react to the divergence of the company law rules in the Member States. Truly, the CJEU, in its case law, does push the Member States towards a sort of convergency in company law placing its legitimacy on the freedom of establishment requirement set in the TFEU (Articles 49-54 of the Treaty on the Functioning of the European Union). The direction of the movement of the CJEU is however fairly debated (Gerner-Beuerle and Schillig, 2010).

So, within the constraints described above, it is up to the Member States to reply to the basic challenge and to set up a business register model which is best apt to serve a swift, efficient and user-friendly registration procedure and further capable of embracing the digitalized tools necessary to comply with the technicalities required by the EU Commission Regulation of 2015/884.

NEW HARMONIZED TRENDS IN THE INTERCONNECTING OF THE BUSINESS REGISTERS IN THE EU

The proposal for amending the directive 2017/1132 as regards the use of digital tools and processes in company law (2018/0113(COD)) was enacted on the 20th of June 2019 and published in July (Directive 2019/1151). The directive entails further the cross-border conversions, mergers and divisions, as well as the registration of cross-border branches of companies. The target group of the legislative act remains, as it was, the SMEs with few shareholders and employees but with a large share within the entire economy of the EU. According to the impact assessment of the Commission "there are around 24 million companies in the EU, out of which approximately 80% are limited liability companies. Around 98-99% of limited liability companies are SMEs" (Impact Assessment 2018 5.) The legal forms of these companies are, generally, the private companies limited by shares or by guarantees (GmbH, société à responsabilité limitée, entreprise unipersonnelle à responsabilité limitée, société par actions simplifiée, société par actions simplifiée unipersonnelle or *korlátolt felelősségű társaság, kft*).

Notwithstanding the statistical significance of these SMEs, the reason, why these companies should comply with the widest access possible to the business registers at EU level, is precisely this limited liability of these companies. Founders of such companies willingly undertake economic activities thereby plausibly affecting third parties' interests. This market activity should definitely be carried out in a way which could be followed through as easily as possible for the interested stakeholders via business registers. This has always been a firm attitude of the legislators in the EU, or its predecessors in the common market (*Haaga* case of 1974, C-32/74 - Haaga GmbH).

The new directive (Directive 2019/1151) guarantees the possibility that the founders of a company should be able to set it up directly from home into any other Member State. So, it prescribes procedures in the Member States firstly to enable formation and disclosures of companies and registration of branches to be completed fully online. Further, the Member States should be able to provide for templates of company constitutions or patterns of contracts (Article 13h). And the content of the templates shall be governed by national law.

Besides, this directive also relies on the "once-only" principle (Annex IIA, Article 3) of the Single Digital Gateway, and puts the burden of costs and time related to parallel information gatherings about a company onto the authorities managing the business registers. It means that a separate publication in the Official Gazette cannot be mandatorily required neither in the formation nor in the disclosure procedures (Recital 28).

Fairly importantly, "[I]n order to ensure that consistent and up-to-date information is available about companies in the Union and to further increase transparency, it should be possible to use the interconnection of registers to exchange information about any type of company registered in the Member States' registers in accordance with national law. Member States should have the option of making electronic copies of the documents and information of those other types of companies available also through that system of interconnection of registers (Recital 29).

Although clearly, the digitalized procedure is the final aim, the proposal lets the Member States follow their own traditions hitherto in regulating the formation of the companies. Nevertheless, none of the Member States should be allowed to hinder the electronic formation of a company, when the company can do so. Exceptionally, "where obtaining electronic copies of documents satisfying the requirements of Member States is not technically possible, by way of exception, the documents in paper form could be required" (Article 13j). This means that legality check may not hinder on-line formation and disclosure of a company directly by the founders (Recital 20) but these methods may vary. Yet further information may be requested in

order to exclude fraudulent behaviour, but again, this should be also through the electronically interconnected business registers (Recital 22).

Importantly enough, the salient basic information on these procedures should be made by the Member States available online and free of charge (Article 19. p.2.). The directive even put a mandatory minimum list of accessible data which are the most inevitable for the investors in the internal market, such as the name and the registered office of the company, details of the company website, the status of the company (just set up, wound up, dissolved, economically active, etc), the object of the company, the representatives of the company, information on branches of the company, if any. However, the scope of these data remains highly limited because the access to this information varies from Member States to Member States. But in order to build legal certainty and trust in the information in the market, Member States are obligated to maintain the data in the interconnected electronic business register reliable, trustworthy and accessible to all interested parties as much as it is technically possible so far. Hence the requirements under applicable national law concerning the authenticity, accuracy, reliability, trustworthiness and the appropriate legal form of documents or information that are submitted shall remain unaffected by the new Directive, provided that online formation and online registration of a branch, as well as online filing of documents and information, is possible (Article 13c p.3).

MAJOR CHARACTERSITIC ISSUES AND PROBLEMS IN THE REGULATIONS OF THE ELECTRONIC INTERCONNECTED REGISTERS

The electronic interconnection of the registers and the possibility of the on-line cross-border direct formation of a company/branch or any such disclosures in the life-cycle of the companies create fairly new ways in the traditional procedures.

Firstly, the burden of the courts, or the designated authorities, may significantly lessen due to the direct formation of the companies achieved by the founders or by the automation of certain elements of these procedures, like the use of the templates for the formation of a company or a branch in another Member State. Secondly, this may generate a better platform for good will cases, such as the use of others business names. Thirdly, the legal professionals may be replaced by assistants, thereby leaving more time for actual court issues to be decided, like complicated nullity questions. Fourthly, a wider interconnecting of public registers, such as the land registers, the various mortgage or lien registers, the citizens' registers, the criminals' registers, etc, could provide an even faster and cost-efficient process.

In fact this was the real drive of the new directive: "The use of digital tools and processes to more easily, rapidly and time- and cost-effectively initiate economic activity by setting up a company or by opening a branch of that company in another Member State, and to provide comprehensive and accessible information on companies, is one of the prerequisites for the effective functioning, modernisation and administrative streamlining of a competitive internal market and for ensuring the competitiveness and trustworthiness of companies" (Recital 2).

Yet, these easy pathways for the businesses may trigger some serious legal problems of privacy. As the rules against the money laundering or the fraudulent managing of a company or the false disclosures require, there are important information, personal data which are processed and, by interconnection, transferred in these registers. The tension between one's privacy and others right to access to information in the market is certainly evergreen. It may truly be important for the interested parties to find out information about managers or directors who had been found by court liable for fraudulent activities, so that to develop a strategy against such market participants.

RECENT CASES RELATED TO THE RELIABILITY, THE TRUSTWORTHYNESS AND THE ACCURACY OF THE INFORMATION VERSUS THE PROTECTION OF PERSONAL DATA IN THE EU

Although the *Haaga* case of 1974 already pointed out that the disclosure rules of a company, fixed by the then first company directive, is crucial for the trustworthy information in the market, the recent *Google Spain* case of 2014 could cause problems.

Firma Haaga manufactured sterilizing equipments especially for medical or hospital use and was seated in Stuttgart. The founders and owners were the members of the Haaga family, the two brothers were the directors. They could represent the company, each acting alone, according to the basic documents of the company. However, in the event of other directors being appointed, the basic document provided that in any case two directors or a director and a duly authorized person, respectively, could represent the company and sign in its name. Further, the basic document added that the power of directors to represent the company in dealings with third parties was unlimited. The then new EC directive (the disclosure directive of 1968) required that the company registers indicate also who represents and with what capacity the companies. Germany duly implemented the directive, but Firma Haaga did not want to comply with new entries into the register claiming that according to the German (unamended) law if one proceeds in conformity with the law, then no entry needs to be done. This refusal of the Firma Haaga was then challenged at the court and it finally ended up at the Court in

Luxembourg. Based on the opinion of the Advocate General Mayras, the Court of Justice interpreted the directive broadly and confirmed that the common market requires accessible and reliable information and even if the German company register had the entry lawfully, this would not be legible for the market participants form the other Member States, who have no knowledge of the German law.

So, in its decision the Court of Justice construed the directive broadly in order to have a common standard in the (then common) market. It should be noted, that the data provider here is to be the data owner, the company itself and the objective of the directive was to protect third parties – like creditors, employees, local authorities – even at the expense of the members of the company. The market actors need to know who can act with what power in the market so that to hold them liable, if needed.

In a recent case of the *Google Spain* 2014*,* the CJEU allowed a lawyer to claim at Google Inc. to have a piece in a newspaper deleted from the internet. This fairly local small newspaper, which was asked to be taken down from the internet, correctly mentioned the lawyer, Mario González as someone who had had debt towards the tax authorities in Spain. Now, the claim was, that if someone looks for a lawyer in the internet in the region, then Mr. González had not much chance since this negative picture always comes forward. Here the issue was whether one has the right to be forgotten, or the right to have the service provider to retrieve the data, especially, if certain data are posted about someone without his approval. Arguing that the personal data and privacy are protected by the EU Charter, the Court of Justice stated that the right to be forgotten is indeed a right pertaining to it. The Court said that in compliance with the then effective personal data protection directive (95/46/EC) the personal data processed must not be inadequate, irrelevant, and excessive in relation to the purposes for which they are collected (para 92-94).

In fact, this decision raised more questions than answers. When are data inadequate irrelevant, and excessive in relation to the purposes for which they are collected? Is it inadequate or irrelevant or excessive for the client to know if the lawyer defending him had issues with the authorities? No one denied during the litigation that the information had been false or falsified. In this case the interest of the general public to have access to data has failed. As the Court states: "the data subject may, in the light of his fundamental rights under Articles 7 and 8 of the Charter, request that the information in question no longer be made available to the general public on account of its inclusion in such a list of results, those rights override, as a rule, not only the economic interest of the operator of the search engine but also the interest of the general public in having access to that information upon a search relating to the data subject's name (para 99).

This outcome of the *Google Spain* case is hard to be reconciled with the concept of the *Haaga* case. Yet, in a more recent case, the *Manni* case of 2017, the CJEU distinguished the interest of the public from the *Google Spain (*Mantelero, 2016). Accordingly, the public needs to have access to those data in the registers which are indispensable for the market participants. In this case the company of Mr. Manni had been awarded some construction works but if someone searched for his name in the business registers, he could have found a different company lead by Mr. Manni which had gone bankrupt. Mr. Manni claimed at the Chamber processing the registers in Italy, that this "old, irrelevant data" facts(?) damage his chances to make a good sale on his construction works, so it should be retrieved. Interestingly enough, the Chamber insisted upon its right to preserve such information necessary in the market, whereas the courts in all levels were in the opinion that this hurts Mr. Manni's privacy rights protected by the EU laws. The CJEU finally interpreted the EU laws so that it should provide for the conservation of the necessary information in the market as long as reasonable.

One is tempted to reconcile *Haaga* and *Manni* by referring to the fact that both cases interpret the scope of the (state) authorities, Chambers, Registers as opposed to the *Google Spain* case where it was a private market actor who processed the data. From this point of view the decisions may reflect well the good old European distrust in the market and preferable reliance on the authorities.

On the other hand, it is clear too, that the CJEU does play a fairly influencing role in the internal market by promoting a common standard also in the field of freedom of establishment (Krawczyk-Giehsmann, 2019, Ringe, 2017).

CONCLUSION

Obviously, it is not the intent of the EU to harmonise the company laws concerning the business registers in the internal market. The new EU directive (Directive EU 2019/1151) regarding the interconnection of the business registers, which aims to allow electronic formation of a company initiated by the founders in different Member States, would therefore not directly enforce a change in the models of the company registers in the national laws. It is up to the competent legislation to set up the registration requirements and the processes in case of the formation of a company or the communication of/about the company. There is still a broad range of models for registrations in the EU and so it will remain.

Yet, the real challenge in the internal market is how to set up a digitalized network of *trustworthy* registers. Trustworthy, authentic, accurate and reliable in the sense, that it contains true, check-proof data accessible to the widest possible interested parties, such as creditors, shareholders or other stakeholders. And it seems, that this challenge is accepted rather by the Court of Justice, the CJEU.

It seems that the time for the harmonisation of the company law is not yet ripe, not even for the registers, but the case law of the EU provides for a wider spectrum for a level-playing field in the internal market. Surely, this is a slower process.

The various regions within the EU have certainly different attitude towards cross-border activities, thus a possibility for the founders to set up a company directly without a compulsory intermediary even throughout the borders is deeply rooted in the historical and business culture of the region. The attitude towards the role of the state is determining. So, clearly, the drive to implement a better model for a business register is rather triggered by the regional challenges and competition than by the legislative acts of the EU.

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