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zonder race to the bottom*

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Abstract

This article deals with the implications of the Centros decision of the European Court of Justice for the “real seat” criterion in international company law and for regulatory competition between EU member states. It is argued that the decision, although formally only dealing with the right of free secondary establishment, clearly limits the full-fledged application of the real seat criterion in that member states may no longer refuse to recognize a company on the ground that its real seat is not situated in the country of incorporation. The decision will be beneficial for the right of establishment, but is unlikely to greatly increase regulatory competition, since it hardly makes reincorporations within the EU any easier and in general only marginally improves the freedom of companies to choose the national laws applicable to them. Fears of massive evasion of national rules after Centros are therefore, and despite the tight limits which the court sets on anti-evasion measures, exaggerated, especially since regulatory competition in the EU would, for several reasons discussed in the text, not lead to a “race to the bottom”.

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