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COMMISSION OF THE EUROPEAN COMMUNITIES

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Part II

COMMISSION STAFF WORKING DOCUMENT

Impact assessment on the Directive on the cross-border transfer of registered office

ANNEX I. TABLES

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Table A1. This table reports new incorporations of private limited companies in the U.K. from other EU Member States except the U.K. Incorporations from country *x* count the number of firms where *the majority* of directors resides in country *x*. Incorporations in parentheses from country *x* count the number of firms where *all* directors reside in country *x*.

Year	Majority of directors from country <i>x</i>	All directors from country <i>x</i>	Majority of directors from country <i>x</i>	All directors from country <i>x</i>	Majority of directors from country <i>x</i>	All directors from country <i>x</i>	Majority of directors from country <i>x</i>	All directors from country <i>x</i>	Majority of directors from country <i>x</i>	All directors from country <i>x</i>
	Austria		Belgium		Cyprus		Czech Republic		Denmark	
1997	31	(22)	116	(85)	144	(120)	22	(9)	59	(26)
1998	19	(13)	144	(87)	194	(154)	15	(8)	42	(31)
1999	43	(30)	169	(109)	673	(568)	32	(19)	71	(54)
2000	31	(15)	121	(56)	936	(657)	39	(17)	60	(20)
2001	77	(11)	199	(13)	864	(353)	33	(5)	201	(5)
2002	99	(21)	219	(57)	985	(422)	38	(8)	515	(259)
2003	142	(75)	282	(124)	872	(452)	54	(31)	957	(896)
2004	371	(292)	330	(204)	801	(519)	67	(33)	196	(97)
2005	609	(514)	458	(346)	959	(646)	89	(63)	248	(179)
	Estonia		Finland		France		Germany		Greece	
1997	0	(0)	9	(4)	1,061	(805)	258	(169)	72	(50)
1998	4	(0)	23	(8)	1,337	(1,042)	279	(179)	121	(94)
1999	0	(0)	11	(2)	1,431	(1,031)	277	(165)	120	(88)
2000	5	(5)	7	(3)	1,342	(764)	233	(104)	78	(37)
2001	6	(0)	23	(4)	1,175	(212)	516	(100)	74	(6)
2002	6	(0)	11	(2)	1,235	(241)	950	(354)	105	(23)
2003	9	(2)	21	(12)	1,269	(400)	2,516	(1,753)	113	(36)
2004	14	(6)	11	(7)	1,378	(682)	9,618	(8,702)	91	(35)
2005	27	(16)	21	(12)	1,666	(937)	12,019	(11,035)	120	(76)
	Hungary		Ireland		Italy		Latvia		Lithuania	
1997	2	(0)	188	(96)	427	(302)	4	(0)	7	(7)
1998	4	(2)	296	(160)	433	(279)	0	(0)	0	(0)
1999	7	(2)	410	(210)	513	(334)	7	(6)	2	(2)
2000	2	(0)	264	(106)	419	(199)	9	(5)	2	(0)
2001	18	(2)	257	(49)	319	(50)	13	(0)	13	(1)
2002	6	(2)	287	(67)	348	(46)	16	(4)	18	(2)
2003	31	(18)	330	(81)	405	(121)	13	(8)	25	(23)
2004	33	(26)	365	(105)	408	(168)	16	(6)	24	(20)
2005	63	(43)	328	(110)	538	(278)	31	(13)	13	(8)
	Luxembourg		Malta		Netherlands		Norway		Poland	
1997	59	(55)	11	(9)	381	(274)	103	(74)	31	(20)
1998	60	(29)	27	(17)	400	(292)	85	(56)	27	(19)
1999	105	(75)	21	(9)	440	(309)	111	(56)	39	(22)
2000	58	(31)	22	(12)	380	(192)	107	(34)	20	(14)
2001	55	(7)	15	(0)	477	(117)	91	(10)	24	(4)
2002	49	(9)	11	(3)	560	(213)	105	(8)	30	(7)
2003	33	(7)	19	(3)	637	(338)	315	(233)	292	(271)
2004	87	(45)	23	(9)	1,506	(1,185)	1,220	(1,080)	113	(50)
2005	111	(72)	23	(9)	2,127	(1,770)	2,328	(2,163)	136	(85)
	Portugal		Slovakia		Slovenia		Spain		Sweden	
1997	53	(28)	15	(7)	0	(0)	243	(151)	166	(114)
1998	67	(42)	6	(2)	4	(2)	237	(140)	258	(158)
1999	54	(28)	4	(4)	6	(4)	300	(169)	247	(159)
2000	44	(24)	7	(3)	2	(0)	271	(117)	233	(107)
2001	45	(5)	8	(1)	11	(4)	273	(42)	131	(10)
2002	26	(3)	11	(1)	7	(3)	370	(71)	204	(80)
2003	52	(18)	12	(8)	9	(4)	269	(79)	238	(109)
2004	53	(16)	13	(11)	18	(8)	376	(144)	241	(112)
2005	66	(35)	16	(12)	32	(16)	539	(309)	406	(288)

Source: M. Becht, C. MAYER H.F. Wagner, "Where do firms incorporate", ECGI Law Working Paper N° 70/2006, September 2006.

Table A2. Registered Companies: Private Limited Companies

Registered Companies: Private Limited Companies	
Country	year 2005
Austria	100709
Bulgaria(1)	106689
Denmark	119855
Estonia	66200
Finland	180332
France	1466781
Germany	995940
Great Britain(2)	2118700
Greece	25585
Hungary	218384
Iceland	23481
Ireland	140194
Italy	988557
Latvia	79711
Liechtenstein	80
Lithuania	55374
Luxembourg	25023
Malta	NA
Netherlands	660298
Norway	NA
Romania	NA
Slovenia	NA
Spain	1715888
Sweden(1)	309012
TOTAL	9396793

Source: European Commerce Registers Forum 2005 Survey, prepared by the Swedish Companies Registration Office, January 2007.

Table A3. Registered Companies: Public Limited Companies

Registered Companies: Public Limited Companies	
Country	year 2005
Austria	1720
Bulgaria ¹	NA
Denmark	39535
Estonia	5945
Finland	204
France	143401
Germany	20297
Great Britain ²	11500
Greece	22542
Hungary	4336
Iceland	880
Ireland	1286
Italy	54852
Latvia	1280
Liechtenstein	8500
Lithuania	727
Luxembourg	47196
Malta	NA
Netherlands	6027
Romania	NA
Norway	NA
Slovenia	NA
Spain	316699
Sweden ¹	NA
TOTAL	686927

Source: European Commerce Registers Forum 2005 Survey, prepared by the Swedish Companies Registration Office, January 2007.

Table A4. Listed companies in the EU

All market segments, excluding ETFs Investments Trusts, Listed Unit Trusts and UCITS, market transfers		
Exchange	N° of companies with listed shares	
Athens Exchange	290	
Borsa Italiana	311	
Bratislava Stock Exchange	187	
Budapest Stock Exchange	41	
Cyprus Stock Exchange	141	
Deutsche Börse	760	
Euronext	954	
Irish Stock Exchange	68	
Ljubljana Stock Exchange	100	
London Stock Exchange	3.256	
Luxembourg Stock Exchange	260	
Malta Stock Exchange	14	
OMX	791	
Oslo Børs	229	
Prague Stock Exchange	32	
Spanish Exchanges (BME)	n/d	
Virt-X	1.446	
Warsaw Stock Exchange	265	
Wiener Börse	113	
TOTAL	9258	

Source: Federation of European Securities Exchanges, December 2006

Table A5. Listed companies in the EU: market capitalisation

All market segments, Domestic Equity (in million EUR)	
Exchange	Value at month end (EUOM)
Athens Exchange	157.941,41
Borsa Italiana	778.500,79
Bratislava Stock Exchange	4.213,84
Budapest Stock Exchange	31.687,05
Cyprus Stock Exchange	12.254,04
Deutsche Börse	1.241.963,25
Euronext	2.812.261,00
Irish Stock Exchange	123.823,58
Ljubljana Stock Exchange	11.513,08
London Stock Exchange	2.876.985,94
Luxembourg Stock Exchange	60.290,14
Malta Stock Exchange	3.415,69
OMX (Finland)	851.459,52
Oslo Børs	212.271,52
Prague Stock Exchange	34.693,42
Spanish Exchanges (BME)	1.003.298,96
Warsaw Stock Exchange	112.825,56
Wiener Börse	146.197,00
TOTAL	10.475.595,79

Source: Federation of European Securities Exchanges, December 2006

Table A6. Legal origin and investors rights

The table presents data on measures of investor protection according of legal origin. The "Antidirectors rights index" is a summary measure of shareholder protection, it ranges from zero to six. The creditors rights index is a summary measure of creditors protection which ranges from from zero to four. The "efficiency of the judicial system" index ranges from zero to ten representing the average of investors' assessments of conditions of the judicial system between 1980-1983 (lower scores represent lower efficiency levels). "Corruption" is an index ranging from zero to ten representing the average of investors' assessments of corruption in government in each country between 1982-1995 (lower scores indicate higher corruption). "Accounting standards" is an index created by examining abd rating companies' 1990 annual reports on their inclusion or omission of 90 items falling in the categories of general information, income statements, balance sheets, funds flow statement, accounting standards, stock data, and special items.

	Common law countries	French civil law	German civil law	Scandinavian civil law
Directors' liability index	4.00	2.33	2.33	3.00
Creditors rights index	3.11	1.58	2.33	2.00
Efficiency of the judicial system	8.15	6.56	8.54	10
Corruption	7.06	5.84	8.03	10.00
Accounting standards	69.92	51.17	62.67	74.00

Source: La Porta et al. 2000

Table A7. New private limited companies incorporated in the UK by Country of origin

This table reports new incorporations of private limited companies in the UK from the rest of the UE. A company is assigned to a given Member State according to the majority of its directors.

Country of origin	Year 2001	Year 2005	New company registrations (2005): limited private companies	Companies registered in UK (2005) as % of total number of companies in a MS
	Total nr of registrations of new plcs in the UK			
		(new company registrations in 2005 in brackets)		
Austria	77	609	Na	-
Belgium	199	458	Na	-
Czech Republic	33	89	Na	-
Denmark	201	248 (52)	18723	0,3%
Estonia	6	27 (13)	9749	0,1%
Finland	23	21 (10)	8421	0,1%
France	1175	1666 (288)	143143	0,2%
Germany	516	12019 (2401)	69167	3%
Greece	74	120 (29)	1192	2%
Hungary	18	63 (30)	21501	0,1%
Ireland	257	328 (-37)	15446	-0,2%
Italy	319	538 (130)	73644	0,2%
Latvia	13	31 (15)	8782	0,2%
Lithuania	13	13 (-11)	4502	-0,2%
Luxembourg	55	111 (24)	3922	0,6%
Malta	15	23 (0)	2360	0%
Netherlands	477	2127 (621)	40595	1%
Poland	24	136	Na	-
Portugal	45	66	Na	-
Slovakia	8	16	Na	-
Slovenia	11	32 (14)	3660	0,4%
Spain	273	539 (163)	136280	0,1%
Sweden	131	406 (165)	20532	0,8%
TOTAL	3963	19686 (3903)	581619	0,6%

Source: Becht et al. (2006); Swedish Companies Registration Office 2007.

Table A8. The Investor Protection Index indicates the quality of the national systems in protecting the investors (i.e. the strength of minority shareholder protections against misuse of corporate assets by directors for their personal gain). The Investor Protection Index is the average of the following indexes: 1) transparency of transactions (Extent of Disclosure Index) ; 2) liability for self-dealing (Extent of Director Liability Index); 3) shareholders' ability to sue officers and directors for misconduct (Ease of Shareholder Suit Index)

Region or Economy	Disclosure Index	Director Liability Index	Shareholder Suits Index	Investor Protection Index
Austria	2	5	4	3.7
Belgium	8	6	7	7.0
Bulgaria	10	1	7	6.0
Czech Republic	2	5	8	5.0
Denmark	7	5	7	6.3
Estonia	8	4	6	6.0
Finland	6	4	7	5.7
France	10	1	5	5.3
Germany	5	5	5	5.0
Greece	1	3	5	3.0
Hungary	2	4	7	4.3
Iceland	4	5	6	5.0
Italy	7	2	6	5.0
Latvia	5	4	8	5.7
Lithuania	6	4	6	5.3
Netherlands	4	4	6	4.7
Norway	7	6	7	6.7
Poland	7	2	9	6.0
Portugal	6	5	7	6.0
Romania	9	5	4	6.0
Slovakia	2	4	7	4.3
Slovenia	3	8	6	5.7
Spain	5	6	4	5.0
Sweden	6	4	7	5.7
United Kingdom	10	7	7	8.0

Source: World Bank, *Doing Business 2006*.

Table A9. Starting a business table illustrating the number of procedures, the time and cost of setting-up a company in the Member States.

Economy	Procedures (number)	Duration (days)	Cost	Min. Capital
			(% GNI per capita)	(% GNI per capita)
Austria	9	29	5.6	59.6
Belgium	4	27	5.8	21.8
Bulgaria	9	32	7.9	91.3
Czech Republic	10	24	8.9	36.8
Denmark	3	5	0.0	44.6
Estonia	6	35	5.1	34.3
Finland	3	14	1.1	27.1
France	7	8	1.1	0.0
Germany	9	24	5.1	46.2
Greece	15	38	24.2	116.0
Hungary	6	38	20.9	74.2
Iceland	5	5	3.1	15.9
Ireland	4	19	0.3	0.0
Italy	9	13	15.2	10.4
Latvia	5	16	3.5	26.1
Netherlands	6	10	7.2	62.3
Norway	4	13	2.5	25.1
Poland	10	31	21.4	204.4
Portugal	8	8	4.3	38.7
Romania	5	11	4.4	0.0
Slovakia	9	25	4.8	39.1
Slovenia	9	60	9.4	16.1
Spain	10	47	16.2	14.6
Sweden	3	16	0.7	33.7
United Kingdom	6	18	0.7	0.0

Source: World Bank, *Doing Business 2006*.

Table A10. Ranking of the Member States on the ease of doing business.

Economy	Ease of Doing Business Rank		Starting a Business	Protecting Investors	Enforcing Contracts	The recovery rate in bankruptcy
	EU	world				
IE	1	10	6	5	24	7
DK	2	11	14	19	1	20
UK	3	12	9	9	22	10
BE	4	19	37	12	21	8
FI	5	20	18	46	13	6
SE	6	21	20	46	2	17
FR	7	30	12	60	19	32
PT	7	30	33	33	35	18
LT	8	35	48	60	4	30
LV	9	36	25	46	11	62
ET	10	38	51	33	20	47
NL	11	44	38	99	31	9
RO	12	48	7	33	45	108
DE	13	51	66	83	29	28
BG	14	58	85	33	52	64
ES	15	60	102	83	42	15
SL	16	61	98	46	84	35
AT	17	62	74	142	14	19
HU	18	66	87	118	12	48
SK	19	68	63	118	59	31
PL	20	75	114	33	112	85
CZ	21	82	74	83	57	113
IT	21	82	52	83	141	49
EL	22	109	140	156	48	34

Source : World Bank, *Doing Business 2006*.

Table A11. Legal cost of bankruptcy for banking creditors

	CREDITORS' POWERS	1. Bankruptcy procedures: 2. Average length (months)	Legal cost of bankruptcy for banking creditors
SWE	DIRECTIVE	12	LOW
UK	DIRECTIVE	Less than one year	LOW
GER	DIRECTIVE	12/27	LOW (AVERAGE-LOW**)
FRA	CONSULTATIVE	24-36	HIGH (AVERAGE-HIGH***)
ITA	CONSULTATIVE	72	HIGH

Sources: for Sweden, Mimeo 1999; for the UK, Germany, France and Italy, Bianco-Marcucci 2001; for the UK and Germany (length of the procedures) Franks, Nyborg and Torous 1996. ** After the 1999 reform *** After the 1994 reform, which allowed to reduce the length of the liquidation procedure.

TABLE A12. Bankruptcy procedures: percentages of credit recovery

	Percentage of credit recovery ¹
SWE	45%(preferential) ² ; 3% (ordinary)
UK	70% (preferential) ³
GER	3-5% (ordinary) ⁴
FRA	14-66% (preferential); 5% (ordinary)
ITA	33% (preferential); 10% (ordinary)

Source: Santella (2004).

¹ Where not otherwise specified, the source is Bianco, Marcucci [2001].

² This figure refers only to floating charge creditors. Franks and Sussman [2000b. 37] report for fixed-charge creditors recovery percentages between 83% and 91%.

³ In this category are to be included also floating charge creditors.

⁴ Kamlah [1996].

Table A13. Closing business table illustrating the time and cost of the bankruptcy proceedings in the Member States may serve as an indicator on the efficiency of the national judiciary systems.

Region or Economy	Time (years)	Cost (% of estate)	Recovery rate (cents on the dollar)
Austria	1.1	18.0	73.7
Belgium	0.9	3.5	86.4
Bulgaria	3.3	9.0	34.4
Czech Republic	9.2	14.5	18.5
Denmark	3.0	4.0	70.5
Estonia	3.0	9.0	39.9
Finland	0.9	3.5	89.1
France	1.9	9.0	48.0
Germany	1.2	8.0	53.1
Greece	2.0	9.0	46.3
Hungary	2.0	14.5	39.7
Iceland	1.0	3.5	79.7
Ireland	0.4	9.0	87.9
Italy	1.2	22.0	39.7
Latvia	3.0	13.0	34.8
Lithuania	1.7	7.0	50.5
Netherlands	1.7	1.0	86.3
Norway	0.9	1.0	91.1
Poland	3.0	22.0	27.9
Portugal	2.0	9.0	75.0
Romania	4.6	9.0	19.9
Slovakia	4.0	18.0	48.1
Slovenia	2.0	8.0	44.9
Spain	1.0	14.5	77.6
Sweden	2.0	9.0	75.7
United Kingdom	1.0	6.0	85.2

Source: World Bank, *Doing Business 2006*

Table A14. The list of the main mandatory procedures for setting up a company in the EU Member States (the exact number and types of procedures vary across the EU)

1. Formal approval of proposed name
2. Confirm skills/qualifications with authorities (if applicable to all new enterprises)
3. Obtain certificate of no outstanding taxes
4. Obtain certificate of "good character" (no criminal record, etc.)
5. Obtain overall permit to conduct economic activity (if applicable to all new enterprises)
6. Complete management training course (if applicable to all new enterprises)
7. Registration of domicile of business
8. Formal validation of signatures of representatives of the business
9. Notary draws up (or confirms) formal deed of incorporation/partnership agreement/registration deed
10. Founders (or advisers) draw up formal deed of incorporation/partnership agreement/registration deed
11. Appoint Board Members/Manager
12. Open bank account and deposit capital
13. Obtain certificate from bank of capital deposited
14. Audit report on deed of incorporation/foundation report or equivalent
15. Create financial plan to show viability
16. Hold statutory meetings (shareholders/ subscribers, approval of foundation report by board, etc.)
17. Shares offered for subscription
18. Lawyer or notary certifies documents for submission to registration authorities
19. Prepare dossier for registration authorities
20. Certificate of all social security charges paid
21. Certificate of all compulsory healthcare paid
22. Obtain certificate of management skills

Source: the Commission study "Benchmarking the administration of start-ups" (January 2002, available at:http://ec.europa.eu/enterprise/entrepreneurship/support_measures/start-ups/bench_admin_business_start-up_final_2002.pdf)

Table A15. This table reports minimum capital requirements for private and public limited liability companies in the 25 E.U. Member States and Norway. Typical setup costs are the upper bounds of figures reported in EVCA (2004) and checked against estimates of law firms based in various Member States. A contact list is available from the authors. All reported figures are in Euro.

Country	Private limited company					Public limited company				
	Local name	Abbreviation	Minimum capital	Paid-up capital	Typical setup costs	Local name	Abbreviation	Minimum capital	Typical setup costs	
Austria	Gesellschaft mit beschränkter Haftung	GesmbH	35,000	17,500	3,500	Aktiengesellschaft	AG	70,000	7,000	
Belgium	Besloten vennootschap met beperkte aansprakelijkheid or Société responsabilité limitée	BVBA or SPRL	18,550	6,000	980	Naamloze vennootschap or Société anonyme	NV or SA	61,500	1,798	
Cyprus	Private company limited by shares	Ltd	2	2	n.a.	Public company limited by shares	Plc	8,850	n.a.	
Czech Republic	Společnost s ručením omezeným	s.r.o.	6,700	3,350	1,234	Akciová společnost	a.s.	67,000	1,234	
Denmark	Anpaartsselskab	ApS	16,800	16,800	6,715	Aktieselskab	A/S	67,200	6,715	
Estonia	Osühing	OÜ	2,560	2,560	n.a.	Aktiaselts	AS	25,560	n.a.	
Finland	Osakeyhtiö	Oy	8,000	8,000	285	Julkinen osakeyhtiö	OYJ	80,000	285	
France	Société à responsabilité limitée	SARL	1	1	450	Société anonyme	SA	37,000	550	
Germany	Gesellschaft mit beschränkter Haftung	GmbH	25,000	12,500	1,000	Aktiengesellschaft	AG	50,000	1,500	
Greece	Eteria periorismenis efthynis	E.P.E.	18,000	18,000	1,500	Anonymos eteria	A.E.	60,000	3,000	
Hungary	Korlátolt felelősségű társaság	Kft	12,170	12,170	430	Részvénytársaság	Rt	81,150	2,443	
Ireland	Private limited liability company	Ltd	1	1	1,500	Public limited liability company	Plc	38,092	5,000	
Italy	Società a responsabilità limitata	S.r.l.	10,000	2,500	2,750	Società per azioni	S.p.A.	120,000	2,750	
Latvia	Sabiedriba ar ierobežotu atbildību	SIA	2,880	2,440	n.a.	Akciju sabiedriba	AS	35,950	n.a.	
Lithuania	Uždaroji akcine bendrove	UAB	2,900	2,900	n.a.	Akcine bendrove	AB	43,440	n.a.	
Luxembourg	Société à responsabilité limitée	SARL	12,500	12,500	2,300	Société anonyme	SA	31,000	2,500	
Malta	Private limited liability company	Ltd	1,160	232	n.a.	Public limited liability company	Plc	46,400		
Netherlands	Besloten vennootschap	B.V.	18,000	18,000	1,750	Naamloze vennootschap	N.V.	45,000	1,750	
Norway	Aksjeselskap	AS	11,913	5,957	1,787	Allmennaksjeselskap	ASA	119,130	1,787	
Poland	Spółka z ograniczoną odpowiedzialnością	SP.Z.O.O	12,460	12,460	650	Spółka akcyjna	S.A.	124,580	3,500	
Portugal	Limitada	Lda.	5,000	5,000	650	Sociedade anónima	S.A.	50,000	830	
Slovakia	spoločnosť s ručením omezeným	s.r.o.	5,230	4,230	4,000	Akciová spoločnosť	a.s.	26,140	5,000	
Slovenia	Družba z omejeno odgovornostjo	d.o.o.	8,780	4,180	n.a.	Delniška družba	d.d.	25,090	n.a.	
Spain	Sociedad de responsabilidad limitada	S.L.	3,010	3,010	600	Sociedad anónima	S.A.	60,100	1,200	
Sweden	Privat aktieföretag	privat AB	10,650	10,650	2,210	Publikt aktieföretag	publikt AB	53,240	2,210	
United Kingdom	Private limited company	Ltd	2	2	425	Public limited company	Plc	75,450	779	

Source: M. Becht, C. MAYER H.F. Wagner, "Where do firms incorporate", ECGI Law Working Paper N° 70/2006, September 2006.

Table A16. The procedural steps required to wind-up a company in FR.

Preparatory measures	<ul style="list-style-type: none"> • Drafting the different resolutions to be adopted by the shareholders during the shareholders' meeting.
During the shareholders' meeting	<ul style="list-style-type: none"> • Adoption of the dissolution of the company resolution. The dissolution leads to the liquidation of the company but the company "survives" as long as the liquidation operations need it. • Nomination of the liquidator. • Publication of the liquidation and appointment of the liquidator decisions in a journal of legal notice (from the company's seat competence). Listed companies (to be precise: companies "faisant appel public à l'épargne") also need to publish the notice in the BALO (Bulletin d'annonces légales obligatoires – This is an official gazette that contains the mandatory legal notices companies are due to publish). • Registration of the juridical acts (decision of dissolution and appointment of the liquidator) at the office of the court clerk. • Notice of discontinuance of the business to the Commercial Register (within one month after the day the dissolution has been decided by the shareholders' meeting). • The clerk of court must publish the notice of discontinuance in the BODACC (Bulletin officiel des annonces civiles et commerciales – Official Bulletin for civil and commercial notices).
Measures during liquidation (Liquidator's obligations)	<p><u>within 6 months after his nomination:</u></p> <ul style="list-style-type: none"> • Convocation of the shareholders' meeting. • Draft and present to the shareholders a report on the financial situation of the company, on the liquidation operations and on the schedule of these operations. • Request all the necessary authorizations from the shareholders. <p><u>within three months after the end of the exercise:</u></p> <ul style="list-style-type: none"> • Preparation of the financial statements and of a report presenting the ongoing liquidation operations. <p><u>within six months after the end of the exercise:</u></p> <ul style="list-style-type: none"> • Convocation of a shareholders' meeting: presentation and approval of the financial statements and renewal of the necessary authorizations.
Termination of liquidation	<ul style="list-style-type: none"> • Termination is possible only after distribution of the share capital and discharge of all liabilities of the company. • The termination of the liquidation is confirmed by the shareholders' meeting or by decision of a court and must be confirmed maximum three years after the dissolution of the company. • Registration of the final financial statements drawn up by the liquidator and approved by the shareholders' meeting at the office of the court clerk. The discharge of the liquidator also has to be registered at the office of the court clerk. • Publication of the termination of the liquidation in the same gazette than the one used to publish the decision of opening the liquidation. Listed companies (to be precise: companies "faisant appel public à l'épargne") also need to publish the notice in the BALO (Bulletin d'annonces légales obligatoires – This is an official gazette that contains the mandatory notices companies are due to publish). • Within one month after the publication of the termination of the liquidation, application for registration of the termination of the liquidation to the Commercial Register (held by the court clerk) by the liquidator. • Maximum eight days after the registration of the termination of the liquidation, the clerk of court must publish the termination of the liquidation in the BODACC (Bulletin officiel des annonces civiles et commerciales – Official Bulletin for civil and commercial notices). • Within one year after the termination of the liquidation, the liquidator has to deposit on a special bank account (Caisse des dépôts et consignations) the amount assigned to some creditors or shareholders and not called for by them. • Once the liquidation is terminated, distribution of the remaining assets.

Source: information obtained from the Advisory Group on Company Law and Corporate Governance in 2006/2007.

Table A17. The procedural steps required to wind-up a company in DE.

Preparatory measures	<p>Drafting of:</p> <ul style="list-style-type: none"> shareholders' resolution on dissolution of the company, letters of information to clients and business partners, letter of information to employees
Start of liquidation	<ul style="list-style-type: none"> Shareholders' resolution on dissolution of the company (3/4 majority requested); Appointment of the liquidator; Application of liquidation to the commercial register by liquidator; Triple publication of the notice to the creditors in the electronic Federal Gazette (<i>elektronischer Bundesanzeiger</i>); Preparation of the closing financial statements of the active company; Preparation of an opening liquidation balance sheet
Measures during liquidation	<ul style="list-style-type: none"> Letters to clients and business partners; Discharge of liabilities, collection of claims and conversion of assets of the company into money (alternatively asset deal with the new company incorporated under the law of the foreign Member State); Preparation of a balance sheet for each year of liquidation; After termination of all business activities: Notice of discontinuance of the business to the responsible Trade Supervisory Office
Distribution of remaining assets	<ul style="list-style-type: none"> Distribution only possible after one year from the third publication of the notice to creditors in the electronic Federal Gazette and after discharge of or provision of security for the obligations of the company; Preparation of a closing balance sheet of the liquidated company; Distribution of the remaining assets
Termination of liquidation	<ul style="list-style-type: none"> Termination is possible only after distribution of the share capital and discharge of all liabilities of the company; Pending law suits have to be resolved before termination; Preparation of final account by the liquidator; Confirmation of termination of liquidation; Approval of closing balance sheet; Approval of final account; Formal approval of the liquidator's activities; Application for registration of the termination of the liquidation to the Commercial Register by the liquidator
Measures after termination of liquidation	<ul style="list-style-type: none"> Notification of the Chamber of Industry and Commerce about the termination of the liquidation; Notification of the relevant Tax Office about the termination of the liquidation; Storage for the next ten years of the books and records of the company by the person determined in the Articles of Association of the company, by a shareholders' resolution or by the responsible court

Source: information obtained from the Advisory Group on Company Law and Corporate Governance in 2006/2007.

Table A18. Court efficiency – contract enforcement. The table shows the three main indicators for enforcing contracts:

- number of procedures from the moment the plaintiff files a lawsuit in court until the moment of payment,
- time in calendar days to resolve the dispute, and
- cost in court fees and attorney fees, where the use of attorneys is mandatory or common, expressed as a percentage of the debt value.

Region or Economy	Procedures (number)	Time (days)	Cost (% of debt)
Belgium	27	328	9.5
Bulgaria	34	440	14.0
Denmark	15	190	6.5
Estonia	25	275	11.5
Finland	27	228	5.9
France	21	331	11.8
Germany	30	394	10.5
Greece	22	730	12.7
Hungary	21	335	9.6
Iceland	14	352	5.9
Ireland	18	217	21.1
Italy	40	1,21	17.6
Latvia	21	240	11.8
Lithuania	24	166	8.6
Netherlands	22	408	15.9
Norway	14	277	9.0
Poland	41	980	10.0
Slovakia	27	565	15.7
Slovenia	25	1,35	15.2
Spain	23	515	15.7
Sweden	19	208	5.9
United Kingdom	19	229	16.8

Source: World Bank, *Doing Business 2006*

Table A19. Case studies

Since the option of the cross-border transfer of the registered office is not yet available, no accurate data exists on benefits of such an option. Therefore, the presented cases should not be considered as precise cost calculations, but simply preliminary estimates, based on certain assumptions.

Case studies

1. Estimated cost savings for EU companies in terms of lower interest rates – example of Italy

In order to provide a quantification of the potential benefits of the option to transfer the registered office recourse is made to the analysis provided by the Italian Banking Association on the consequences of the higher legal costs of credit recovery in Italy. According to the Chairman of the Italian Banking Association, higher cost of legal procedures relied to banking credit recovery entails 1 percentage point more in interest rate required by Italian banks in their loans to non-financial companies.⁵ It could be assumed that if the company would move its registered office to a jurisdiction with a more efficient credit recovery system, the cost of credit in Italy is likely to be lower.

In order to build a case study, we apply such estimation to the total loans provided by Italian credit institutions to non-financial companies (**Table A20**). Taking into account that in 2005 the average interest rate applied to banking loans to non-financial companies was 4.24%,⁶ a benefit to Italian companies from moving to a jurisdiction with a more efficient credit recovery system in terms of savings on interest rates could be as much as **6 billion EUR**, that is **22% of the total cost of credit in 2005 (Table A21)**. In 2005 **total loans provided by credit institutions to EU companies** amounted to **more than 4000 billion EUR (Table A20)**.

2. Estimated cost savings for EU listed companies in terms of lower cost of capital

With regard more specifically to listed companies, **Table A4** illustrates the number of companies listed on the EU stock exchanges. As of December 2006, **the total number of listed companies was of more than 9000**, with the London Stock Exchange, Euronext and Deutsche Börse leading the way and representing about 54% of the total. As **Table A5** shows, the total market capitalisation represented by companies listed on the EU stock exchanges is about 10 trillion EUR, with the London Stock Exchange, Euronext, and Deutsche Börse representing about 66% of the total.

For listed companies the cost of capital is very important. In this respect, the studies measuring the extent of private benefits of control provide data to estimate the potential for savings in terms of cost of capital that could be ushered if an option to transfer the registered offices provided⁷.

Table A22 illustrates the potential savings in terms of cost of capital that could be possible if the option to transfer the registered office is made available. Potential savings are calculated by considering the re-registration of EU listed companies in another Member State characterized by a lower level of private benefits of control. Potential savings range from 2% for Spanish companies to 35% for Italian companies and 56% for Czech companies.

⁵ See ABI (2002), p. 21: " As credit recovery depends on judicial procedures, the efficiency of the latter affects even more active rates. Empirical evidence shows that credit recovery delays are much longer in Italy than in the rest of Europe: 6 years as compared to one. Such a substantial delay also determines a penalisation in terms of effectively recovered amount. Once the new Basilea's Ratios will enter into force, medium-high risk rates could be even lower than one percentage point, if only the average length of credit recovery in Italy would align to that of the rest of Europe. This is to say that the inefficiency of Italian judicial system of credit protection burdens businesses with billions of Euros."

⁶ Source: Italian Banking Association and European Central Bank (ECB).

⁷ See Annex 3 for more information on studies.

Table A20. Loans of Credit Institutions to non financial companies

- bln euro -					
	2005	2004	2003	2002	2001
BE	90,6	84,5	86,9	90,8	94,2
CZ	18,8	15,5	13,8	13,8	
DK	102,4	89,5	83,5		
DE	774,1	786,8	813,7	840,7	844,2
EE	3,2	2,0	1,5	1,2	1,1
EL	69,1	63,0	58,3	52,3	48,6
ES	579,7	454,7	387,8	341,0	306,0
FR	610,9	566,9	534,7	548,9	540,1
IE	107,1	85,6	65,0	54,9	52,8
IT	647,5	615,2	588,7	546,6	520,9
CY	N.A.	N.A.	N.A.	N.A.	N.A.
LV	5,1	3,5	2,6	2,2	2,0
LT	4,6	3,6	2,8	1,9	1,6
LU	37,3	33,7	36,6	40,2	45,4
HU	23,1	20,8	16,1	14,5	13,6
MT	3,3	3,2	3,0	6,3	5,6
NL	242,0	224,0	214,0	206,0	213,3
AT	121,6	114,0	131,3	132,2	134,1
PL	32,2	30,9	25,8	29,4	40,7
PT	88,0	84,1	82,7	78,7	72,6
SI	11,0	8,1	6,8	5,9	5,6
SK	7,2	5,9	6,0	5,5	5,6
FI	41,2	37,7	34,7	33,0	30,9
SE	138,5	128,3	125,0	127,4	124,8
UK	540,0	426,9	408,6	439,5	439,7
MU	3409,1	3152,2	3034,3	2965,1	2903,1
EU	4298,5	3890,4	3729,7	3612,9	3543,6

Source: ECB

Table A21. The Italian case (lower interest rates on loans)

	Bln EUR
Loans to non-financial companies (bln EUR)	647
Average interest rate	4.24
Interests paid in 2005 (bln EUR)	27
Possible lower interest rate	3.24
Possible interests paid	21
Possible savings	6 (22%)

Data refer to 2005. Source: Italian Banking Association.

Table A22. Potential savings in terms of cost of capital

	Control block premia (mean values)	Market capitalization (Bln EUR)	Possible market capitalization by moving registered office to FI, FR, NL or the UK (Bln EUR)
Austria	0.38	146	198 (+34%)
Czech Republic	0.58	35	55 (+56%)
Denmark	0.08		
Finland	0.02	851	Na
France	0.02	2812*	Na
Germany	0.10	1242	1342 (+8%)
Italy	0.37	778	1050 (+35%)
Netherlands	0.02	2812*	Na
Poland	0.11		
Portugal	0.20		
Spain	0.04	1003	1023 (+2%)
Sweden	0.06		
UK	0.02	2877	Na

Source: Dyck and Zingales 2004; FESE.

* Total capitalization for Euronext, which includes France, Belgium and the Netherlands.

Table A23. Different scenarios: public limited companies

Registered Companies: Public Limited Companies				
Country	year 2005	0,6% moving	1% moving	3% moving
Austria	1720	10	17	52
Bulgaria1	NA	Na	Na	Na
Denmark	39535	237	395	1.186
Estonia	5945	36	59	178
Finland	204	1	2	6
France	143401	860	1.434	4.302
Germany	20297	122	203	609
Great Britain2	11500	69	115	345
Greece	22542	135	225	676
Hungary	4336	26	43	130
Iceland	880	5	9	26
Ireland	1286	8	13	39
Italy	54852	329	549	1.646
Latvia	1280	8	13	38
Liechtenstein	8500	51	85	255
Lithuania	727	4	7	22
Luxembourg	47196	283	472	1.416
Malta	NA	Na	Na	Na
Netherlands	6027	36	60	181
Romania	NA	Na	Na	Na
Norway	NA	Na	Na	Na
Slovenia	NA	Na	Na	Na
Spain	316699	1.900	3.167	9.501
Sweden1	NA	Na	Na	Na
TOTAL	686927	4.122	6.869	20.608

Source: European Commerce Registers Forum 2005 Survey, prepared by the Swedish Companies Registration Office, January 2007.

Table A24. Different scenarios: private limited companies

Registered Companies: Private Limited Companies		0,6% moving	1% moving	3% moving
Country	year 2005			
Austria	100709	604	1.007	3.021
Bulgaria(1)	106689	640	1.067	3.201
Denmark	119855	719	1.199	3.596
Estonia	66200	397	662	1.986
Finland	180332	1.082	1.803	5.410
France	1466781	8.801	14.668	44.003
Germany	995940	5.976	9.959	29.878
Great Britain(2)	2118700	12.712	21.187	63.561
Greece	25585	154	256	768
Hungary	218384	1.310	2.184	6.552
Iceland	23481	141	235	704
Ireland	140194	841	1.402	4.206
Italy	988557	5.931	9.886	29.657
Latvia	79711	478	797	2.391
Liechtenstein	80	0	1	2
Lithuania	55374	332	554	1.661
Luxembourg	25023	150	250	751
Malta	NA	Na	Na	Na
Netherlands	660298	3.962	6.603	19.809
Norway	NA	Na	Na	Na
Romania	NA	Na	Na	Na
Slovenia	NA	Na	Na	Na
Spain	1715888	10.295	17.159	51.477
Sweden(1)	309012	1.854	3.090	9.270
TOTAL	9396793	56.381	93.968	281.904

(1) The figures include both public and private limited companies.

(2) The figures are taken from the DTI Companies In Reports for a year ending March 2006.

Source: European Commerce Registers Forum 2005 Survey, prepared by the Swedish Companies Registration Office, January 2007.

Table A25. Different scenarios: listed companies

Exchange	N° of companies with listed shares	0,6% moving	1% moving	3% moving
Athens Exchange	290	2	3	9
Borsa Italiana	311	2	3	9
Bratislava Stock Exchange	187	1	2	6
Budapest Stock Exchange	41	0	0	1
Cyprus Stock Exchange	141	1	1	4
Deutsche Börse	760	5	8	23
Euronext	954	6	10	29
Irish Stock Exchange	68	0	1	2
Ljubljana Stock Exchange	100	1	1	3
London Stock Exchange	3.256	20	33	98
Luxembourg Stock Exchange	260	2	3	8
Malta Stock Exchange	14	0	0	0
OMX (Finland)	791	5	8	24
Oslo Børs	229	1	2	7
Prague Stock Exchange	32	0	0	1
Spanish Exchanges (BME)	n/d	n/d	n/d	n/d
Warsaw Stock Exchange	1.446	9	14	43
Wiener Börse	265	2	3	8
TOTAL	113	1	1	3
	9258	56	93	278

Source: Federation of European Securities Exchanges, December 2006 (All market segments, excluding ETFs Investments Trusts, Listed Unit Trusts and UCITS, market transfers).

ANNEX II. The recent case law of the Court of Justice on the freedom of establishment

- (1) **Case C-81/87, Daily Mail** (The Queen v H. M. Treasury and Commissioners of Inland Revenue, ex parte Daily Mail and General Trust plc (reference for a preliminary ruling: High Court of Justice, Queen's Bench Division, United Kingdom)).

Content: Articles 52 and 58 (new Articles 43 and 48) of the EC-Treaty - the right of free establishment - the right to leave the Member State of origin

Basic Principles of the Judgement: With regard to the present stand of harmonisation of company law, Articles 52 and 58 of the EC Treaty cannot be interpreted as conferring on companies incorporated under the law of a Member State a right to transfer their central management and their central administration to another Member State while retaining their status as companies incorporated under the legislation of the first Member State.

- (2) **Case C-212/97, Centros Ltd** v Erhvervs- og Selskabsstyrelsen (reference for a preliminary ruling: Højesteret, Denmark)

Source: [1999] ECR I-1459

Content: Articles 52 and 58 (new Articles 43 and 48) of the EC-Treaty -right of free movements of persons - right of free establishment

Basic Principles of the Judgement: It is contrary to Articles 52 and 58 of the Treaty for a Member State to refuse to register a branch of a company formed in accordance with the law of another Member State in which it has its registered office but in which it conducts no business, where the branch is intended to enable the company in question to carry on its entire business in the State in which that branch is to be created, while avoiding the need to form a company there. The fact that a national of a Member State who wishes to set up a company chooses to form it in the Member State whose rules of company law seem to him the least restrictive and to set up branches in other Member States cannot, in itself, constitute an abuse of the right of establishment. However, the authorities of the Member State concerned are not precluded from adopting appropriate measure for preventing or penalising fraud.

- (3) **Case C-208/00, Überseering BV** v Nordic Construction Company Baumanagement GmbH (NCC), (reference for a preliminary ruling, Bundesgerichtshof, Germany)

Content: Articles 43 EC and 48 EC - Company formed in accordance with the law of a Member State and having its registered office there - Company exercising its freedom of establishment in another Member State - Company deemed to have transferred its actual centre of administration to the host Member State under the law of that State - Non-recognition by the host Member State of the company's legal capacity and its capacity to be a party to legal proceedings - Restriction on freedom of establishment

Basic Principles of the Judgement: 1. Where a company formed in accordance with the law of a Member State ('A') in which it has its registered office is deemed, under the law of another Member State ('B'), to have moved its actual centre of administration to Member State B, Articles 43 EC and 48 EC preclude Member State B from denying the company legal capacity and, consequently, the capacity to bring legal proceedings before its national courts for the purpose of enforcing rights under a contract with a company established in Member State B.

2. Where a company formed in accordance with the law of a Member State ('A') in which it has its registered office exercises its freedom of establishment in another Member State ('B'), Articles 43 EC and 48 EC require Member State B to recognise the legal capacity and, consequently, the capacity to be a party to legal proceedings which the company enjoys under the law of its State of incorporation ('A').

- (4) **Case C-167/01, Inspire Art Ltd** (Kamer van Koophandel en Fabrieken voor Amsterdam v Inspire Art Ltd), reference for a preliminary ruling, Kantongerecht te Amsterdam, Netherlands

Content: Articles 43 EC, 46 EC and 48 EC + Twelfth Company Law Directive - Company formed in one Member State and carrying on its activities in another Member State - Application of the company law of the Member State of establishment intended to protect the interests of others

Basic Principles of the Judgement: It is contrary to Article 2 of the Eleventh Council Directive 89/666/EEC of 21 December 1989 for national legislation to impose on the branch of a company formed in accordance with the laws of another Member State disclosure obligations not provided for by that directive.

It is contrary to Articles 43 EC and 48 EC for national legislation to impose on the exercise of freedom of secondary establishment in that State by a company formed in accordance with the law of another Member State certain conditions provided for in domestic company law in respect of company formation relating to minimum capital and directors' liability. The reasons for which the company was formed in that other Member State, and the fact that it carries on its activities exclusively or almost exclusively in the Member State of establishment, do not deprive it of the right to invoke the freedom of establishment guaranteed by the EC Treaty, save where the existence of an abuse is established on a case-by-case basis.

- (5) **Case C-411/03, SEVIC Systems AG**

Basic Principles of the Judgement: The Court of Justice observes that freedom of establishment for companies includes in particular the establishment and management of those companies under conditions laid down by the legislation of the State of establishment for its own companies. The Court went on to emphasise that cross-border merger operations, like other company transformation operations, meet needs for cooperation and consolidation between companies established in the various Member States. They constitute particular forms of exercise of the freedom of establishment, which are important for the proper functioning of the internal market, and therefore fall within those economic activities in respect of which Member States are required to comply with the freedom of establishment laid down by Article 43 EC.

The Court notes that a difference in treatment between companies according to the internal or cross-border nature of the merger constitutes a restriction on the right of establishment and can be allowed only if it pursues a legitimate objective compatible with the Treaty and is justified by imperative reasons in the public interest, such as protection of the interests of creditors, minority shareholders and employees, preservation of the effectiveness of fiscal supervision and the fairness of commercial transactions. Such a restrictive measure must also be appropriate for ensuring the attainment of the objectives pursued and not go beyond what is necessary to attain them.

To refuse generally in a MS to register a merger between a company established in that MS and one established in another MS when such registration is possible where both companies are established in the same MS is contrary to Articles 43 and 48 of the Treaty. Limitations to fundamental freedoms must meet the proportionality test.

ANNEX III. Studies on private benefits of control.

Empirical studies of private benefits of control try to measure whether the controlling votes are valued more than non-controlling ones.⁸ These studies take recourse to two different methodologies. A first group of studies measures the value of control-block votes, while a second group measures the value of a single vote.

Controlling block trades. One methodology is to focus on privately negotiated transfers of controlling blocks in publicly traded companies: “The assumption made is that the price per share an acquirer pays for the controlling block reflects the cash flow benefits from his fractional ownership and the private benefits stemming from his controlling position in the firm. By contrast, the market price of a share after the change in control is announced reflects only the cash flow benefits non-controlling shareholders expect to receive under the new management. Hence, the difference between the price per share paid by the acquiring party and the price per share prevailing on the market reflects the differential payoff accruing to the controlling shareholder.”⁹ As a result of such a methodology, countries are ranked according to a ratio of value of control to value of equity. The most recent estimates in this respect are those provided by Dyck and Zingales 2004.

Vote premium studies. An alternative methodology consists of linking the extraction of private benefits by controlling shareholders to their willingness to pay a premium price for voting shares at the moment of their acquiring control of the company. Some of the relevant studies in this field are Zingales (1994 and 1995a), Rydqvist (1996), Modigliani and Perotti (1998), and Nenova 2003.¹⁰ To sum up the findings of this literature, we may say that, although methodologies differ and the number of companies included in the various samples is limited, in some EU states there might be a significant level of private benefits of control. With particular reference to Italy, such benefits are the highest in relative terms in all the more recent and complete studies. In the Nenova study, the value of control-block votes in Brazil, Chile, France, Italy, and Mexico is one-quarter or more of firm market capitalization. Such figures are confirmed by Dyck and Zingales 2004 as regards Italy in particular, while France in this study shows a low level of private benefits. It should also be noted that while in general such studies are based on a small number of observations for each country, in one of these studies¹¹ Italy is covered with a rather large set of cases.¹²

⁸ Overviews of this subject are provided by Shleifer and Vishny 1997, Nenova 2003, and Dyck and Zingales 2004.

⁹ Dyck and Zingales 2004, p. 1.

¹⁰ According to the definition of such a method provided by Dyck and Zingales 2004, p. 9: “The second method of estimating the value of private benefits of control uses the price difference between two classes of stock, with similar or identical dividend rights, but different voting rights. If control is valuable, then corporate votes, which allocate control, should be valuable as well. How valuable? It depends on how decisive some votes are in allocating control and how valuable control is. If one can find a reasonable proxy for the strategic value of votes in winning control - for example in forming a winning coalition block - then one can infer the value of control from the relationship between the market price of the votes and their strategic role.” As underlined by Marcello Bianchi in a private interview, the main problem of this methodology is that prices of non-voting classes of shares often are highly variable due to the limited quantities traded.

¹¹ Nenova 2003.

¹² The latest available data are provided by the annual report of the Consob (the Italian stock market regulator) for 2003, p. 9: out of 21 cases identified, the average premium for the purchase of controlling blocks is 12.3%. Such findings are also confirmed from non-systematic findings reported in the press. For instance, Penati 2004a refers to recent cases in which controlling voting blocks in Italian listed companies have been paid a premium between 30% and almost 100% vis-à-vis their stock market price. For a general treatment on the importance of shareholder expropriation in Italian corporate governance, see Rajan and Zingales 2004 and Pinza and Zoppini 2004.