

Preface

WHY STUDY EC CORPORATE TAXATION AND EC COMPANY LAW TOGETHER IN THE CURRENT PHASE OF DEVELOPMENT OF EC LAW?

The European Community (EC), which since its foundation has been offering new and original issues to the international academic and extra-academic literature concerning both law and other disciplines, currently finds itself in a period of its history which presents unprecedented risks and opportunities. The risks have been well evidenced by the difficult times during 2005: the rejection of the 'European Constitution' in popular referenda in two founding states, and the difficulties in reaching agreement over the budget, indicate that the 'crisis of rejection' may paralyse any further progress of the European construction and even compromise its future when the ultimate objectives stated in the Treaty of Rome (such as harmonious and balanced development of economic activities, high level of employment, social cohesion, improvement in the standard of living) – objectives which would benefit all socio-economic actors in any Member State – are not reached, or when the advantages brought about by their achievement are not fully perceived. In these circumstances, the future of the European integration process risks being threatened to a greater extent than in any previous period in the history of the EC: as the current range of decisions taken at EC level affecting the everyday life of nationals (individuals and businesses) of Member States is wider than in any previous period, negative interdependencies are deemed to be amplified in the event of malfunctioning of the internal market. Together with (and because of) these risks, the current historical context also offers decision-makers and academic researchers unprecedented opportunities of identifying clear patterns that, on a lasting basis, could shape future developments in such a way as to minimize the risk of not achieving the goals stated in the Treaty and the EC's self-set objective of becoming the world's most competitive and knowledge-driven economy (the so-called 'Lisbon objective', the strategy towards which was revised in 2005). This challenge will need to find a response, among others, in those areas of EC law that create the essential framework enabling businesses (which are the main protagonists of market integration) to operate on a Community-wide scale: the areas of EC company law and EC company tax law.

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The importance of future developments in these two areas was already understood, 50 years ago, by the founders of the (then) EEC, when they provided the institutions of the Community with the legal basis for creating, within the Community, a level playing field for all businesses from any Member State. For this purpose, they envisaged the removal of those obstacles that would hinder companies' free movement within the internal market, such as excessive differences in national company law provisions and risks of double taxation, and regarded the future Community's initiatives in these two areas of law as complementary. Moreover, in important Communications issued in recent years, the European Commission has highlighted the importance, in this historical phase, of developments in each of these areas for the proper functioning of the Community market and for the 'Lisbon objective'.

With these premises, the (developments in the areas of) EC company law and EC company taxation should be studied together, in the current phase, on the one hand from the perspective of academic research, of decision-making at EC level and of students of European law, of company law and of European and international tax law, and, on the other hand, from the perspective of businesses and practitioners. Important legislation in recent years, innovative rulings of the European Court of Justice (ECJ) on the freedom of establishment and new proposals from the Commission for legislative developments, which ultimately are all aimed at creating for cross-border activity within the Community the conditions of a domestic market, are deeply affecting both company law and company taxation systems of Member States. This is occurring at the same time when, in a global economy where capital and investments quickly move from one jurisdiction to another in search of the optimal location, company law and company taxation have been emerging as the two areas of law in which Member States are concentrating much of their efforts for improving their attractiveness as locations for businesses and investments. Company law and company taxation regimes of each of the Member States are thus being increasingly affected not only by Community initiatives, but also by this 'legal competition' with each other, which has been acquiring an increasing prominence in recent years and with which the Community initiatives are bound to interact. In such a context, the reason for studying the developments of EC company law and of EC corporate tax law together lies in the challenges it affords from the perspective of academic research, at the political decision-making level and for students, and in the unprecedented opportunities offered from the perspective of businesses and practitioners. Under the first perspective, the challenge is twofold: for academic researchers and decision-makers, it is the search for a comprehensive response to the questions whether and under which conditions the phenomenon of legal competition, in its interaction with developments of EC

company law and of EC corporate tax law, can contribute to the proper functioning of the internal market (and thus minimize the risks of outcomes in conflict with the Treaty's objectives and with the Lisbon objective). For students, it is the turning of possible difficulties (in considering systematically the interdependencies between the developments in EC company law and in EC tax law and those of the national company law and company taxation systems in competition with each other) into major chances of increasing or consolidating an interdisciplinary and comparative approach of analysis and of building up an international legal curricula. From businesses' perspective, a unified approach towards EC company law and EC corporate tax law (which aims to consider together, in a systematic manner, the developments in these two areas of EC law and their impact on the competing national company law and corporate tax regimes) reveals opportunities for new strategies of expansion within the Community, which could take advantage from the legal competition in both areas while remaining within the ambit of exercise of the freedom of establishment granted by the Treaty. To the extent that these opportunities are being opened to businesses, the unified approach towards EC company law and EC tax law which makes it possible to identify the possible combinations of optimal choices becomes also a must from the viewpoint of tax and legal practitioners acting as their advisors.

In the overall situation where the two areas of EC law at stake have a crucial role to play in indicating clear patterns in order for future developments to contribute to the proper functioning of the internal market, and where studying EC company law and EC corporate tax law together becomes a suitable approach from the perspectives of academic research, of decision-makers, of students, of businesses and of practitioners, this book is intended to contribute to each of these perspectives. It seeks, in fact, to reconcile a contribution to new research themes suggested by the latest developments in EC company law and in EC corporate tax law, aimed at offering 'inputs' to the international academic debate and to decision-makers, with a description of the fundamental framework and of the key developments of interest to students, and with the illustration on new possibilities for companies' intra-EC expansion strategies that are of interest on the one hand from the academic viewpoint, and on the other hand to businesses and their consultants.

The book's structure has a main text and Appendices. The main text (a) in Part I illustrates the key EC legal framework in the two areas, the legislative developments and the most important ECJ rulings, and indicates how these developments, in the current context of the legal competition among the Member States, have contributed to this phenomenon; (b) in Part II formulates a hypothesis for future developments allowing the legal competition to meet some conditions under which it could aid the achievement of the ultimate EC law objectives. In pursuing these purposes, the book considers possible

strategies for expansion by businesses on a Community scale, and pays particular attention to the latest 'supranational' developments and proposals, which have been attracting much international interest in recent years: the European company in the field of EC company law and the Commission's strategy for the introduction of a common consolidated base taxation in the field of EC corporate tax law.

The Appendices offer to businesses and practitioners an overview of the implementation of the key EC legislation in some Member States and of the resulting differences between national laws, with some examples of strategies for intra-Community expansion and restructuring that could be implemented as modalities of exercising the freedom of establishment from one state to another.

The author hopes that the book will become a useful instrument while, at the same time suggesting research ideas for the international debate on possible future developments in the two complex and fascinating areas of EC company law and EC company taxation.

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