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Press and Information

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Judgment of the Court of Justice in Case C-411/03

SEVIC Systems AG

GENERAL REFUSAL IN GERMANY TO REGISTER A MERGER BETWEEN COMPANIES IN THE COMMERCIAL REGISTER WHERE ONE IS ESTABLISHED IN ANOTHER MEMBER STATE IS CONTRARY TO COMMUNITY LAW

That difference in treatment between companies, according to whether the merger is internal or cross-border in nature, constitutes a restriction on freedom of establishment that cannot be justified on imperative grounds in the public interest.

A merger contract concluded in 2002 between SEVIC Systems AG, established in Germany, and Security Vision Concept SA, established in Luxembourg, provided for the dissolution without liquidation of the latter company and the transfer of the whole of its assets to SEVIC, without any change in the company name of the latter.

The Amtsgericht Neuwied rejected the application for registration of the merger in the commercial register, holding that the German law on the transformation of companies (Umwandlungsgesetz)¹ provided only for mergers between legal entities established in Germany.

SEVIC brought an action against that decision before the Landgericht Koblenz.

That court asked the Court of Justice whether provisions such as the German provisions referred to above are compatible with Community law.

In its judgment today, the Court of Justice begins by observing 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.

¹ Umwandlungsgesetz, of 28 October 1994 (BGBl. 1994 I, p. 3210).

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 Member State, to register a merger between a company established in that State and a company whose establishment is situated in another Member State in the commercial register has the result of preventing the realisation of cross-border mergers even if the public interests mentioned above are not threatened. Such a rule goes beyond what is necessary to attain the objectives designed to protect those interests.

Unofficial document for media use which is not binding on the Court of Justice.

Languages available : DE, EN, FR, IT, PL

The full text of the judgment can be found on the internet site of the Court of Justice

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

It can normally be consulted from 12 noon CET on the day of delivery.

For further information, please contact Christopher Fretwell

Tel: (00352) 4303 3355; fax: (00352) 4303 2674