62010CJ0378
JUDGMENT OF THE COURT (Third Chamber)

12 July 2012 (*1)

?Articles 49 TFEU and 54 TFEU — Freedom of establishment — Principles of equivalence and effectiveness — Cross-border conversion — Refusal to add to register’

In Case C-378/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Legfels?bb Bíróság (Hungary), made by decision of 17 June 2010, received at the Court on 28 July 2010, in the context of an application to register a company in the commercial register made by

VALE Építési kft

THE COURT (Third Chamber),

composed of K. Lenaerts, President of the Chamber, J. Malenovský, R. Silva de Lapuerta, G. Arestis and T. von Danwitz (Rapporteur), Judges,

Advocate General: N. Jääskinen,

Registrar: A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 14 September 2011,

after considering the observations submitted on behalf of:

—

VALE Építési kft, by P. Metzinger, ügyvéd,

—

the Hungarian Government, by M.Z. Fehér, K. Szíjjártó and K. Veres, acting as Agents,

—

the German Government, by T. Henze and J. Kemper, acting as Agents,

—

Ireland, by D. O’Hagan, acting as Agent, and by M. Collins SC, B. Doherty BL, J. Buttimore BL and L. Williams,

—

the Italian Government, by G. Palmieri, acting as Agent, and by S. Fiorentino, avvocato dello Stato,

—

the Austrian Government, by C. Pesendorfer, acting as Agent,

—

the United Kingdom Government, by S. Hathaway and H. Walker, acting as Agents, and by K. Beal, Barrister,

—

the European Commission, by G. Braun, A. Sipos and K. Talabér-Ritz, acting as Agents,

—

the EFTA Surveillance Authority, by X. Lewis and F. Simonetti, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 December 2011,

gives the following

Judgment

1

The reference for a preliminary ruling on the interpretation of Articles 49 TFEU and 54 TFEU has been made in proceedings concerning a cross-border conversion of a company governed by Italian law into a company governed by Hungarian law.

National law

2

Paragraph 25 of Law V of 2006 on Company Information, Company Registration and Winding-up Proceedings (A cégnyilvánosságról, a bírósági cégeljárásról és a végelszámolásról szóló 2006. évi V. törvény) provides:

‘(1)

Where applicable, the commercial register shall also include for all companies:

…

(g)

the corporate name and registration number of any predecessor(s) and/or successor(s) in law of the company, and the date of conversion the company has designated, where applicable,

…’

3

Paragraph 57(4) of that law states:

‘Any application to change the form of a company shall fall within the competence of the court of registry responsible for the place where the predecessor company is established. That court shall cancel the registration of the predecessor company — indicating the successor in law — and

register the successor company in the commercial register. Where appropriate, it shall forward the company documents to the competent commercial court for the place where the seat of the successor company is located.'

4

Paragraph 69(1) of Law IV of 2006 on Commercial Companies (A gazdasági társaságokról szóló 2006. évi IV. Törvény; 'the Law on Commercial Companies') provides:

'Unless otherwise prescribed by the present law, with regard to the conversion of a commercial company into another form of company, the provisions on the formation of companies shall apply. The provisions of this law pertaining to the various corporate forms with regard to conversion shall also be applied.'

5

Pursuant to Paragraph 71 of that law:

'(1)

Unless stated otherwise in the company's articles of association, the highest representation of the commercial company shall take a decision regarding conversion in two stages …

(2)

… [D]uring the first stage, the representation assesses, on the basis of a proposal by the senior executives — after consulting the supervisory committee, if the commercial company has such a committee –, whether the partners (shareholders) of the company are in favour of the intention to convert the company, then decide on the legal form of the company resulting from the conversion and identify the company partners (shareholders) who wish to become partners (shareholders) of the new company.

(3)

If the intention to convert the commercial company is approved by the majority of the partners (shareholders) required for the form of the company in question, the highest representation shall determine the reference date for its balance sheets, appoint a certified accountant and entrust to the senior executives of the company the task of drawing up lists of assets and liabilities and property inventories, and all other documents necessary for taking the decision regarding conversion, whether required by law or determined by the highest representation.

(4)

The senior executives shall draw up lists of assets and liabilities and property inventories of the commercial company to be converted, lists of assets and liabilities and (initial) property inventories of the company resulting from the conversion, the articles of association of the latter, and arrangements for those not wishing to become partners (shareholders) of the company resulting from the conversion.

…'

6

Paragraph 73 of the Law on Commercial Companies contains provisions on the drawing-up of lists

of assets and liabilities and how they are to be audited by an independent certified accountant, and Paragraph 74 of that law governs the adoption, by the company, of its accounts and the division of capital within the new company.

7

Pursuant to Paragraph 75 of the Law on Commercial Companies, the bodies within a commercial company representing the company's staff are to be informed of the decision to convert the company, which is to be communicated in two successive editions of the Companies Bulletin, containing, inter alia, a notice to creditors.

8

Under Paragraph 76(2) of that law, creditors with claims that are not yet due against the company being converted which came into existence prior to the first communication regarding the conversion decision may demand from that company a guarantee in the amount of their claims.

The dispute in the main proceedings and the questions referred for a preliminary ruling

9

VALE Costruzioni Srl (a limited liability company governed by Italian law) ('VALE Costruzioni'), established on 27 September 2000, was registered in the Rome (Italy) commercial register on 16 November 2000. On 3 February 2006, VALE Costruzioni asked to be removed from that register on the ground that it intended to transfer its seat and its business to Hungary, and to discontinue business in Italy. In accordance with that request, the authority responsible for the commercial register in Rome deleted the entry relating to VALE Costruzioni from the register on 13 February 2006. As is apparent from the file, an entry was made in the register under the heading 'Removal and transfer of seat', stating that 'the company ha[d] moved to Hungary'.

10

Given that the company established originally in Italy under Italian law had decided to transfer its seat to Hungary and to operate there in accordance with Hungarian law, on 14 November 2006, the director of VALE Costruzioni and another natural person adopted, in Rome, the articles of association of VALE Építési kft (a limited liability company governed by Hungarian law) ('VALE Építési'), with a view to registration in the Hungarian commercial register. Moreover, the share capital was paid up to the extent required under Hungarian law for registration.

11

On 19 January 2007, the representative of VALE Építési applied to the F?városi Bíróság (Budapest Metropolitan Court), acting as the Cégbíróság (Commercial Court), to register the company in accordance with Hungarian law. In the application, the representative stated that VALE Costruzioni was the predecessor in law to VALE Építési.

12

The F?városi Bíróság, acting as a commercial court at first instance, rejected the application for registration. VALE Építési lodged an appeal before the F?városi Ítél?tábla (Regional Court of Appeal of Budapest), which upheld the order rejecting the registration. According to that court, a company which was incorporated and registered in Italy cannot, by virtue of Hungarian company law, transfer its seat to Hungary and cannot obtain registration there in the form requested. According to that court, under the Hungarian law in force, the only particulars which can be shown

in the commercial register are those listed in Paragraphs 24 to 29 of Law V of 2006 and, consequently, a company which is not Hungarian cannot be listed as a predecessor in law.

13

VALE Építési brought an appeal on a point of law before the Legfels?bb Bíróság (Supreme Court), seeking the annulment of the order rejecting registration and an order that the company be entered in the commercial register. It submits that the contested order infringes Articles 49 TFEU and 54 TFEU, which are directly applicable.

14

In that regard, it states that the order fails to recognise the fundamental difference between the international transfer of the seat of a company without changing the national law which governs that company, on the one hand, and the international conversion of a company, on the other. The Court clearly recognised that difference in Case C-210/06 Cartesio [2008] ECR I-9641.

15

The referring court upheld the assessment by the F?városi Ítél?tábla and states that the transfer of the seat of a company governed by the law of another Member State, in this instance the Italian Republic, entailing the reincorporation of the company in accordance with Hungarian law and a reference to the original Italian company, as requested by VALE Építési, cannot be regarded as a conversion under Hungarian law, since national law on conversions applies only to domestic situations. However, it harbours doubts as to the compatibility of such legislation with the freedom of establishment, while stressing that the present case differs from the case which gave rise to the judgment in Cartesio, since what is at issue here is a transfer of the seat of a company with a change of the applicable national law, while maintaining the legal personality of the company, that is to say, a cross-border conversion.

16

In those circumstances, the Legfels?bb Bíróság decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1)

Must the host Member State pay due regard to Articles [49 TFEU and 54 TFEU] when a company established in another Member State (the Member State of origin) transfers its seat to that host Member State and, at the same time and for this purpose, deletes the entry regarding it in the commercial register in the Member State of origin, and the company’s owners adopt a new instrument of constitution under the laws of the host Member State, and the company applies for registration in the commercial register of the host Member State under the laws of the host Member State?

(2)

If the answer to the first question is yes, must Articles [49 TFEU and 54 TFEU] be interpreted in such a case as meaning that they preclude legislation or practices of such a (host) Member State which prohibit a company established lawfully in any other Member State (the Member State of origin) from transferring its seat to the host Member State and continuing to operate under the laws of that State?

(3)

With regard to the response to the second question, is the basis on which the host Member State prohibits the company from registration of any relevance, specifically:

—

if, in its instrument of constitution adopted in the host Member State, the company designates as its predecessor the company established and deleted from the commercial register in the Member State of origin, and applies for the predecessor to be registered as its own predecessor in the commercial register of the host Member State?

—

in the event of international conversion within the Community, when deciding on the company's application for registration, must the host Member State take into consideration the instrument recording the fact of the transfer of company seat in the commercial register of the Member State of origin, and, if so, to what extent?

(4)

Is the host Member State entitled to decide on the application for company registration lodged in the host Member State by the company carrying out international conversion within the Community in accordance with the rules of company law of the host Member State as they relate to the conversion of domestic companies, and to require the company to fulfil all the conditions (e.g. drawing up lists of assets and liabilities and property inventories) laid down by the company law of the host Member State in respect of domestic conversion, or is the host Member State obliged under Articles [49 TFEU and 54 TFEU] to distinguish international conversion within the Community from domestic conversion and, if so, to what extent?'

Consideration of the questions referred

Admissibility

17

The United Kingdom Government calls into question the admissibility of the reference for a preliminary ruling in its entirety, submitting that the questions referred are hypothetical. Indeed, those questions concern a case of cross-border conversion whereas, on the basis of the facts apparent from the order for reference, it must be found that the operation at issue does not correspond to such a cross-border conversion. The EFTA Surveillance Authority considers the third and fourth questions referred to be inadmissible, since the factual background is not set out in sufficient detail to enable the Court to provide a useful answer.

18

For the purposes of the examination, respectively, of the admissibility of the reference for a preliminary ruling in its entirety, and of the third and fourth questions referred, the Court recalls the settled case-law pursuant to which questions on the interpretation of European Union law referred by a national court, in the factual and legislative context which that court is responsible for defining and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of European Union law that is sought bears no relation to the

actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (Joined Cases C-188/10 and C-189/10 Melki and Abdeli [2010] ECR I-5667, paragraph 27 and the case-law cited).

19

In the present case, the questions referred concern the interpretation of Articles 49 TFEU and 54 TFEU in a real case regarding the registration of VALE Építési in the commercial register. Moreover, the referring court's characterisation of the operation at issue in the main proceedings as a cross-border conversion of a company does not appear to be irrelevant, since it is clear from the file that the authority responsible for the commercial register in Rome deleted VALE Costruzioni from that register by entering, under the heading 'Removal and transfer of seat', that 'the company ha[d] moved to Hungary'.

20

For the same reason, in the light of the clear separation of the functions of national courts and this Court, it is not for the Court to conclude that VALE Costruzioni ceased to exist following its removal from the commercial register in Rome. In those circumstances, the interpretation requested cannot be regarded as bearing no relation to the actual facts of the main action or its purpose.

21

Finally, the order for reference provides a sufficient description of the facts at issue in the main proceedings and of the relevant national legislation, thereby enabling the Court to grasp the meaning and scope of the questions referred and to give a useful answer to them.

22

Consequently, the reference for a preliminary ruling must be considered admissible, as must the questions contained therein.

Substance

The first two questions referred

23

By the first two questions referred, which it is appropriate to examine together, the referring court asks, in essence, whether Articles 49 TFEU and 54 TFEU must be interpreted as precluding national legislation which, although enabling a company established under national law to convert, does not allow a company established in accordance with the law of another Member State to convert to a company governed by national law by incorporating such a company.

– The scope of Articles 49 TFEU and 54 TFEU

24

As regards the question whether such legislation falls within the scope of Articles 49 TFEU and 54 TFEU, it should be noted that the Court held, in paragraph 19 of its judgment in Case C-411/03 SEVIC Systems [2005] ECR I-10805, that company transformation operations are, in principle, amongst those economic activities in respect of which Member States are required to comply with

the freedom of establishment.

25

However, the Hungarian, German and United Kingdom Governments and also Ireland submit that such legislation does not fall within the scope of Articles 49 TFEU and 54 TFEU since, unlike the cross-border merger at issue in SEVIC Systems, a cross-border conversion leads to the incorporation of a company in the host Member State.

26

Such reasoning cannot be accepted.

27

Indeed, according to settled case-law, companies are creatures of national law and exist only by virtue of the national legislation which determines their incorporation and functioning (see Case 81/87 Daily Mail and General Trust [1988] ECR 5483, paragraph 19, and Cartesio, paragraph 104).

28

Similarly, it is not disputed that, in accordance with Article 54 TFEU, in the absence of a uniform definition in European Union law of the companies which may enjoy the right of establishment on the basis of a single connecting factor determining the national law applicable to a company, the question whether Article 49 TFEU applies to a company which seeks to rely on the fundamental freedom enshrined in that article is a preliminary matter which, as European Union law now stands, can be resolved only by the applicable national law (Case C-371/10 National Grid Indus [2011] ECR I-12273, paragraph 26 and the case-law cited).

29

Finally, a Member State thus unquestionably has the power to define both the connecting factor required of a company if it is to be regarded as incorporated under its national law and as such capable of enjoying the right of establishment, and the connecting factor required if the company is to be able subsequently to maintain that status (Cartesio, paragraph 110, and National Grid Indus, paragraph 27).

30

In the light of the settled case-law set out above, the Court notes that any obligation, under Articles 49 TFEU and 54 TFEU, to permit a cross-border conversion neither infringes the power, referred to in the preceding paragraph, of the host Member State nor that State’s determination of the rules governing the incorporation and functioning of the company resulting from a cross-border conversion.

31

As is apparent from the case-law set out in paragraph 27 above, such a company is necessarily governed solely by the national law of the host Member State, which determines the connecting factor required and the rules governing its incorporation and functioning.

32

It is thus apparent that the expression ‘to the extent that it is permitted under that law to do so’, in

paragraph 112 of Cartesio, cannot be understood as seeking to remove, from the outset, the legislation of the host Member State on company conversions from the scope of the provisions of the Treaty on the Functioning of the European Union governing the freedom of establishment, but as reflecting the mere consideration that a company established in accordance with national law exists only on the basis of the national legislation which ‘permits’ the incorporation of the company, provided the conditions laid down to that effect are satisfied.

33

In the light of the foregoing, the Court concludes that national legislation which enables national companies to convert, but does not allow companies governed by the law of another Member State to do so, falls within the scope of Articles 49 TFEU and 54 TFEU.

– The existence of a restriction on the freedom of establishment and possible justification for such a restriction

34

As regards the existence of a restriction on the freedom of establishment, the Court notes that the concept of establishment within the meaning of the Treaty provisions on the freedom of establishment involves the actual pursuit of an economic activity through a fixed establishment in the host Member State for an indefinite period. Consequently, it presupposes actual establishment of the company concerned in that State and the pursuit of genuine economic activity there (Case C-196/04 Cadbury Schweppes and Cadbury Schweppes Overseas [2006] ECR I-7995, paragraph 54 and the case-law cited).

35

In the present case, there has been nothing to suggest in the procedure before the Court that the activities of VALE Építési will be restricted to Italy and that the company will not actually seek to establish itself in Hungary, although that is a matter to be determined by the referring court.

36

The Court considers that, in so far as the national legislation at issue in the case in the main proceedings provides only for conversion of companies which already have their seat in the Member State concerned, that legislation treats companies differently according to whether the conversion is domestic or of a cross-border nature, which is likely to deter companies which have their seat in another Member State from exercising the freedom of establishment laid down by the Treaty and, therefore, amounts to a restriction within the meaning of Articles 49 TFEU and 54 TFEU (see, to that effect, SEVIC Systems, paragraphs 22 and 23).

37

In so far as concerns possible justification for the restriction at issue, it is true that the Court recognised, in paragraph 27 of SEVIC Systems, that cross-border mergers pose specific problems, which is also true of cross-border conversions. Indeed, such conversions presuppose the consecutive application of two national laws.

38

The Court notes, at the outset, that differences in treatment depending on whether a domestic or cross-border conversion is at issue cannot be justified by the absence of rules laid down in secondary European Union law. Even though such rules are indeed useful for facilitating cross-

border conversions, their existence cannot be made a precondition for the implementation of the freedom of establishment laid down in Articles 49 TFEU and 54 TFEU (see, in relation to cross-border mergers, SEVIC Systems, paragraph 26).

39

In so far as concerns justification on the basis of overriding reasons in the public interest, such as protection of the interests of creditors, minority shareholders and employees, the preservation of the effectiveness of fiscal supervision and the fairness of commercial transactions, it is established that such reasons may justify a measure restricting the freedom of establishment on the condition that such a restrictive measure is appropriate for ensuring the attainment of the objectives pursued and does not go beyond what is necessary to attain them (see SEVIC Systems, paragraphs 28 and 29).

40

However, such justification is lacking in the present case. Hungarian law precludes, in a general manner, cross-border conversions, with the result that it prevents such operations from being carried out even if the interests, mentioned in the preceding paragraph, are not threatened. In any event, such a rule goes beyond what is necessary to protect those interests (see, as regards cross-border mergers, SEVIC Systems, paragraph 30).

41

In those circumstances, the answer to the first two questions is that Articles 49 TFEU and 54 TFEU must be interpreted as precluding national legislation which enables companies established under national law to convert, but does not allow, in a general manner, companies governed by the law of another Member State to convert to companies governed by national law by incorporating such a company.

The third and fourth questions referred

42

By its third and fourth questions, which it is appropriate to examine together, the referring court asks, in essence, whether Articles 49 TFEU and 54 TFEU must be interpreted, in the context of a cross-border conversion, as meaning that the host Member State is entitled to determine the national law applicable to such an operation and thus to apply the national law provisions on domestic conversions governing the incorporation and functioning of a company, such as the requirements of drawing up lists of assets and liabilities and property inventories. More specifically, it seeks to determine whether the host Member State may refuse, for cross-border conversions, the designation ‘predecessor in law’, such a designation in the commercial register being laid down for domestic conversions, and whether and to what extent it is required to take account of documents issued by the authorities of the Member State of origin when registering the company.

43

In that regard, the Court notes, first, that, since secondary law of the European Union, as it currently stands, does not provide specific rules governing cross-border conversions, the provisions which enable such an operation to be carried out can be found only in national law, namely the law of the Member State of origin of the company seeking to convert and the law of the host Member State in accordance with which the company resulting from that conversion will be governed.

44

The implementation of a cross-border conversion requires, as is apparent from paragraph 37 above, the consecutive application of two national laws to that legal operation.

45

Second, although specific rules capable of substituting national provisions cannot be inferred from Articles 49 TFEU and 54 TFEU, the application of such national provisions cannot escape all review in the light of those Treaty provisions.

46

As is apparent from the answer given to the first two questions referred, Articles 49 TFEU and 54 TFEU require Member States which make provision for the conversion of companies governed by national law to grant that same possibility to companies governed by the law of another Member State which are seeking to convert to companies governed by the law of the first Member State.

47

Consequently, provisions of national law must be applied consistently with that requirement, in accordance with Articles 49 TFEU and 54 TFEU.

48

In that regard, the Court notes that, in many areas, it is settled case-law that, in the absence of relevant European Union rules, the detailed procedural rules designed to ensure the protection of the rights which individuals acquire under European Union law are a matter for the domestic legal order of each Member State, provided that they are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not render impossible in practice or excessively difficult the exercise of rights conferred by the European Union legal order (principle of effectiveness) (see, to that effect, in relation to recovery of undue payments, Joined Cases C-10/97 to C-22/97 IN. CO. GE.’90 and Others [1998] ECR I-6307, paragraph 25; in relation to administrative law, Joined Cases C-222/05 to C-225/05 van der Weerd and Others [2007] ECR I-4233, paragraph 28; in relation to the non-contractual liability of a Member State, Case C-445/06 Danske Slagterier [2009] ECR I-2119, paragraph 31; and, in relation to the requirement of a certificate for a tax advantage, Case C-262/09 Meilicke and Others [2011] ECR I-5669, paragraph 55 and the case-law cited).

49

The Court notes that the logic underlying that case-law is also valid in the legal context of the case in the main proceedings. As in that case-law, the company concerned enjoys a right granted by the European Union legal order, in this instance, the right to carry out a cross-border conversion, the implementation of which depends, in the absence of European Union rules, on the application of national law.

50

In that regard, the Court notes that the determination, by the host Member State, of the applicable national law enabling the implementation of a cross-border conversion is not, in itself, capable of calling into question its compliance with the obligations resulting from Articles 49 TFEU and 54 TFEU.

51

It is not disputed that, in the host Member State, a cross-border conversion leads to the incorporation of a company governed by the law of that Member State. Indeed, companies are creatures of national law and exist only by virtue of the national legislation which determines their incorporation and functioning (see Daily Mail and General Trust, paragraph 19, and Cartesio, paragraph 104).

52

Thus, in the present case, the application by Hungary of the provisions of its national law on domestic conversions governing the incorporation and functioning of companies, such as the requirements to draw up lists of assets and liabilities and property inventories, cannot be called into question.

53

Third, in so far as concerns the questions of the referring court concerning the implementation of the operation at issue in the main proceedings, it is necessary to clarify the obligations resulting from the principles of equivalence and effectiveness which govern the application of national law.

54

As regards the principle of equivalence, the Court notes that, pursuant to that principle, a Member State is not required to treat cross-border operations more favourably than domestic operations. That principle merely implies that the detailed rules of national law aimed at safeguarding the rights which individuals derive from European Union law cannot be less favourable than those governing similar situations under national law.

55

Thus, in the context of a domestic conversion, if the legislation of a Member State requires strict legal and economic continuity between the predecessor company which applied to be converted and the converted successor company, such a requirement may also be imposed in the context of a cross-border conversion.

56

However, the refusal by the authorities of a Member State, in relation to a cross-border conversion, to record in the commercial register the company of the Member State of origin as the

‘predecessor in law’ to the converted company is not compatible with the principle of equivalence if, in relation to the registration of domestic conversions, such a record is made of the predecessor company. The Court notes, in that regard, that the recording of the ‘predecessor in law’ in the commercial register, irrespective of the domestic or cross-border nature of the conversion, may be useful, in particular, to inform the creditors of the company which has converted. Moreover, the Hungarian Government does not raise any argument to justify its recording of the names of only companies which convert domestically.

57

Consequently, the refusal to record VALE Costruzioni in the Hungarian commercial register as the ‘predecessor in law’ is incompatible with the principle of equivalence.

58

Next, so far as concerns the principle of effectiveness, the question arises in this instance as to the account which the host Member State must take, in the context of an application for registration, of documents obtained from the authorities of the Member State of origin. In the context of the dispute in the main proceedings, that question relates to the examination, to be made by the Hungarian authorities, of the issue whether VALE Costruzioni dissociated itself from Italian law, in accordance with the conditions laid down thereunder, while retaining its legal personality, thereby enabling it to convert into a company governed by Hungarian law.

59

Since that examination constitutes the indispensable link between the registration procedure in the Member State of origin and that in the host Member State, the fact remains that, in the absence of rules under European Union law, the registration procedure in the host Member State is governed by the law of that State, which thus also determines, in principle, the evidence which must be furnished by the company seeking to be converted, certifying that conditions compatible with European Union law and required by the Member State of origin have been satisfied in that regard.

60

However, a practice on the part of the authorities of the host Member State to refuse, in a general manner, to take account of documents obtained from the authorities of the Member State of origin during the registration procedure is liable to make it impossible for the company requesting to be converted to show that it actually complied with the requirements of the Member State of origin, thereby jeopardising the implementation of the cross-border conversion to which it has committed itself.

61

Consequently, the authorities of the host Member State are required, pursuant to the principle of effectiveness, to take due account, when examining a company’s application for registration, of documents obtained from the authorities of the Member State of origin certifying that that company has indeed complied with the conditions laid down in that Member State, provided that those conditions are compatible with European Union law.

62

In the light of the foregoing, the answer to the third and fourth questions referred is that Articles 49 TFEU and 54 TFEU must be interpreted, in the context of cross-border company conversions, as meaning that the host Member State is entitled to determine the national law applicable to such

operations and thus to apply the provisions of its national law on the conversion of national companies governing the incorporation and functioning of companies, such as the requirements relating to the drawing-up of lists of assets and liabilities and property inventories. However, the principles of equivalence and effectiveness, respectively, preclude the host Member State from

—

refusing, in relation to cross-border conversions, to record the company which has applied to convert as the ‘predecessor in law’, if such a record is made of the predecessor company in the commercial register for domestic conversions, and

—

refusing to take due account, when examining a company’s application for registration, of documents obtained from the authorities of the Member State of origin.

Costs

63

Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

1.

Articles 49 TFEU and 54 TFEU must be interpreted as precluding national legislation which enables companies established under national law to convert, but does not allow, in a general manner, companies governed by the law of another Member State to convert to companies governed by national law by incorporating such a company.

2.

Articles 49 TFEU and 54 TFEU must be interpreted, in the context of cross-border company conversions, as meaning that the host Member State is entitled to determine the national law applicable to such operations and thus to apply the provisions of its national law on the conversion of national companies governing the incorporation and functioning of companies, such as the requirements relating to the drawing-up of lists of assets and liabilities and property inventories. However, the principles of equivalence and effectiveness, respectively, preclude the host Member State from

—

refusing, in relation to cross-border conversions, to record the company which has applied to convert as the ‘predecessor in law’, if such a record is made of the predecessor company in the commercial register for domestic conversions, and

—

refusing to take due account, when examining a company’s application for registration, of documents obtained from the authorities of the Member State of origin.

[Signatures]

(*1) Language of the case: Hungarian.