

EU Company Law

the Free Establishment of Companies

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Overview

- The legal issue
- The Case
- The Questions
- How does ECJ case law answer the problem?



The legal issue

- What are the constitutional principles of EC law that are applicable to the cross-border establishment of commercial enterprises which are organized in an EU/EEA state?



Mr. Lansky





Alpha



Beta



The case: *Gambling Express, GmbH*

- Incorporated in Alpha and principal place of business in Alpha.
- Seeks to expand its business to Beta and to move its principal place of business there.
- Alpha regulations impose restrictions on companies seeking to change their main place of business to another state, making it effectively impossible for a company to do so unless it dissolves itself and reincorporates in another state.
- Are Alpha's regulations justified under EU law?



Question 1

- May a company registered in a EU state transfer its registered office to another Member State relying directly on Community law?
- If yes, may the transfer of the registered office be made subject to any kind of condition or authorisation by the Member State of origin or the host Member State?



Question 2

- May EC Treaty law be interpreted as meaning that national rules or national regulatory practices which differentiate between commercial companies with respect to the exercise of their rights, based on the Member State in which their registered office is situated, is incompatible with Community law?



Question 3

- Does Article 46 justify Alpha's regulatory restrictions on cross-border establishment?



- Discuss the policy implications for the internal EU market of states having ‘exit restrictions’ on their companies moving their main operations to other EU states.



- **Vielen Dank fuers Mitmachen!**

