Bruno Mestre

Cartesio and its potential impact on co-determination regimes: a 14th Company Law Directive is needed!

Introduction

The ruling Cartesio was one of the most expected decisions of 2008 because it closed the gap opened by the groundbreaking *Centros* ruling in 1999. The question that the European Court of Justice (ECJ) had to answer in this ruling was whether a company whose *head office* (i.e: the factual centre of administration) was transferred abroad would be allowed to maintain itself as a company governed by the law of the member state of origin under the Treaty rules concerning the right of establishment (Art. 43 ECT). The ECJ provided a salomonic solution to this case: it claimed that, although the company could not oblige the home-member state to apply its laws to companies whose factual head office was not located in its territory, the home-member state simply couldn't oblige the company to enter into a liquidation proceeding; its legal personality would be maintained and the company would become governed by the law of the host member state (under certain conditions). This apparently simple solution opens considerable questions concerning the codetermination (*Mitbestimmung*) regime to which some companies in Europe are subject to. The purpose of this paper is to analyse the impact of the ruling in those co-determination regimes. The paper was organised as follows: the first part will review the existing case law concerning the mobility of companies in Europe and systematise it with Cartesio; the second part will address the consequences for Labour Law: it will analyse the possible impact of regulatory competition in co-determination statutes and the solutions offered by EU Law. The final part will present the conclusion.

1. Freedom of establishment for companies in Europe: a short overview

The understanding of the scope of the freedom of establishment for companies in Europe depends on the analysis of the compatibility of member states' international private law (IPL) rules with the freedom of establishment enshrined in the ECT. Arts. 43 and 48 ECT provide for the fundamental freedom of establishment, which enjoys *vertical* and *horizontal* direct effect in accordance with the case law of the ECJ.[1] In accordance with the fundamental freedom of establishment, *restrictions* (whether or not discriminatory) on the exercise of the right of establishment shall be deemed contrary to the free movement provisions of the ECT and therefore preempted. The definition of establishment

[1] See cases *Van Gend en Loos (C-26/62)*, *Reyners (C-2/74)*, *Gebhard (C-55/94)* and, more recently, *Viking* (C-438/05).

is simple: it consists in the actual pursuit of a self-employed economic activity in another member state either by means of the actual *installation* in a host member state (*primary establishment*) in the same conditions as its nationals or in the setting up of *agencies*, *branches* or *subsidiaries* (*secondary establishment*). This apparently simple provision must be understood with a grain of salt as regards companies. Since companies are not *natural* but *legal* persons and their existence depends on the conditions laid out in the regulation of the member state where they were set up, the ECT provided for special rules for companies. In accordance with Art. 48 ECT, any profit-making company formed in accordance with the law of a member state *and* having their *registered office*, *central administration* or *principal place of business* within the community shall be deemed *equal* to a natural person national of a member state for the purposes of the exercise of the right of establishment. This apparently simple provision demands further explanation: this provision recognises autonomy to the member states in the determination of the conditions under which companies may be set up in accordance with their laws. It simply claims that a company validly formed in accordance with the law of a member state (where is has its *registered office*) and having its *central administration* or *principal place of business somewhere* in the community shall be deemed equivalent to natural persons for the purposes of the exercise of the right of establishment. They will be able to set up *secondary establishments* anywhere in the community without restrictions.[2]

I mentioned in the former paragraph that the member states are autonomous in determining the *connecting factor* of companies to their territory, i.e they are free to determine to whom its law shall apply. The connecting factors may be fundamentally reduced to two theories, the *incorporation* and the *real seat* theories. The *incorporation theories* originated in the UK and consider that the company is a creation of the law; it is sufficient for a company to be incorporated under a certain statute (i.e: to have its *registered office* there) to be governed by that statute, independently of the place where it carries out its business (*head office*). The *real seat* theories take a more Savignynian approach of *law as the expression of sovereignty over a territory* and consider that all companies whose *central administration* or *principal place of business* is located in their geographical territory should be subject to the laws enforced in that place. The conciliation between these theories and the freedom of establishment was, apparently, simple: as long as a company was formed in accordance with the law of one member state (whether it followed the incorporation or the real seat theory) and it existed under the law of that member state, it could establish *secondary establishments* in the Community free from any restrictions.[3]

The compatibility between member states' IPL rules and the freedom of establishment were questioned in the last years with a number of rulings from the ECJ that apparently introduced the incorporation theory in Europe. The rulings were *Centros*, *Überseering*, *Inspire Art*, *Daily Mail* and *Cartesio*.[4] The groundbreaking *Centros* ruling (and complementary jurisprudence) initiated the debate concerning the compatibility of the real seat theory

[2] Craig, Paul – Gráinne Dé Búrca: EU Law. Texts, Cases and Materials, Oxford, 2002.
[3] Franz, Walter: Handbuch Europarecht, Springer, Berlin, 2004.
[4] *Centros (C-212/97), Überseering (C-208/00), Inspire Art (C-167/02), Cartesio (C-210/06)*

with EC Law. In *Centros*, a Danish couple incorporated a letter-box company in the UK and intended to register a subsidiary in Denmark solely with the purpose of evading Danish minimum capital rules. The ECJ decided that the rules governing the *formation of companies* were distinct from the rules governing the *exercise of activities* (whose evasion is fraudulent) and that European citizens could choose the legislation most appealing to them. In a reasoning similar to a previous ruling – *Segers*[5] – the company did not need to prove actual pursuit of an economic activity in the member state of incorporation. Certain *mandatory requirements* for the protection of the *public interest* (such as *creditor protection* or *deterrence of fraud*) were not deemed legitimate justifications because the rules had been partially *harmonised* and there were *equivalent mechanisms* for the protection of those interests in the member state of incorporation. This reasoning was completed in *Überseering* and *Inspire Art*. In *Überseering,* the ECJ struck down the generally accepted theory of refusal of recognition of legal personality to companies whose *head office* (but not *registered office*) is in the *host* member state and is not incorporated in the host member state; in *Inspire Art,* the ECJ struck down the Dutch legislation on *formally foreign companies* that imposed the rules of *minimum capital* and *directors' liability* to letter-box companies incorporated abroad but active in the Netherlands. The conclusion to be extracted from these rulings is the following: *there is actually a market for corporate charters in Europe and European citizens may choose the most appealing law to govern their companies even if they have no connection to the member state where their companies are incorporated. The mandatory requirements pointed by the member states have generally failed to be accepted and the tendency of the ECJ seems to have been to provide citizens with the greatest margin of choice of law possible.*[6]

Up to this point, all cases have a common denominator: all concerned the *setting up (=incorporation)* of *new* companies in member states that follow the *incorporation* theory. The cases *Daily Mail*[7] and *Cartesio* concern a distinct problem: the transfer of *head office* and *registered seat*. In *Daily Mail*, a British company wished to transfer its *head office* to the Netherlands in order to gain some tax advantages. The British tax authorities conditioned the exit to the liquidation of some taxes that had the effect of eliminating the envisaged tax advantage. The ECJ, surprisingly, upheld this behaviour and considered that *companies were creations of the law under wish they were incorporated and that, therefore, it would be the law in which they were incorporated to decide their existence after the transfer of the head office or registered office*. In *Cartesio*, a Hungarian limited partnership decided to transfer its *head office* to Italy; Hungary follows the *real seat* theory and the Companies Registry demanded that Cartesio be liquidated and re-incorporated as a company governed by Italian law. The partners of Cartesio objected to this decision and considered that the *Centros* case law had introduced the incorporation theory in Europe by jurisprudential means. The ECJ rejected the claims and adopted a salomonic solution: it considered that Hungary could not require the company to enter into liquidation proceedings; the *legal*

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5 *Segers (C-79/85)*

6 Trefil, Barbara: Die Niederlassungsfreiheit für Gesellschaften in der Rechtsprechung des EuGH und ihre Auswirkungen auf nationales Recht, Law Working Papers, Florence, European University Institute, 2003.

7 *Daily Mail (C-81/87)*

personality of the company would be maintained but as a company governed by the laws of the host member state if the rules of conflict of laws of the host member state so accept.

The question is: how to reconcile *Centros*, *Daily Mail* and *Cartesio*? The logical conclusion from these rulings seems to be the following: *(1) companies are creations of national law and member states have full competence to decide the relevant connecting factor (incorporation and real seat theories); (2) the exercise of that competence must nonetheless be made in accordance with EC Law: (2.1) in case of the setting up of new companies, a real seat member state cannot refuse to recognise a company validly incorporated in an incorporation theory member state, even if the company was incorporated there to evade national regulations; (2.2) in the case of the transfer of head office, a national cannot impose the incorporation theory to a real theory member state; nevertheless the State cannot oblige the company to go into liquidation: the legal personality of the company will be maintained as long as the rules of the host member state accept to subject the company to their laws; it will then become a company governed by the law of the host member state.*

The solution proposed in the former paragraph deserves further explanation. Firstly, the ECJ provided an answer to those who claimed that the real seat theory was killed. That is not the case, it was merely conciliated with the free movement provisions of the ECJ. Each member state remains free to determine the relevant connecting factor: however, it must respect the choices of the others. If a company incorporated in an incorporation theory regulation decides to transfer its head office into a real theory regulation, then the latter regulation cannot refuse the recognition of the company; if a company moves between two real seat regulations (the situation in Cartesio), then the company will become governed by the law of the host-regulation, without being obliged to be wound up or liquidated; there will simply be a change in the applicable law; if a company moves from a *real seat* to an *incorporation theory* regulation, then the home member state may require liquidation because no regulation accepts to govern the company.[8] Secondly, the solution laid down in Daily Mail seems to have been partially defeated. The question in Daily Mail was the compatibility of what was in reality an *exit tax* with Art. 43 ECT and the ECJ answered as if it had been a *conflict of laws*. This measure equivalent to an exit tax imposed upon Cartesio was struck down by the ECJ. This is in fact a great conquest to the mobility of companies in Europe because it removed all restrictions to the transfer of the head office as long as the host-member state accepts to govern that company. In this sense, Cartesio closed the gap opened by Centros.[9]

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[8] Edwards, Vanessa: EC Company Law, Oxford, Clarendon Press, 1999.

[9] The impact of *Centros* has gone beyond IPL and the regulatory competition that it triggered has sparkled a number of innovations in European Law that are potentially far reaching: from law-making procedures to the actual evolution of the law. See the studies of Deakin, Simon: Two types of regulatory competition: competitive federalism vs. reflexive harmonisation: a law and economics perspective on Centros. Cambridge Yearbook of Legal Studies, Oxford, Hart Publishing, 1999, 231-260. Deakin, Simon – Hughes, Alan: Economic efficiency and the proceduralisation of company law, ESRC Centre for Business Research, University of Cambridge, 1999; Deakin, Simon: Reflexive Governance and European Company Law. U. o. C. Centre for Business Research, 2007.

2. Consequences for Labour Law

Unlike Company Law, Labour Law is, fundamentally, *territorial* in nature. The intimate connection between a country's labour policy and its systems of Social Security, Political Economy, Education and the chronically low mobility of the workforce advise against radical deviations from the territoriality principle. This is so imperative that the labour contract is partially exempted from the *choice of law* rules contained in the Roma I Regulation by connecting the labour contract to the usual place of work, at least as regards the more protective provisions (Art. 8 Regulation 593/2008). This does not mean, of course, that labour law is exempted from the free movement provisions of the ECJ: the already extensive case law of the ECJ in the subject of posted workers has attempted to strike a balance between the free movement provisions and the application of national regulations to posted workers.[10] The ruling Cartesio opens, however, new challenges to labour law as it may be a means of evading *co-determination* structures that are part of the culture of some member states such as Germany and Austria. This section will attempt to determine the consequences of the ruling for co-determination structures.

2.1. Labour Law and territoriality

Labour laws are, essentially, territorial by nature. They are applicable to anyone who exercises a stable activity in a certain geographical territory. Certain member states have taken the politically far-reaching option of implementing co-determination regimes in their companies. This means that employees are granted certain co-decision making rights in companies by providing them with representation rights in the boards of companies. These provisions are, equally, *territorial* in their application: they are applicable to all companies set up in one of the legal forms admitted in the territory (national structures of company law) and active within their territory.

The ruling *Cartesio* presents a challenge to these structures. Considering that States that impose co-determination regimes also tend to apply the real seat theory, it is sufficient for a company to transfer its office towards a real seat member theory state to become governed by the law applicable in that member state. If the law imposes no codetermination regimes (such as France or Portugal for instance), then the home member state will be powerless to impede the escape to its regime. The same thing occurs if there is a transfer of registered office: if a German company decides to reincorporate as a British company, then it will not have to be wound up to be governed by British Law in

[10] Mestre, Bruno: Some reflections on the posted workers Directive – the tension between harmonisation and the country of origin principle, European Law Reporter (7-8) 2006, 314-321.; ib. Some preliminary comments on the opinion of Advocate-General Mengozzi in Laval un Partneri Ltd., European Law Reporter (6), 2007 ib. The ECJ rules again on the German Law on Posted Workers (AEntG): Commentary to the ruling Commission vs Germany (C-490/04), European Law Reporter (11) 2007, 448-455; ib. The Ruling Laval un Partneri: clarification and innovation, European Law Reporter (1), 2008, 2-9; ib. The ruling Dirk Rüfert vs. Land Niedersachsen (C-346/06): the ECJ strikes down (again) decentralized collective bargaining in the context of posted workers, European Law Reporter (6), 2008, 226-230.

Germany and therefore evade the co-determination regime by *transforming* itself from an *Aktiengesellschaft* towards a *Company Limited by Shares* without a change in head office.

2.2. Regulatory competition and Co-determination

This decision raises the spectrum of regulatory competition in terms of labour conditions. *Regulatory competition* is a wellknown and throughly studied phenomenon that initiated with the *Delaware effect* in the USA. In short, it consists in a situation in which States compete for the incorporation of corporate charters in their territory. Some claim that regulatory competition is good because it will increase the *protection of shareholders* (who will not invest in companies that do not protect their interests) leading to a *race to the top*; others claim that it will lead to *managerial statutes* that increase agency costs vis-â-vis shareholders, leading to a *race to the bottom*. Up to this point, there is no empirical evidence of any of these theories.[11] But one thing that has been ignored in the debate consists in its impact over codetermination structures because they are not applied in the USA. Since co-determination structures are, fundamentally, imposed by law,[12] regulatory competition in this aspect will more likely lead to a *race to the bottom*: certain member states will have no trouble offering their employee-free corporate charters to companies burdened by worker representation in order to contribute actively to their "*competitiveness*". This might have severe impacts in countries where co-determination statutes are enforced: employees are deprived of one of their main means of influencing the governance of companies (obliging law makers to intervene by statute, which is generally undesirable in those countries, where consensual *ad hoc* solutions are favoured), courts and lawyers are usually not trained in foreign law, access to courts is more limited if they are located abroad and this increases the risk of *managerial opportunism*, raising agency costs in relation to shareholders and stakeholders. Therefore, regulatory competition in terms of employee representation is undesirable because there are no incentives towards a *race to the top* and it will most likely lead to a *race to the bottom*, with considerable agency costs.

2.3. The solution of EU Law

The mobility of companies and regulatory competition are, nonetheless, potentially beneficial to Europe, as competition and mutual learning may possibly lead to more efficient corporate laws. This is not the first time that the EU has had to deal with the question of *employee representation* and *mobility of companies* and the solutions offered by the existing statutes may be considered as *salomonic* – as it occurs in the ruling Cartesio. The existing statutes that address this issue are Directives 2001/86, 2003/72 and

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[11] Romano, Roberta: Law as a Product: some pieces of the incorporation puzzle, Journal of Law, Economics and Organisation, 1985; Easterbrook, H. Frank – Daniel R. Fischel: The Economic Structure of Corporate Law, Harvard University Press, 1996.

[12] Hansmann, Henry: Worker participation and corporate governance, University of Toronto Law Journal 43, 1993, 589-606.

2005/56.[13] The solutions laid down in these statutes are fairly harmonic and they will be only synthesized where. The idea underpinning these statutes may be reduced to two main points: (1) *no imposition of co-determination* and (2) *no escape from codetermination*. As regards the first point, these statutes recognise that co-determination is fundamentally a national choice and do not intend to impose it by the European level. Therefore if a company is not subject to a co-determination statute in any regulation then the EU will not impose it. As regards the second point, these statutes intend to impede that the mobility of companies in Europe be used as a means of *evading* co-determination statutes; although competition in terms of corporate charters is seen as positive, the competition in terms of labour conditions is fairly reproved. Therefore the company subject to these instruments may not use the mobility across Europe in order to escape a more employee-friendly regime. Consequentially it lays down a detailed regime concerning the involvement of the employees. Priority is given to *bargained solutions*: the management is under an obligation to engage in a dialogue with the employees and bargain the most appropriate solution to safeguard their co-determination rights after the mobility of the company. In the event that no decision is reached, the statutes provide for a safeguard solution, in which the previous level of participation is maintained. This means that employees can either bargain for a more appropriate solution or at least not suffer a detriment caused by the mobility of the company.[14]

The solution laid down in these statutes reveals that employee co-determination is no impeditive to *regulatory competition* or to the *mobility of companies* in Europe. It simply recognises the principle underlying all employee representation (which is fundamentally a labour cartel) that competition in terms of labour conditions is *undesirable* because it will most likely lead to a race to the bottom. When confronted with the impossibility of implementing at the European level a co-determination regime (which would eliminate competition) the European legislator took a more careful approach: it simple stated that questions of employee involvement are left to the member states; however companies may not use their mobility across Europe with the sole purpose of evading those national regimes. This is an extremely balanced approach that effectively combines regulatory competition and the safeguard of national models of employee representation.

2.4. Worker representation as a mandatory general interest?

The solutions laid down in the statutes referred in the former chapter are strictly applicable only to the situations they were set up to. *Cartesio* opened a gap in this regard because it allowed the transfer of the *head* or *registered* office without the corresponding provisions concerning the safeguard of employee involvement. The mobility of compa-

[13] Directive 2001/86 concerning the involvement of employees in the Societas Europeae; Directive 2003/72 concerning the involvement of employees in the European Cooperative Statute; Directive 2005/76 concerning the cross-border merger of limited liability companies.

[14] Davies, Paul: Employee involvement in the European Company. La Société Européenne – organization juridique et fiscale, intérets, perspectives, Dalloz, 2003, 67-79; Diego, de Alexander: Die Mobilität der Europäische Aktiengesellschaft (SE) im EG-Binnenmarkt, Europäisches Wirtschafts- und Steuerrecht (10), 2003, 446-454.

nies in Europe is not so radical however because the ECJ has at times recognised *limits* to the mobility of companies on account of other interests. This section will analyse the case law of the ECJ in that regard and rehearse an application to employee representation.

The ECJ has at times recognised limits to the free movement of companies when the objective of the transfer was to object to certain regulations. In *Veronica* and *TV10* two Dutch broadcasting organisations established a shell-company in the Luxemburg in order to evade certain Dutch regulations concerning the contents of the broadcasts. In accordance with the Dutch Law, the limitations were applicable only to the organisations established in the Netherlands and foreign organisations broadcasting to the Netherlands had to comply with the rules enforced *in the place of establishment. The ECJ uphold the decision of the Dutch State of prohibiting the broadcasts claiming that the shell-company was merely a means of evading Dutch regulations on media plurality*. In *Cadbury- Schweppes* the ECJ struck down *wholly artificial arrangements* set up for *agressive tax planning*. This ruling concerned a situation in which a company set up a shell company in another member state where the *corporate tax* was considerably lower and inputed the totality of its earnings to that shell company. The ECJ claimed that the freedom of establishment could not cover these *wholly artificial arrangements* as long as the shell company did not pursue any actual economic activity in the member state of "*establishment*".[15]

This case law raises a tricky question: what is the difference between *Centros* and *Veronica*, *TV10* and *Cadbury*? Why may a company evade its own *company* regulations but not its own *professional* or *tax* regulations? The difference reminds us of the distinction laid down in two previously extremely influential rulings: *Cassis de Dijon* and *Keck*.[16] The *Cassis* case law refers to the *goods* themselves, claiming that if they were legally manufactured in a member state they could be commercialised freely in others; *Keck* refers to *selling arrangements* that impose equal burdens on all economic actors within a given territory. National laws that impose limitations to the *goods* that may be commercialised in a given territory would be considered as *restrictive* whereas those that concern *selling arrangements* would be upheld as long as they affected in the same manner both nationals and foreign economic agents.[17] In this sense, *company law* can be considered as a *commodity* that may be freely "*marketed*" among the member states and *professional* and *tax* regulations could be qualified as measures equivalent to *selling arrangements* (because they affect equally all companies active in the territory independently of the legal organisation).

This leaves us the question of the qualification of employee co-determination? Can we apply the case law laid down in *Veronica*, *TV 10* and *Cadbury* to employee representative structures and consider co-determination as a "*professional rule*" capable of justifying restrictions to the the transfer of a registered or head office of a company when it was made solely with the purpose of avoiding those regulations? The co-determination sta-

15 *Veronica (C-148/91), TV10 SA (C-23/93), Cadbury-Schweppes (C-196/04)*

16 *Cassis de Dijon (C-120/78), Keck (C-267/91 and 268/91)*

17 Maduro, Miguel Poiares: We the Court: the European Court of Justice and the European Economic Constitution, Oxford, Hart Publishing, 2002.

tutes do not support such a conclusion because they are not applicable to *all* companies active within their territory but only to those that were set up in the legal forms created in their territory (*Aktiengesellschaft, GmbH, KG*). This restrictions on the application of co-determination rules merely to national company forms has its reason: the statute was approved before *Überseering,* when it was unanimous that an *economical organisation* (*Verband*) trading within German territory could only have access to the *organisational benefits* of *legal personality* and *limited liability* when they were set up in accordance with one of the forms statutorily laid down in that territory.[18] Therefore even if a company was composed of 100% foreign capital, it would still be subject to codetermination rules as long as it was set up within one of the organisational forms that were the creation of German lawmakers. *Überseering* destroyed this doctrinal current but the statutes did not amend correspondingly. Therefore there is no legal basis for the imposition of co-determination rules upon *formally foreign companies* and, consequently, no room for their classification as *rules indistinctly applicable to all companies (whether national or foreign)* that could justify a restriction to the free movement of companies.

3. Conclusion – 14th Company Law Directive

The possible consequences of *Cartesio* for employee co-determination and the possible means to avoid it have been laid out above. It seems that *Cartesio* opens the room to an escape from co-determination statutes that the generally accepted justifications to the restrictions to the fundamental freedoms cannot avoid. There are already legal instruments of EC Law that address this problem but the fact that they are strictly applicable impedes their application to situations not directly foreseen on their texts. The solution, in my view, lays in the approval of a 14th Company Law Directive on the transfer of *head office* or *registered seat* that would address this problem in harmony with the solutions reached beforehand. The best solution for employee co-determination seems to be the *no escape from co-determination*: companies subject to co-determination statutes wishing to move their offices abroad with a change in the applicable law should bargain employee participation with the employees and, in the event of failure, be forced to preserve the existing participation rights. This would avoid a race to the bottom in terms of labour rights while ensuring regulatory competition in Europe with the potential improvements in terms of shareholder rights.

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Bruno Mestre: A Cartesio ítélet és lehetséges hatása az együttdöntési rendszerekre: egy 14. társasági jogi irányelv szükséges!

A Cartesio, a 2008-as év egyik nagy figyelemmel kísért döntése bezárta az 1999-es Centros által nyitva hagyott rést, ugyanakkor újabb kérdéseket vetett fel a vállalati mobilitás munkavállalói

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18 Schmidt, Karsten: Gesellschaftsrecht, Köln, Carl Heymanns, 2002.

jogokra gyakorolt hatása kapcsán. Meggátolható-e, hogy továbbra is az eredeti tagállam joga vonatkozzon arra a vállalatra, mely székhelyét külföldre helyezi át? Az Európai Bíróság döntése salamoni. A cikk első fele a vállalatok mobilitásával, a vállalkozás szabadságával kapcsolatos esetjog rendszerében helyezi el a Cartesiot, hangsúlyozva, a vállalatok mobilitása, a tagállamok rendszereinek versengése, a jó megoldások átvétele előnyös lehet. A második rész a lehetséges munkajogi hatásokat, az együttdöntésre vonatkozó szabályozások konkurálását és az EU jog által kínált lehetséges megoldásokat elemzi. Végül a cikk egy 14. társasági jogi direktíva megalkotását javasolja. A munkavállalói együttdöntés kapcsán a legmegfelelőbbnek a „nincs kiugrási lehetőség az együttdöntés alól" elvének alkalmazása kínálkozik, vagyis amennyiben a változás sértené a munkavállalók meglévő jogait, a székhelyét külföldre telepíteni kívánó cégek kötelesek lennének tárgyalás keretében kialakítani a munkavállalói részvétel szabályait, ennek meghiúsulása esetén pedig a már meglévő jogok érvényesítése lenne kikényszeríthető. Ezáltal elkerülhető a „race to the buttom", a lefelé irányuló verseny munkavállalói jogok terén, egyúttal biztosítható a kedvező verseny illetve a részvényesi jogok erősítése.