

*European
Business
Organization
Law Review*

EBOR

ARTICLES

The Shareholder in European Corporate Law

Joint Dominance

Patterns of Legal Change in Transition Economies

The Challenges for a European Tax Policy

CASE NOTES

International Company Law in View of *Centros*

Freedom of Establishment – New Developments

BOOK REVIEWS

T · M · C · A S S E R P R E S S

<https://doi.org/10.1017/S156675290000001X> Published online by Cambridge University Press

1:1
2000

AIMS AND SCOPE

The European Business Organization Law Review aims to promote a scholarly debate which critically analyses the whole range of organizations chosen by companies, groups of companies, and state-owned enterprises to pursue their business activities and offer goods and services all over the European Union. At issue are the enactment of corporate laws, the theory of the firm, the theory of capital markets and related legal topics.

EDITORIAL BOARD

- Prof. Talia Einhorn*, Editor-in-Chief, T.M.C. Asser Institute, The Hague;
Dr. Brigitte Haar, LL.M. (University of Chicago), Max Planck Institute, Hamburg;
Mr. Michael Hofstötter, T.M.C. Asser Institute, The Hague;
Dr. Rainer Kulms, LL.M. (University of Michigan), Max Planck Institute, Hamburg;
Dr. Vesna Lazić, T.M.C. Asser Institute, The Hague;
Prof. Colin Mayer, Peter Moores Professor of Management Studies (Finance),
Saïd Business School, University of Oxford;
Dr. Guus E. Schmidt, T.M.C. Asser Institute, The Hague.

ADVISORY BOARD

- Prof. Julian Franks*, Corporation of London Professor of Finance, London Business School;
Prof. Barry Hawk, Skadden, Arps, Slate, Meagher & Flom LLP/
Director, Fordham Corporate Law Institute, New-York;
Francis Jacobs, Advocate General, European Court of Justice, Luxembourg;
Prof. Hideki Kanda, Professor of Law, University of Tokyo;
Alfred E. Kellermann, General Secretary, T.M.C. Asser Institute, The Hague;
Prof. Harm-Jan de Kluiver, Maastricht University/ De Brauw, Linklaters and Alliance;
Prof. Herbert Kronke, Secretary General, UNIDROIT, Rome/
Professor of Law, University of Heidelberg, (on leave);
Prof. Ernst-Joachim Mestmaecker, Director (emeritus), Max Planck Institute, Hamburg;
Prof. Peter Nygh, Adjunct Professor, University of New South Wales;
Prof. Roberta Romano, Allen Duffy/Class of 1960 Professor of Law, Yale Law School, New Haven;
Prof. Wolfgang Schön, Director, Tax Law Institute and Center for
European Economic Law, Bonn University;
Prof. Kurt Siehr, University of Zurich Center for Private International Law;
Dr. Robert Siekmann, Research Director, T.M.C. Asser Institute, The Hague;
Prof. Tadeusz Skoczny, Jean-Monnet Chair on European Economic Law,
Warsaw University Faculty of Management;
Prof. Louis Vogel, University Panthéon-Assas (Paris), Director, Institut de droit comparé;
Prof. Jan Wouters, Professor of Law, Catholic University of Leuven.

EDITORIAL OFFICE

European Business Organization Law Review
T.M.C. ASSER INSTITUTE
P.O. Box 30461, 2500 GL The Hague, The Netherlands
Tel. +31(0)703420300, Fax. +31(0)703420359
E-mail: EBOR@asser.nl

European Business Organization Law Review

VOLUME 1 (2000)

ISSN 1566-7529

EDITORIAL BOARD

- Prof. Talia Einhorn*, Editor-in-Chief, T.M.C. Asser Institute, The Hague;
Dr. Brigitte Haar, LL.M. (University of Chicago), Max Planck Institute, Hamburg;
Mr. Michael Hofstötter, T.M.C. Asser Institute, The Hague;
Dr. Rainer Kulms, LL.M. (University of Michigan), Max Planck Institute, Hamburg;
Dr. Vesna Lazić, T.M.C. Asser Institute, The Hague;
Dr. Guus E. Schmidt, T.M.C. Asser Institute, The Hague.



T · M · C · A S S E R P R E S S

EDITORIAL OFFICE

European Business Organization Law Review

T.M.C. Asser Institute

P.O. Box 30461, NL-2500 GL The Hague, The Netherlands

Tel. +31 70 3420 327, Fax +31 70 3420 359

E-mail: EBOR@asser.nl

<http://www.asser.nl/ebor.htm>

European Business Organization Law Review is published in cooperation with the T.M.C. Asser Instituut, Institute for Private and Public International Law, International Commercial Arbitration and European Law, The Hague, The Netherlands. The T.M.C. Asser Instituut is responsible for the promotion of research and education in international law, particularly by carrying out research programmes and setting up documentation projects in the fields covered by the Institute.

PUBLISHER AND DISTRIBUTION

T.M.C.ASSER PRESS, P.O.Box 16163, 2500 BD The Hague, The Netherlands.
Phone: +31(70)3420800, Fax: +31(70)3420801, E-mail: press@asser.nl and
website www.asserpress.nl. It is distributed for T.M.C.ASSER PRESS by Kluwer
Law International, The Hague, The Netherlands.

CONTENTS

Editorial	1
------------------	---

Articles

WOLFGANG SCHÖN, The Concept of the Shareholder in European Company Law	3
FRÉDÉRIC JENNY, Economic Analysis, Anti-trust Law and the Oligopoly Problem	41
KATHARINA PISTOR, Patterns of Legal Change: Shareholder and Creditor Rights in Transition Economies	59
FRANS VANISTENDAEL, The Making or Br(e)aking of Europe or the Challenges for a European Tax Policy	109

Case Notes

PETER BEHRENS, International Company Law in View of the <i>Centros</i> decision of the ECJ	125
VANESSA EDWARDS, Case-law of the European Court of Justice on Freedom of Establishment after <i>Centros</i>	147

Book Reviews

Vanessa Edwards, <i>EC Company Law</i> (Mathias Habersack)	157
Doris Hildebrand, <i>The Role of Economic Analysis in the EC Competition Rules</i> (Joachim Jickeli)	160

Editorial policy

The journal encourages submissions from lawyers, both academic and practitioners, and economists. Contributions of authors from other disciplines, such as political and social scientists, are welcome. Occasionally, policy makers and business people will be invited to express their opinion within their fields of expertise. Theoretical and applied works are equally considered. Articles will be subjected to a review procedure. Accepted manuscripts will be edited, if necessary, to enhance their effectiveness. In case of extensive editing the approval of the author will be sought prior to typesetting.

Submission of manuscripts

Manuscripts should be submitted to the Editor, accompanied by an assurance that the article has not been published or accepted elsewhere. However, exceptional contributions originally written in other languages may be considered for publication in proximity to their publication in that other language.

The articles should be comprehensible to readers outside the specific field of expertise. Special terms and abbreviations should be clearly defined. Manuscripts should range between 3000 and 10000 words and be prefaced by an abstract of no longer than 200 words. Contributors are requested to submit one hard copy of their manuscript and a diskette (preferably Word for Windows). Alternatively, manuscripts may be sent by e-mail (Word for Windows and rtf, rich text format attachments). A hard copy would only be requested if necessary.

Copyright

The acceptance of a manuscript for publication implies that the author assigns to the publisher the copyright to the contribution whereby the publisher shall have the exclusive right to publish it everywhere during the full term of copyright and all renewals and extensions thereof. These rights include mechanical, electronic and visual reproduction, electronic storage and retrieval; and all other forms of electronic publication including all subsidiary rights.

The author retains the right to republish the article in any other publication one year after its publication in the journal, provided only that the author notifies the Publisher and ensures that that the Publisher is properly credited and that the relevant copyright notice is repeated verbatim.

EUROPEAN BUSINESS ORGANIZATION LAW REVIEW

CONTENTS OF VOLUME I (2000)

Articles

FORUM EUROPAEUM CORPORATE GROUP LAW, Corporate Group Law for Europe	165-264
HAAR, BRIGITTE, Piercing the Corporate Veil and Shareholders' Product and Environmental Liability in American Law as Remedies for Capital Market Failures – New Developments and Implications for European and German Law after <i>Centros</i>	317-352
HIRTE, HERIBERT, Convertible Bonds and Option Bonds: A Comparative Study	507-537
JENNY, FRÉDÉRIC, Economic Analysis, Anti-trust Law and the Oligopoly Problem	41-57
KALSS, SUSANNE, The Austrian Law on Public Offers and Takeovers	479-506
KIRCHNER, CHRISTIAN AND PAINTER, RICHARD W., European Takeover Law – Towards a European Modified Business Judgment Rule for Takeover Law	353-400
KLUVER, JOHN, European and Australian Proposals for Corporate Group Law: A Comparative Analysis	287-315
LOFARO, ANDREA AND RIDYARD, DEREK, The Economic Analysis of Joint Dominance under the EC Merger Regulation	539-559
MESTMAECKER, ERNST-JOACHIM, The EC Commission's Modernization of Competition Policy: A Challenge to the Community's Constitutional Order	401-444
MÜLBERT, PETER O. AND BIRKE, MAX, In Defense of Passivity – on the Proper Role of a Target's Management in Response to a Hostile Tender Offer	445-478
PAPATHOMA-BAETGE, ANASTASIA, Regional Integration of Competition Rules: A Comparative Analysis of European and Greek Competition Law	561-583
PISTOR, KATHARINA, Patterns of Legal Change: Shareholder and Creditor Rights in Transition Economies	59-108

SCHÖN, WOLFGANG, The Concept of the Shareholder in European Company Law	3-39
VANISTENDAEL, FRANS, The Making or Br(e)aking of Europe or the Challenges for a European Tax Policy	109-123
WINDBICHLER, CHRISTINE, "Corporate Group Law for Europe": Comments on the Forum Europaeum's Principles and Proposals for a European Corporate Group Law	265-285
ZIMMER, DANIEL, Private International Law of Business Organisation ...	585-599

Case Notes

BEHRENS, PETER, International Company Law in View of the <i>Centros</i> decision of the ECJ	125-146
EDWARDS, VANESSA, Case-law of the European Court of Justice on Freedom of Establishment after <i>Centros</i>	147-155

Book Reviews

EDWARDS, VANESSA, <i>EC Company Law</i> . Oxford: Clarendon 1999 (Mathias Habersack)	157-160
HABERSACK, MATHIAS, <i>Europäisches Gesellschaftsrecht. Einführung für Studium und Praxis</i> . Munich: Beck 1999 (Martina Deckert)	601-605
HILDEBRAND, DORIS, <i>The Role of Economic Analysis in the EC Competition Rules</i> . The Hague: Kluwer Law International 1999 (Joachim Jickeli)	160-163
SCHWARZ, GÜNTER CHRISTIAN, <i>Europäisches Gesellschaftsrecht: Ein Handbuch für Wissenschaft und Praxis</i> . Baden-Baden: Nomos 2000 (Martina Deckert)	601-605