



Press and Information

Court of Justice of the European Union
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Judgment in Case C-106/16
Polbud – Wykonawstwo sp. z o.o.

Member States may not impose mandatory liquidation on companies that wish to transfer their registered office to another Member State

The transfer of the registered office of such a company, when there is no change in the location of its real head office, falls within the scope of the freedom of establishment protected by EU law

Polbud is a company established in Poland. By a resolution in 2011, an extraordinary general meeting of shareholders of that company decided to transfer the company's registered office to Luxembourg. That resolution makes no reference to a transfer to Luxembourg of either the place where Polbud's business is managed or of the place where that company's business is actually carried out.

On the basis of that resolution, the opening of a liquidation procedure was recorded in the Polish commercial register and a liquidator was appointed.

In 2013 the registered office of Polbud was transferred to Luxembourg. Polbud then became 'Consoil Geotechnik Sàrl', a company under Luxembourg law. Further, Polbud lodged an application at the Polish registry court for its removal from the Polish commercial register. The registry court refused the application for removal.

Polbud brought an action against that decision. The Sąd Najwyższy (Supreme Court of Poland), before which an appeal has brought, first asks the Court of Justice whether freedom of establishment is applicable to the transfer of only the registered office of a company incorporated under the law of one Member State to the territory of another Member State, where that company is converted to a company under the law of that other Member State, when there is no change of location of the real head office of that company. Next, the Sąd Najwyższy asks whether Polish legislation, that provides that removal of a company from the commercial register is dependent on the winding-up of the company following a liquidation procedure, is compatible with freedom of establishment.

In today's judgment, the Court states, first, that EU law extends the benefit of freedom of establishment to all companies or firms formed in accordance with the legislation of a Member State and having their registered office, their central administration or principal place of business within the European Union. That freedom includes, in particular, the right of such a company to convert itself into a company or a firm governed by the law another Member State.

In this case, freedom of establishment therefore confers on Polbud the right to convert itself into a company incorporated under Luxembourg law, provided that the conditions for its incorporation laid down by the Luxembourg legislation are satisfied and, in particular, that the test adopted by Luxembourg to determine the connection of a company or firm to its national legal order is satisfied.

Further, the Court holds that a situation in which a company formed in accordance with the legislation of one Member State wants to convert itself into a company under the law of another Member State, with due regard to the test applied by the second Member State in order to determine the connection of a company to its national legal order, falls within the scope of freedom of establishment, even though that company conducts its main, if not entire, business in the first

Member State. The Court recalls, in that regard, that the fact that either the registered office or real head office of a company is established in accordance with the legislation of a Member State for the purpose of enjoying the benefit of more favourable legislation does not, in itself, constitute an abuse. Accordingly, the decision to transfer to Luxembourg only the registered office of Polbud (that transfer not affecting the real head office of that company) cannot, in itself, mean that such a transfer does not fall within the scope of freedom of establishment.

Secondly, the Court observes that, although it may in principle transfer its registered office to a Member State other than Poland without the loss of its legal personality, a company incorporated under Polish law, such as Polbud may, under Polish law, obtain the removal of its name from the Polish commercial register only if it has been liquidated. In that regard, the Court notes that, under Polish law, the process of liquidation extends to the completion of current business, recovery of debts owed to the company, performance of its obligations and sale of its assets, satisfaction or securing of its creditors, submission of a financial statement on the conduct of that process and an indication of where the books and documents of the company in liquidation are to be deposited. The Court holds that, by requiring the liquidation of the company, the Polish legislation is liable to impede, if not prevent, the cross-border conversion of a company. **That legislation therefore constitutes a restriction on freedom of establishment.**

Such a restriction may, in principle, be justified by overriding reasons in the public interest, such as the protection of the interests of creditors, minority shareholders and employees. However, the Polish legislation prescribes, in general, mandatory liquidation, there being no consideration of the actual risk of detriment to those interests and no possibility of choosing less restrictive measures capable of protecting those interests. In the Court's view, such a requirement goes beyond what is necessary to achieve the objective of protecting the abovementioned interests.

Finally, as regards the argument of the Polish government that that legislation is justified by the objective of preventing abusive practices, the Court holds that, since a general obligation to implement a liquidation procedure amounts to establishing a general presumption of the existence of abuse, such legislation is disproportionate.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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