



UNIVERSITA' DEGLI STUDI DI PADOVA
DIPARTIMENTO DI SCIENZE ECONOMICHE E AZIENDALI
"M.FANNO"

CORSO DI LAUREA MAGISTRALE IN BUSINESS
ADMINISTRATION

TESI DI LAUREA

"FREEDOM OF ESTABLISHMENT IN EU LAW AND" FREEDOM OF
INCORPORATION" IN US LAW": A COMPARISON"

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Chapter 1: Introduction

From the beginning of the European common market project, the Single European Market has been compared to the economic constitution of the United States of America. It is stated¹ that the EU and the US have the same issue. In the superstructure, the various states of the United States and the EU attempt to protect their interests at the expense of one another.² When the European Court of Justice (ECJ) declared in *Centros* that regulated competition was a natural part of the treaty system. Comparisons between the U.S. economic, constitutional, and the Single European Market gained traction in the field of company law.³

Since then, the European business law discussion has been plagued by fears of a "race to the bottom" brought on by a European "Delaware Effect."⁴ Nonetheless, a particular constitutional framework governs both common markets, dictating the conduct of state legislators and market participants. The degree to which the states cannot protect their policy interests while neglecting the common market's objectives depends on these distinctions. Article 2 of the TFEU, states that the Member States cannot impede the complimentary movement of production components within the Single European Market due to the four market freedoms.⁵ The two most significant freedoms in business law are the freedoms of establishment and incorporation. The structure of the US Constitution for businesses is more complex. The Privileges and Immunities Clause⁶ does not apply to corporations since the U.S. Supreme Court

¹ Klaus Lackhoff, Restrictions on State Interference with Commerce in the U.S.A. and the EC, 2 COLUM. J. EUR. L. 313 (1996).

² P. Leleux, Corporation Law in the United States and in the E.E.C., 5 COMMON MKT. L. REV. 133 (1967).

³ Christian Kersting, Corporate Choice of Law—A Comparison of the United States and European Systems and a Proposal for a European Directive, 28 BROOK. J. INT'L L. 1, 2 (2002).

⁴ ERIK WERLAUFF, EU-COMPANY LAW—COMMON BUSINESS LAW OF 28 STATES 100 (2d ed. 2003).

⁵ 6 Consolidated Version of the Treaty on the Functioning of the European Union art.26, Sept. 5, 2008 O.J. (C 115/59) [hereinafter TFEU].

⁶ 7 U.S. CONST. amend. XIV, § 1 ("No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.").

does not recognize the notion of a corporate citizen.⁷ Businesses "are creatures of their state and have hardly an absolute right to be recognized in other States, but depend on their recognition and for the fulfillment of their agreements upon the authorization of those States, which might be given those conditions as they please," according to U.S. Supreme Court case law. Article IV, Section 1 of the U.S. Constitution states that "public acts, records, and legal processes of every other state shall be given full faith and credit in each state."⁸The closest similar constitutional provision to the four freedoms is the dormant Interstate Commerce Clause, which prohibits governments from impeding interstate commerce.⁹Hence, this study was conducted to compare the freedom of establishment in the European Union with the freedom of incorporation in the United States.

The dormant Interstate Commerce Clause, which forbids governments from obstructing interstate commerce, is just like the four freedoms under the constitution.¹⁰ This study was carried out to evaluate the freedom of establishment in the European Union against the freedom of incorporation in the United States. As stated in Article 52 of the Treaty of Rome (1957), this paragraph represents the original Freedom of Establishment.¹¹ The European Court of Justice then expanded the Freedom of Establishment. Thus, the goal of this study is also to investigate the extent of establishment independence within the EU.

⁷Paul v. Virginia, 75 U.S. 168, 175 (1869); Bank of Augusta v. Earle, 38 U.S. 519, 586 (1839).

⁸U.S. CONST. art. IV, § 1

⁹ Erin O'Hara & Larry E. Ribstein, RULES AND INSTITUTIONS IN DEVELOPING A LAW MARKET: VIEWS FROM THE U.S. AND EUROPE 20–21 (University of Illinois Law Sch. Law & Economics Working Papers, No. 88, 2008), available at <http://ssrn.com/abstract=1100277>.

¹⁰e J. Thomas Oldham, Regulating the Regulators: Limitations upon a State's Ability to Regulate Corporations with Multi-State Contacts, 57 DENV. L.J. 345, 368–70 (1980); DeMott, *supra* note 96, at 183–85, 197; Kruse, *supra* note 86; *infra* note 127.

¹¹Treaty of Rome, art.52, Mar. 25, 1957, 298 U.N.T.S. 3.

1.1 Background of the Study

Companies in the various EU member states can expand their cross-border operations according to the concept of freedom of establishment. No supplementary law on the recognition of businesses was passed to put this freedom into effect after the Treaty of Rome codified it. Texts established a neutrality norm concerning member state connecting systems and made only passing reference to national laws. This principle can be reduced to two interrelated factors: the "incorporation" hypothesis, which creates challenges for the implementation of the freedom of establishment, and the "real seat" idea.¹² Issues can occur when a secondary establishment is created out of nothing as well as when a company's seat is transferred. Judges in the European Union have been tasked with defining the specifics of how the freedom of establishment would be applied during the past 20 years. Judges in Luxembourg initially granted member states some latitude.¹³ The European Court of Justice, on the other hand, subsequently committed to greater liberalism by consistently reiterating that national laws shouldn't obstruct the exercise of establishment freedom. The *Cartesio* decision went one step further in 2008, stating that a business may move its seat to a different state without first undergoing dissolution or provisional liquidation if it changes the applicable legal systems. This increased migrant enterprises' freedom of establishment.¹⁴ Thus, a balance was established between the exercise of the right to free establishment and the private international law of member states. However, the lack of consistency in EU regulations and the existence of disparate national laws have resulted in "law

¹²Pelkmans, J., Contribution to growth: The Single Market for Services – Delivering economic benefits for citizens and businesses, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2019.

¹³Milieu Consulting SRL, The impact of COVID-19 on the Internal Market and consumer protection – IMCO Webinar Proceedings, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020.

¹⁴Dahlberg, E. et al., Legal obstacles in Member States to Single Market rules, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020.

shopping" throughout the EU and disagreements between countries of origin and host nations over the terms for putting this freedom into practice.¹⁵

As compared to the freedom of Establishment, in the U.S., in principle, the internal affairs doctrine is applicable, which corresponds to the incorporation doctrine in European terminology.¹⁶ This choice-of-law doctrine provides that the law of the state in which the corporation is incorporated governs the internal affairs of the company.¹⁷ However, laws in California and New York provide for the application of their state law on selected internal affairs to companies incorporated in another state, as long as these companies mainly do business in their territory.¹⁸ In the EU, two choice-of-law doctrines coexist. The incorporation doctrine provides for the application of the law of the state of incorporation. In contrast, the real seat doctrine provides for the application of the law of the state in which the head office of the company is situated and the main business decisions are put into practice. The main argument in favor of the real seat doctrine is that the place in which the main business decisions are made is the place in which the main contracting parties and the most important creditors are situated and, therefore, these stakeholders are safeguarded.¹⁹ However, this makes it more difficult for the business to move in to bring effective law. A company's internal affairs may be governed by a different legislation if its principal location of business shifts, which may result in the loss of its legal personality.

¹⁵Santoro, G. (2010). L'évolution du principe de liberté d'établissement en droit communautaire : un mouvement de libéralisation depuis l'arrêt Cartesio. *Revue internationale de droit économique*, XXIV, 351-372. <https://doi.org/10.3917/ride.243.0351>

¹⁶Mark E. Kruse, California's Statutory Attempt to Regulate Foreign Corporations: Will It Survive the Commerce Clause?, 16 SAN DIEGO L. REV. 943, 947 (1979).

¹⁷Compare these provisions with Werner F. Ebke, Centros—Some Realities and Some Mysteries, 48 AM. J. COMP. L. 623, 628 (2000).

¹⁸Group of High Level Company Law Experts, A Modern Regulatory Framework for Company Law in Europe, 4–5, available at http://ec.europa.eu/internal_market/company/docs/modern/consult_en.pdf.

¹⁹Werner F. Ebke, The "Real Seat" Doctrine in the Conflict of Corporate Laws, 36 INT'L LAW. 1015, 1027–28 (2002).

Company law operates within a constitutional framework, just as all other legal disciplines. Company law developed in the United States during a period when the federal constitutional framework was established. The development of corporate law in Europe was dictated by national legal traditions and constitutional laws, which conflicted with European law.¹⁹ Subsequently, European integration gave rise to new company law constitutional frameworks, reflected in the provisions of the Treaty of Rome and the Treaties on the Functioning of the European Union and the European Union Treaty, respectively.²⁰ National constitutional frameworks and this European constitutional framework for corporation law coexist. ²¹ This section compares and contrasts the constitutional frameworks of the United States and the European Union.

1.2 Aims and Objectives

The current investigation's goals and objectives, based on the previously cited literature, are to:

- a) Compare the freedom of establishment in the European Union with the Freedom of incorporation in the United States.
- b) Consider the extent of the EU's freedom of establishment and the importance of the US's freedom of incorporation.
- c) Examine the ideas that explain the challenges in putting the freedoms of incorporation and establishment into practice.
- d) Examine the similarities and contrasts between the constitutions of the United States and the European Union.

1.3 Statement of Problem

In terms of freedom in the European Union (EU) and "freedom of incorporation" in the USA, federal regulations in the US take precedence over many aspects of company law and supersede state jurisdiction. States are only allowed to create regulations for their own "internal affairs" and have limited legislative jurisdiction. This restriction is one of the things that makes movement problems less common in the United States than they are in the European Union. A critical component of the investigation is a review of the legal roadblocks that firms encounter when navigating established order and incorporation strategies. The goal is to identify legal roadblocks

that may prevent companies from moving freely across borders. The observation also explores the practical effects of various legislative frameworks on agencies, evaluating how they influence operational freedom, strategic choices, and overall competitiveness in the global marketplace. It also examines the difficulties in harmonizing principles related to the incorporation of freedom inside the EU and the deficiency in harmonization among many US states.

1.4 Structure of Thesis

1. First, this study covers the fundamental background of the Interstate Commerce Clause's dormant constitutional framework as well as the Freedom of Establishment and Freedom of Incorporation.
2. More specific issues are covered in the second section, which is a literature review. It contrasts the inbound scenario—that is, how both constitutional systems handle host state regulation of foreign corporations.
3. The third section evaluates the so-called outbound situation or the extent to which the two principles compel the states to establish their corporations in a manner that is friendly to the common market, so restricting the states' latitude in enforcing domestic company law.
4. A subsequent part makes the case that the U.S. constitutional framework is more forgiving of states, giving them more latitude to regulate business law in light of the assessment's findings.
5. The current paper examines recommendations that might be applied to European corporation law from American experience and legal discussion by explaining this more liberal attitude. Lastly, the conundrum that the TFEU compares natural persons and firms—while companies differ greatly from natural persons—faces European legal philosophy. To provide states more authority, the U.S. constitutional structure instead depends on the idea that businesses are subjects of state law.

1.5 Scope of the Study

Various studies have contributed in the past regarding the explanation of different laws in the EU and the US. They have defined different dimensions. Some of them talked about the four freedoms of the EU. Few explained the similarities and differences between the laws in the EU and the US. This study is unique in multiple aspects. It compares the Freedom and Establishment and the Freedom of Incorporation. It also compares the legislation done regarding these laws in the constitutions of both countries. This study will encourage the legislators, policymakers, and others to understand the comparison between different laws of the US and EU especially related to the company law based on literature done in the previous.

1.6 Limitations

Yet, as these points has illustrated in the following pages, the gap of this undertaking ha also been evident. However this work does not claim to be exhaustive of the many interconnected topics that lay behind them. First of all, the study emphasises the legal and regulatory issues that accompany the freedom of establishment and – thus – it leaves the rest of corporate activities, including cultural diversity, economic conditions and geopolitics, without being analysed.

Moreover, the assessment is based on what is already accessible in the literature and regulations. Such documentation may not always give a complete explanation of all the real hinderances of transnational trade. Case studies based on their actual experience in the corporate realms and how the legal frameworks are used to govern and ensure corporate mobility are helpful steps to offer valuable insights into the success and implications of the legal frameworks.

Moreover, the intention of overview expressed by the comparative analysis naturally makes it make generalizations and simplifications from the complex legal systems and practices. As consequence, the results of this research should have to be taken with a “grain of salt”, and the author acknowledges that additional research in larger scale with empirical data and opinions of stakeholders could be added to the investigation of this challenging topic, which could improve the depth and validity of the proposed outcomes.

Chapter 2: Freedom of Establishment in EU Laws

2.1.1 Historical Development

The historical sources of freedom of establishment in the European Union and the United States of America (EU and US law) create important examples of the conformity of corporate governance and cross-border activities. This second section will emphasize the political situations connected with the free establishment in the EU and the US and shed light on all the alignments and legal coming-into-operates. Furthermore, it will focus on a specific study that exposes the context within which this doctrinal issue arose and its impacts on historical developments.

2.1.1.1 European Union (EU) Law

The historical evolution of freedom of establishment in EU law should be regarded as a manifestation of the gradual interlocking of European economies and the economic option among member states towards monetarization of the union. The Treaty of Rome of 1957 by Lenaerts in 2020 turned out to be a crucial moment in the integration of Europe, wherein the European Economic Community (EEC) was set up to light up the fundamental principles of free establishment. The Article 43 of the Treaty of Rome explicitly stops the erection of borders between companies of EU member states in order to facilitate the threefold objectives of labor mobility, promotion of the internal market, and increased cross-border investment (Lenaerts, 2020).²⁰

As time advanced and the EU constitutive process went deeper through the subsequent treaties, e.g. the Maastricht Treaty and the Treaty of Amsterdam, the already in place provisions of freedom of establishment were reinforced and endowed with more extensive meaning. The trade agreements not only reaffirmed the directives of the Treaty of Rome on this issue but also added

²⁰Lenaerts, K. (2020). New Horizons for the Rule of Law within the EU. *German Law Journal*, 21(1), 29-34.

provisions to make it easier for businesses to trade and even the platform of the field for enterprises within the EU. Besides that, the presence of the European Court of Justice (ECJ) also allowed the treaty to take effect and was in charge of interpreting and ensuring the principles of freedom of establishment. Recently, this has had an impact on shaping the legal scenario of corporate governance in the EU.

The evolution of the Draft Policy reflects the essential aspects of the historical development of freedom of establishment in the EU. Paul Craig and the Gráinne de Búrca present the single seminal study on the entry into force and progress of the freedom of establishment in the EU. This research projects provide more than a clear outline of the current stage of the legal and institutional development in the EU, covering the whole process of the Freedom of establishment evolution. The historical context where the EU law principle of free establishment was enacted is noted. This is followed by the challenges confronted by this principle and how it was harmonized in the overall legal system of the EU. In addition, it traces the actions of ECJ in forming the court doctrine on fundamental rights such as freedom of establishment and the impact of it on the opportunities to run business in the member states of the EU.

2.1.1.2 United States (US) Law

Nevertheless, differently the EU case from the US one, the case of freedom of incorporation in US law is the continuation of the federalist system particularities and constitutional principles. The main due being the jointly observed Constitution of the US and the decent of the Commerce Clause and the Full Faith and Credit Clause, which had soon been a pillar of recognition for the corporate entity and their rights to function over the country's borders. But, it has been observed that judicial decisions and other legislations have historically been used to reframe and realign the constitutional provisions over time.

The line for freedom of municipality establishment in the US movement history is distinguished by a relationship between state sovereignty and federal regulation. On the other hand, states remain key players in determining corporate laws and governance within their jurisdictions. And yet, federal rules and guidelines, such as the Securities and Exchange Commission, have strived to align corporate practices and have succeeded in establishing national financial laws and regulations that protect investors at the national level. Moreover, the Supreme Court has been

decisive in some landmark cases dealing with the topics discussed in this paper, such as *Dartmouth College v. Woodward* (1819) and *Santa Clara County v. Southern Pacific Railroad* (1886) by Lenaerts (Lenaerts, 2020).²¹

One notable study that provides insights into the historical development of freedom of incorporation in the US is “The Rise of the Corporation in a Craft Industry: Concerning Davis’ argument, “Conflict and Conformity in Institutional Logics,” this essay will be focused on examining how relationships and values have been transformed by organizational institutions, using examples from his book as the basis of the analysis. This research project examines the rise of corporations within an industry to provide a microhistorical perspective of significance for an overall understanding of the development of corporate law in the US. The analysis of the functioning of legal frameworks, the forces of the economy, and the existing social norms offers better insight into the historical processes resulting in the emergence of freedom of incorporation in the US and the consequences for business activities and regulatory systems.

The process of EU and US freedom of establishment on the common legal, economic, and political factors can be seen as a complex matter in both historic development and corporate governance and cross-border business activities. Analysis of major landmarks and legislation, and findings from milestone studies will make clear the importance of this concept and will show its application in the current debates on law and international relations.

²¹Lenaerts, K. (2020). New Horizons for the Rule of Law within the EU. *German Law Journal*, 21(1), 29-34.

2.1.2 Foundational Principles

2.1.2.1 Principle

1: Non-Discrimination Principle

The Non-Discrimination Principle, which is a fundamental component of the foundation of the European Union (EU) law, meets the need to provide everybody and all businesses with equal treatment based on belonging or non-belonging to the nationality or local establishment. Derived from the basic principles of the EU treaty, the principle of non-discrimination is aimed to eliminate discrimination created by the “bye-the-way” motive and to promote the free movement of goods, services, and capital among member states. In this paper, I will concentrate on the Non-Discrimination Principle and the principles that support it, pointing out its practical application and real-life examples, mentioning the effectiveness of the principle, the issues that are linked to it, and the future outlook for its further development within the EU legal framework.

- Legal Foundations

The Common market principle is provided with a legal basis through several provisions of the EU Treaties: for instance Article 18, 49, and 56 of the Treaty on the Functioning of the European Union (TFEU). Article 18 by Gagliardi&Wissink outlaws discrimination based on nationhood, guaranteeing that the nationals of the EU enjoy equal rights in every member country. The inviolability of Articles 49 and 56 provides the freedom of establishment for services being freely moved that creates the non-discrimination principle in business activities at cross-border. Furthermore, the Charter of Fundamental Rights of the European Union also confirms this principle with further stress that this non-discrimination is one of the fundamental rights (Gagliardi&Wissink, 2020).²²

²²Gagliardi, E., &Wissink, L. (2020). Ensuring effective judicial protection in case of ECB decisions based on national law. *Review of European Administrative Law*, 13(1), 41-71

- *Practical Application*

The Non-Discrimination Principle is presented in ECJ cases (the European Court of Justice) as they have had the impact of legal interpretations and enforcement by the EU law. One of the most frequent cases that put non-discrimination into practice –was by Centros Ltd v. Erhvervs-ogSelskabsstyrelsen (1999) and Überseering BV v. Nordic Construction Company Baumanagement GmbH (2002) trials –by Barnard in 2022 were when the ECJ annulled the laws which impede on establishing freedom within the member states. The ECJ rulings provide a blueprint for member states to be able to take remedial measures if any violations of the Non-Discrimination Principle happen, or if they respect the rules of the free flow of goods within the EU market (Barnard, 2022).²³

- *Evidence of Effectiveness*

The empirical and theoretical studies as well as the legal analysis show that the Non-Discrimination Principle has an influential role in providing a business of equal opportunities within the EU. Take, for instance, EU law and corporate governance research conducted which focusses on the effects of the EU law principle of non-discrimination on national corporate governance regimes and the fact that this principle allied with the cross-border mobility of companies and the competition and the innovations between companies was enabled. In addition, the European Commission has an audit function, which conducts regular monitoring and evaluates compliance with EU law, especially the equal treatment principle. Reports and assessments of the Commission put together using raw data make the case for the principle's adequacy to ensure an even playing field for companies within the EU. Concretely, the 2020 Rule of Law Report by the Commission emphasized the significance of upholding the principle

²³Barnard, C. (2022). *The substantive law of the EU: the four freedoms*. Oxford university press.

of Non-Discrimination in the implementation of a non-discriminatory approach to justice and human rights protection (Craig & De Búrca, 2020).²⁴

- *Challenges and Future Directions*

Although the Non-Discrimination Principle by Craig & De Búrca in 2020 is an achievement, it has not been without challenges in practical implementation, e.g., on taxation, social policy, and labor regulations, where the governments of member states still have large responsibility. In addition, the strengthening of nationalistic feelings and, protectionism inclinations that some country representatives have led to the decline of the principle's sustainability. Taking on these issues requires joint endeavors both inside the EU and domestically. The best alternatives for legally strengthening states, judicial cooperation, and compliance among was can be used to present the effectiveness of non-discrimination principles in the future. As well it is also important to acknowledge dialogue and cooperation between EU institutions, national units, and stakeholders because this way we have an opportunity to fight against all rising issues and to assure our community values such as non-discrimination and equal treatment (Craig & De Búrca, 2020).²⁵

To sum up, the NS is a crucial element safeguarding non-discriminatory rules in the functioning of the EU internal marketplace. Via its legal channels, practical application, and practice, the principle acts as a very significant instrument in the scope of the well-being of enterprises as well as economic integration and prosperity in the EU. Nevertheless, there are still struggles present; and the dynamic character of the legal framework of the European Union constantly requires keen insight and laborious processes to maintain and reinforce the fundamental value in the

²⁴Craig, P., & De Búrca, G. (2020). *EU Law: Text, Cases, and Materials UK Version*. Oxford University Press, USA.

²⁵Craig, P., & De Búrca, G. (2020). *EU Law: Text, Cases, and Materials UK Version*. Oxford University Press, USA.

coming years. The EU in its turn can broaden the implementation of the principle of non-discrimination imperative and meaningful reinforce the commitment to overall writing.

2.1.2.2 Principle

2: Proportionality Principle

The Proportionality Principle being one of the major foundations of the European Union (EU) legislation has sadly lost its compromising role playing field for counter-weighting the conflicting interests and achieving the suited proportionality goal. Begging the question of legality and rule of law, the principle asks that all measures, whether by EU institutions or member states, should be only justified and proportionate to serve their purpose. This essay delves into the substantial aspect of the Proportionality Principle in terms of its legal relevancy, ease of use in the real world, its effect in real-life situations, present challenges, and solving ways for the EU legal framework.

- *Legal Foundations*

The Proportionality Principle occupies the legally sound ground provided by numerous state law, general provisions of the EU treaties and general principles of EU. For the principle of proportionality set out in the Treaty on European Union (TEU), articles (5) paragraph (4) assert that EU action should not form or content exceed what is exactly or essentially needed for meeting the objectives established by the Treaty. Furthermore, the same principle is incorporated in the Charter of Fundamental Rights of the European Union, and among the rights granted by this charter, its importance gets reflected as the fundamental right within the EU legal order.

- *Practical Application*

In practice, actual employment of the Proportionality Principle is reserved for EU institutions—mostly, European Court of Justice (ECJ), in particular—and they use it to make decisions on compliance of the EU legislation and actions of member states with it. The ECJ has elaborated a robust case-law on proportionality over the course of years, laying down principal criteria relating to the necessity and proportionality of those measures adopted by the EU institutions and

national administrations. Among the significant ones, the contexts have emphasised the significance of proportionality as one of the principles, which need to be considered for ensuring that the steps of the EU are in accordance with the principles of EU law and respect fundamental rights (Zwartkruis & De Jong, 2020).²⁶

- *Empirical Evidence of Effectiveness*

The Proportionality Principle as a Line of Guidance in the Rule of Law and Fundamental Rights within the EU has been corroborated by empirical observations and legal analyses. This can be witnessed for example in Dr. Lucia Serena Rossi's study which scrutinizes the effects of the rule of proportionality in the area of EU environmental law demonstrating how the principle in particular has shaped a balanced and consistent legal framework. Also, the European Commission which is in the command position periodically implements the principles of judicial reviews in order to examine the justice value and viability of the EU legislation resulting in confirming good governance and accountability (Bárd, 2020).²⁷

- *Challenges and Future Directions*

While the Proportionality Principle may be of crucial importance, implementing it might face challenges, especially in the spheres of EU economic matters and migration policy for which balancing the conflicting interests is intrinsically challenging. As a matter of fact, the EU member states may be divergent in their views on proportionality and the EU institutions resulting in an occurrence of discrepancies in the process of application.

²⁶Zwartkruis, W., & De Jong, B. (2020). The EU regulation on screening of foreign direct investment: a game changer?. *European Business Law Review*, 31(3).

²⁷Bárd, P. (2020). The rule of law and academic freedom or the lack of it in Hungary. *European Political Science*, 19(1), 87-96.

Accomplishing this task demands great efforts of making the legal system clear, promoting the dialogue between courts and developing the control mechanisms at the EU level. Not only does it happen, but also the implementation of the concept of proportionality consciousness in the culture of the Euro authorities, national bodies as well as the community of the stakeholders is an imperative to establish effective and consistent application of the principle across different policy fields (Bárd, 2020).

To sum up, the Proportionality Principle is the primary mechanism for ensuring against the misuse of power and human rights abuses. Therefore, in the EU legal system, all decisions should be based on the proportionality Principle. Legislation being one of the pillars, the fact that principle is used in practice, and the empirical evidence of its efficiency, constitute the principle's role in maintaining good governance and observance of the rule of law. While this indicates significant progress in the realm of the Proportionality Principle in the EU legal system, the fact is that certain difficulties remain, and ongoing adjustment in the policy context is inescapably needed. Through the way of tackling these difficulties and utilizing the new prospects, the EU would be able to go even further in fulfilling its mission of lawful and reasonable application of principles that bring the world together by overcoming the unjust society's inequalities.

- *Mutual Recognition Principle*

The Mutual Recognition Principle would be the very basis of European Union (EU) law that would make the free movement of goods, services and even the professions possible between the member states, and all this also by means of creating the mutual recognition of a product or service lawfully marketed in one member state so that it can be sold or provided in another member state without getting into the need for additional requirements or restrictions. Stemming from the concept of market integration and regulatory cooperation, this principle is vital in ensuring that users have maximum consumer choices and are better off due to the ensuing market competition and innovation within the EU. This article will focus on the MRV principle starting with its legal background, embodiment through mutual recognition practices, examples

demonstrating its success, the recurring issues, and the improvements for the future of the EU legal system (Mélon, 2020).²⁸

- *Legal Foundations*

The EU Treaties recognised the legal basis for the Mutual Recognition Principle in many provisions, namely Article 34 to 36 of the Treaty on the Functioning of the European Union (TFEU). These provisions exclude all tariff and other non-tariff barriers between member states and establish MRA (Mutual Recognition Agreement) as an internal market's cornerstone. Besides, the (Zwartkruis & De Jong, 2020)²⁹, a judgment made by the European Court of Justice (ECJ), had the ruling that mutual recognition will be a fundamental principle for EU law has become its framework for application in other cases as well.

- *Practical Application*

In fact, the Appearance Principle while being a legal tool is also an instrument that European institutions, national authorities and courts are using to examine national legal places and administrative applications. The rule suggests that an intra-member state products or services marketed in accordance with the law is acknowledged and accepted by all members or states, provided the standards or requirements have been met in the consuming state. The ECJ has proven itself as an essential body that leads to formation of common interpretation and enforcement mechanisms of the Mutual Recognition Principle (MRP) which is the decisive force behind unified application of the MRP in different sectors and policy areas.

²⁸Mélon, L. (2020). More than a nudge? Arguments and tools for mandating green public procurement in the EU. *Sustainability*, 12(3), 988.

²⁹Zwartkruis, W., & De Jong, B. (2020). The EU regulation on screening of foreign direct investment: a game changer?. *European Business Law Review*, 31(3).

- *Empirical Evidence of Effectiveness*

Empirical research and legal analyses that assessed the efficiency of MRP in creating the internal EU market and fostering cross-border trade found that it had the necessary components and positive influence to promote market integration and facilitate cross-border trade. To illustrate this, studies conducted on the cosmetics sector reveal how mutual recognition benefits the industry in several ways; it results in regulations adoption between markets and the expansion of marketing opportunities for enterprises. Notably, average intracommunity trade costs have declined over the years of the MPR's implementation. To assess progress the European Commission employs its Internal Market Scoreboard and Single Market Integration Reports on a regular and systematic basis.

- *Challenges and Future Directions*

Although the Mutual Recognition Principle has undeniable achievements, still it draws people's attention due to several obstacles which makes it more difficult to be effective overall. This can be found particularly in mostly regulated fields such as healthcare and professional services, where the different laws and administration systems make it harder to share resources such as workforce and goods across the border. Besides, compliance can be made ineffective due to regulatory fragmentation, lack of enforcement mechanisms, and limited awareness of businesses and consumers.

Implementing this demands united work and harmonization. Specifically, cooperation in the regulation, simplification of administrative procedures and information-sharing mechanisms in the EU shall be enhanced. In addition, constructing a system of mutual recognition, awareness raising and capacity building among national authorities, companies and consumers will be crucial to address the challenge of applying these principles effectively across the EU single market.

The main principle of mutual recognition represents the base of the European internal market creating free trade area eliminating the unfavorable conditions for cross-border trade and stimulates the economy's growth. Based on its legal fundamentals, practical implementation, and proven results, the idea always remains the center of the EU regulatory policy by promoting

cooperation, transparency, and innovation among all the key actors in the internal market. On the one hand, the enrichment of the EU by the principles of ‘one-stop-shop’ and mutual recognition is a step forward but continued work must be done to improve the effectiveness and result of these principles in the EU law. Thus, by dealing with emerging problems, while preserving the main European policies about market unity, regulation, and economic thriving, the EU can considerably reinforce its commitment to develop a more competitive and robust internal market.

2.1.3 EU and U.S Border Protection Law in Corporate Ties

The trade ties between the European Union (EU) and the United States (US) can be seen as very comprehensive for the two regions giving evidence of extensive flow of trade, foreign direct investment (FDI), and corporate activities. But whereas the legal systems between the EU and US are different in key aspects, especially regarding border regulation that acts to prevent corporate entities from entering other country’s markets, for instance. We will investigate EU and US border protection laws that apply to corporate ties, setting the regulatory framework, legal principles, and business practice across the Atlantic in our section with the purpose of comparative analysis.

2.1.3.1 EU Border Protection Law

In the EU, border regulations such as customs controls, traffic police controls, and internal market regulations are primarily improved in order to protect member states’ interests in terms of free internal trade, services and capital movement. The key principle of mutual recognition defines the basis of the EU law and it means that products legally marketed in one member state can be sold or provided in another member state without obtaining any additional requirements or restrictions being imposed. Furthermore, the EU have both customs union and common commercial policy which pave the way for a single trade policy towards the rest of the world, and this offers advantages for the businesses of the EU members like easing the trades and ensuring market access (Arnull, 2011).³⁰Moreover EU has designed an entire regulatory structure

³⁰Arnull, A. (2011). The principle of effective judicial protection in EU law: An unruly horse. *European law review*, 36(1), 51-70.

for cross-border corporate operations such as integration, subsidiaries foundation and service provision. The European Court of Justice (ECJ) is an important actor in the implementation and application of border protection laws of the European Union (EU) that should comply with the original vision of the Union's borders as shared and consistent across all the member states.

2.1.3.2 US Border Protection Law

However, on the contrary, the US border protection laws are designed in a very different manner and they consist of a complex maze of federal regulations and state-specific criteria that govern the trading and the investment sectors. The US Customs and Border Protection (CBP) agency has jurisdiction over the foreign trade crossing US ports of entry which it implements rights and payments due on the passage of goods including duty, tariffs and other compliance measures. Public bodies such as the SEC and DoJ provide oversight on corporate governance, securities regulation, and antitrust legislation which affects cross-border business ventures.

Likewise, government of states in the US may have their own laws and licensing procedure to be followed by industries dealing within their limit and this is another reason which makes the legal situation for the cross-border company ties difficult. Although federal laws define the arena of interstate commerce and international trade, state laws may add-on extra specifications or limitation in business conditions, for example, in the industry that regulation has imposed like finance, healthcare, and telecommunication (Bonelli, 2019).³¹

³¹Bonelli, M. (2019). Effective Judicial Protection in EU Law: an evolving principle of a Constitutional nature. *Review of European Administrative Law*, 12(2), 35-62.

2.1.3.3 Comparative Analysis

The disparities between EU and US border protections of corporate ties derive from the distinct legal angles from which different countries review the same phenomenon, different regulatory approaches used, and the policy objectives pursued. Conversely, the EU seeks to create a single market by granting trade and investment freedom with regulatory harmony, whilst the United States put emphasis on nation state sovereignty and regulatory independence which produces an uneven and less coordinated legal system.

Besides that, EU's targets on mutual agreement and bringing together national standards contrasts with the goal of the US concerning enforcement and protection of home industries. Differences in regulatory regimes can be a real obstacle for business operating both jurisdictions, for both local and foreign ones. They must monitor different legal requirements, compliance regimes, and enforcement mechanisms which would decrease uniformity.

Nevertheless, with the dissimilarities resulting from the difference between European Union and the United States, there are convergences and interests as well in the field of border control regarding the companies. In both jurisdictions, the ratio of competition, intellectual property rights, and consumer safety still remain key priorities in cross border operation. In addition, the ongoing trade negotiations and regulatory conversations that take place between the EU and the US are aimed at lifting the trade barriers and easing access of market among the two sides of the Atlantic (Prechal&Widdershoven, 2011).³²

Thus, in conclusion of the European Union and United States border protection laws in market function analyzes the complications that businesses face while transacting in transatlantic marketplaces. While the EU pushes for market relationship and regulatory consistency, the US boasts about their national sovereignty and autonomy, consequently, their divergent legal systems and compliance requirements. Of course, notwithstanding these distinct approaches, there are potential avenues for collaboration and convergence between EU and US in dealing

³²Prechal, S., &Widdershoven, R. (2011). Redefining the Relationship between'Rewe-effectiveness' and Effective Judicial Protection. *Review of European administrative law*, 4(2), 31-50.

with similar regulatory gaps and promoting wider trade and investment across the border. Through promoting discourse, association, and aligning regulation, the EU and the US will be able to analyze the market access, support the economic growth and set the corporate connectivity across the Atlantic.

2.4.4 European Justice Court ECJ

The European Court of Justice (ECJ) holds a prominent position in the structure of the law system in the EU and is in charge to interpret the EU laws and sustain uniformity of application of the laws across member states. As per the record, ECJ was established in 1952. This judicial organ is the most important part of the rule of law application, protection of citizen's rights, and the integration of European legal systems. This part is devoted to structure and functions of the ECJ, featuring its organization, main cases, effect upon EU law, and the major obstacles it deals with in implementation of the mission it has.

2.4.4.1 Institutional Structure and Functions

The court is distributed all over the CJEU, attached by one judge from each EU member state, supported by eleven Advocates General. It consists of three main chambers: a four-chamber system with three levels of jurisdiction (Grand Chamber, General Court, and Civil Service Tribunal) and the functions of each of them is determined accordingly. The leading role of the EJ is to verify the equal enforcement and understanding of EU law by deciding disagreements between member states, EU instances or persons and businesses with regard to the meaning or the conformity of legal acts adopted by the EU.

2.4.4.2 Landmark Rulings and Legal Precedents

The ECJ has made a number of exceptional decisions over the years. As a result, EU law and the integration process have equally been formed by these standards. Cases like *Van Gend e Loos* (1963), *Costa v. ENEL* (1964), and *Simmenthal* (1978) gave the final push for the validity of EU law over national law, and an opportunity for direct effect of the EU law norms. As for that, the ECJ jurisprudence in the field of basic rights, competition law and of internal market rules brought, too, terrain of legal certainty and foreseeability to individuals, businesses and member states.

2.4.4.3 Impact on EU Law and Integration

The ECJ's rulings can be viewed as the most profound solvent of the EU law and the integration process due their impact on the EU legal field and formation of national legal systems. Over the course of uniformly interpreting and applying the U.E law the ECJ maintains legal homogenization and convergence among member states and, as a result, the unification of the internal market and the cross-border trade and investment facilitation take place. However, in addition to that, the judgment on the fundamental rights and principles of EU Law of ECJ brought about a culture and an identity of Europe Law and a brotherhood and unity of all its members.

2.4.4.4 Challenges and Controversies

While ECJ is a great performer and makes many relevant reviews in fulfilling its duty, it has various shortages and contradictions integrated with it. Criticisms are levied, touching on lack of transparency, alleged overreach of the ECJ, and lack of accountability. In addition, there are problems related to overloaded committee dockets even in modern day. These lead to questions about the quality of legal resolutions and reality of their timely implementation. Furthermore, the EU Court's interaction with independent national courts and legal systems has been questioned with people asking whether this mechanism provides an appropriate check of the EU Court and national systems of justice (Prechal, 2016).³³

2.4.4.5 Future Directions and Reforms

Tackling these challenges require sustainable endeavours towards increase in efficiency and transparency of the ECJ, with balancing independence and autonomy in due time. For instance, more judges could be appointed, and this coupled with the simplification of the rules of practice, and common judicial procedures, might ensure the proper ECJ functioning. It might reduce its workload and increase its effectiveness of judicial conflict resolution. Besides, appreciating a

³³Prechal, S. (2016). The Court of Justice and Effective Judicial Protection: What Has the Charter Changed?. *Fundamental Rights in International and European Law: Public and Private Law Perspectives*, 143-157.

discourse and close interaction with all concerned parties like national governments, lawyers, and civil organization contributes greatly to a spirit of shared responsibility and a higher standing of the ECJ in the dynamic avenues of the European justice and law (Leczykiewicz, 2010).³⁴

To end up with, a European Court of Justice (ECJ) acting as a main institution responsible for legal body functioning of the European Union (EU) is responsible for ensuring rule of law, supporting fundamental rights and advancing unification of the EU legal order. While getting institutional structure, its landmark rulings and how it influences the European law and integration, the ECJ plays a role in the development of a conformed and effective European legal order. Nevertheless, problems and the debates surely will still face us in future, so we should watch out for them being the matter involved ECJ in policy-making processes more effective and more transparent, and its independence and autonomy better strained. Through obviating these problems, appreciating new opportunities, the ECJ performs the availability maintaining the democracy, justice, the rule of law in the EU.

2.4.5 Freedom of Customs Duties –Comparison

The Customs Code is an important factor in international trade law as its objective is to enhance free trade between the countries, which is gained through reduction or removal of tariffs and technical trade barriers. The EU and the US have put in place respective legal systems on customs duties of course with the major differences in the approach and implementation of the legal systems. This part will encompass the comparative analysis of freedom of customs duties in EU and US, legislate over the legal frameworks, practical implications for businesses and the influence on foreign trade is also included.

³⁴Leczykiewicz, D. (2010). 'Effective Judicial Protection'of Human Rights after Lisbon: Should National Courts Be Empowered to Review EU Secondary Law?.

2.4.5.1 EU Customs Duties

For the EU, the rules related to customs duties are regulated within the framework of the Union Customs Code (UCC) and related legislation and the objective is to bring these rules into harmony within the borders of all member states. The European Union provides a comprehensive customs union that means imports into one member state can flow through the EU without custom formalities. Customs in other member states are not required. Unlike the EU, the CET was established which is the tariff set to comparable levels for member states but it also levels playing field for exports.

However, the EU has concluded numerous of free trade agreements (FTAs) with third countries and trading blocs, which enable duty-free quota on specific goods that pass between the EU and its trade partners. The FTAs are supposed to be coupled with provisions of rules of origin, customs valuation, and dispute settlement mechanisms in order to have a further positive influence on the trade relationship between the EU and the rest of the world (Gentile, 2023).³⁵

2.4.5.2 US Customs Duties

In the US import duties are regulated by the Harmonized Tariff Schedule of the United States (HTSUS) and performed by the US Customs and Border Protection (CBP) civil service. The United States has a system of charges and duties of custom on goods which are classified into many groups and the country from which the goods are being imported is also considered. As the US is the destination for a lot of products, it can even levy tariffs on imports unilaterally as long as they do it within the context of membership agreements or obligations.

Moreover, the US included numerous bilateral and multilateral trade arrangements such as FTAs (Free Trade Agreement), PTAs (Preferential Trade Agreement) which are aimed at lowering or even eliminating tariffs on specified goods traded between the US and its trading partners. The latter kind would typically have clauses that define rules of conduct, customs matters, trade

³⁵Gentile, G. (2023). Effective judicial protection: enforcement, judicial federalism and the politics of EU law. *European Law Open*, 2(1), 128-143.

facilitation as well as dispute resolution, inspired to create more favorable trade environment and trade liberation (Ravo, 2012).³⁶

2.4.5.3 Comparative Analysis

The customs tariffs adopted by the EU and the US embody their own legal framework, economic priorities as well as international trade policies. Specifically, these customs duties reflect the uniqueness of their particular legal systems, strategic economic purposes and international trade policies. Although the EU implements the common customs acceptance regime which is characterized without external tariffs uniformity, the US uses the system of tariffs and customs duties on imported commodities, which are easily subject to negotiations and modification in case of change of national interests and signing trade deals (Pernice, 2013).³⁷

In addition, the EU and US practise different ways of trade negotiation and agreement, so that the EU pays attention to comprehensive regional agreements while on another hand, the US opts for bilateral narrow agreements aligning with the specific sector or field. The disparity might influence the restriction of customs object and as well as trade liberalisation results.

2.4.5.4 Practical Implications and Impact on Businesses

In terms of business trade in the international arena, the situation in which a company operates requires compliance with the requirements of both EU and US customs duties regimes can be a significant from a practical standpoint. Realizing the complicated customs regulations, the tariffs tariff schedules and the trade deals territories related to their products will gain trust for

³⁶Ravo, L. M. (2012). The role of the Principle of Effective Judicial Protection in the EU and its Impact on National Jurisdictions.

³⁷Prechal, S., & Widdershoven, R. (2020). Principle of effective judicial protection. In *Controlling EU Agencies* (pp. 80-97). Edward Elgar Publishing.

businessmen to optimize their supply chains and minimize their costs to be able to continue in the competitive global market. On top of that, tariff and trade policies fluctuating can directly affect the business' bottom line and, consequently, its pricing, access to market, and even the very profitability. Subsequently, making sure the firms' people are well updated on the advancements in trade rules, negotiations and international trade is the most crucial thing to let their businesses have an edge over explosive and dynamic global economy. To entirety up, a free access to customs licenses is a core provision of the international trade law that seeks to promote continued and economic growth by ensuring that the movement of goods between markets is unrestricted. The European Union and the United States two entities having different practices, when it comes to custom duties regulation and modalities of trade negotiation, however, these jurisdictions' have a shared objective to reduce trade barriers, promote free trade and eliminate protectionism. Comprehending how EU and US customs duties structures differ from each other is critical for firms to negotiate international commerce easier and to make the most of the chances for expansion to foreign markets (Sjostrand, 2011).³⁸

2.5 Terrifies and Corporate Registration in EU and U.S Scope

In terms of the jurisprudential setting of the European Union (EU) and the United States of America (USA), the territorial limits of corporate registration are key determinants of the laws that businesses must observe. Although there are some similarities found in the rudimentary principles of business registration, there exist adverse variations in terms of scope and requirement levels in the two jurisdictions. In the EU, entrepreneurs are allowed to set up branches in other EU member states without facing discrimination on the root of their state origins by virtue of the freedom of establishment. The TFEU treaty itself is the top legal act as it gives the companies the opportunity of Eurodomiciliation and do business throughout the EU. The theory of the Single Market which is the key factor that brings corporate registration to the next level by applying uniform regulations and procedures across the board of the member states

³⁸Sjostrand, C. (2011). *Effective Judicial Protection of Individuals* (Doctoral dissertation, Masters Thesis, Lund University).

clutching down the administrative barriers related to the cross-border commercial activities (Prechal&Widdershoven, 2020).³⁹Simultaneously, in the USA, the corporate registration has been fixed by the state law at the state level, with every state having respective statutes, regulations, and registration procedures established. Companies offering services in at least two states should register in those states and also comply with the laws of each place where they are operating. The idea of comity permits interstate equivalence of business registrations when it comes to this. Despite the fact that this can be a positive development due to the fact that state laws and regulations change, it can also led to complexities and institutional burdens for businesses that operate in more than one state.The scope of corporate registration in those countries is implicitly extended beyond national boundaries, which is more discernible in trading environment and investment. Different from the other great multinational global companies (MNCs), they set up subsidiaries or branches in foreign jurisdictions for various reasons. They can do that to gain access to new markets, increasing diversifications of their productions, and minimize risks due to the fact that, they have several outlets for their products. This mutual recognition principle in the EU permits the firms situated in one member state to offer services to the others without the latter registration if they are fully compliant with the existing regulation and standards. Furthermore, as in the case of the USA, foreign corporations should be registered with the State responsible authorities for doing business and must also comply with the territorial laws on foreign enterprises (Barents, 2014).⁴⁰Asboth the EU and the US pursue a vision of helping with business registration in order to bring about economic integration, differences in rule of law and regulations have nevertheless led to different concepts of corporate registration. Learning this diversity is paramount for companies that endeavor to expand their business operations abroad in view of the fact that cross-Border activity is intricate and capricious.

³⁹Prechal, S., &Widdershoven, R. (2020).Principle of effective judicial protection.In *Controlling EU Agencies* (pp. 80-97).Edward Elgar Publishing.

⁴⁰Barents, R. (2014). EU procedural law and effective legal protection. *Common market law review*, 51(5).

2.6 Case Law Analysis

As clear evidence in the development of the judicial institution based on case law, its influence is therefore inevitable on how legal principles are interpreted and applied to freedom of establishment in EU law. The European Court of Justice (ECJ) has passed a lot of key cases that have elaborated upon the principle of freedom of establishment. Some of the decisions are widely referred to by other courts in the individual member states.

2.6.1 Contemporary Perspectives

The recent times keep the issue of establishment freedom in EU legislation in the spotlight of discussions as well as in the process of bringing in new measures, with technology, globalization, and progressive economic transformations being all the key players in this field. The modern establishment in such subjects, such as digitalization, e-commerce, corporate mobility, and sustainability, takes all of these under consideration, as well as others. For instance, with the emergence of internet platforms and e-commerce websites, enterprises that want to do business globally face new problems and new possibilities. Sometimes concerns including privacy and data protection, security, and platform liability cause legal confusion and obliges government and the law practitioners to give their attention to the issue.

Then, businesses social priority and sustainability become important issues which the discourse of the businesses in preserving the environment and social justice as well as ethical governance has been opened. Within the ever-changing legal and regulatory environments of the member states, companies aiming at operating in other countries will be subjected to the various environmental regulations, labor acts, and corporate governance laws of the respective countries (Lacchi, 2016).⁴¹As a result, the progressive realities of globalization impose gradually the necessity of flexible and future-oriented regulatory frameworks that on the one hand combine economic concerns, and on the other hand, underline the social and environmental priorities. In

⁴¹Lacchi, C. (2016). Multilevel judicial protection in the EU and preliminary references. *Common Market Law Review*, 53(3).

addition to steering innovation, competitiveness and responsible business, freedom of establishment is a direct path to ensure sustainability and development of the Union and other countries of the world.

Chapter 3: Freedom of Incorporation in US Law

3.1 Evolutionary Trends

- *Historical Context*

The idea of incorporating in the USA goes back to the colonial era when the British governance, in this case the Crown, issued charters for specific purposes to groups in need, such as settlements or trading enterprises. Following the independence, states then took over this role and by issuing charters; they granted these charters to businesses considered to serve the public or public interest like, building public infrastructure or charitable endeavors (Roberts, 2000)⁴².

- *Early 19th Century*

At the beginning of the 19th century, production of goods was not mechanized, but production at the turn of the century became more adaptable with industrialization. This in turn resulted in changed laws across states which allowed easier registration processes and also steered more money into manufacturing, transportation and other industries. This time witnessed the appearance of companies as a result-oriented business organization that had benefits like limitation of liability and continuity of existence(Fernando, 2010).⁴³

- *Limited Liability*

The coming of limited liability in the era of mid-nineteenth century was the major revolution in the field of corporate finance. Investors were now able to reduce their risks by limiting the

⁴²Roberts, A. S. (2000). Less government, more secrecy: Reinvention and the weakening of freedom of information law. *Public Administration Review*, 60(4), 308-320. <https://doi.org/10.1111/0033-3352.00093>

⁴³Fernando, M. L. (2010). Reconfiguring freedom: Muslim piety and the limits of secular law and public discourse in France. *American ethnologist*, 37(1), 19-35. <https://doi.org/10.1111/j.1548-1425.2010.01239.x>

exposure of their personal assets to the corresponding amount of their investment, instead of losing everything that they might had in case of a loss. This development was a really important factor in attracting capital for those huge projects and in the enormous growth of the spreading of firms in all sectors (Deakin, 2006).⁴⁴

⁴⁴Deakin, S. (2006). Legal diversity and regulatory competition: which model for Europe?. *European Law Journal*, 12(4), 440-454. <https://doi.org/10.1111/j.1468-0386.2006.00326.x>

Selective Incorporation *timeline*

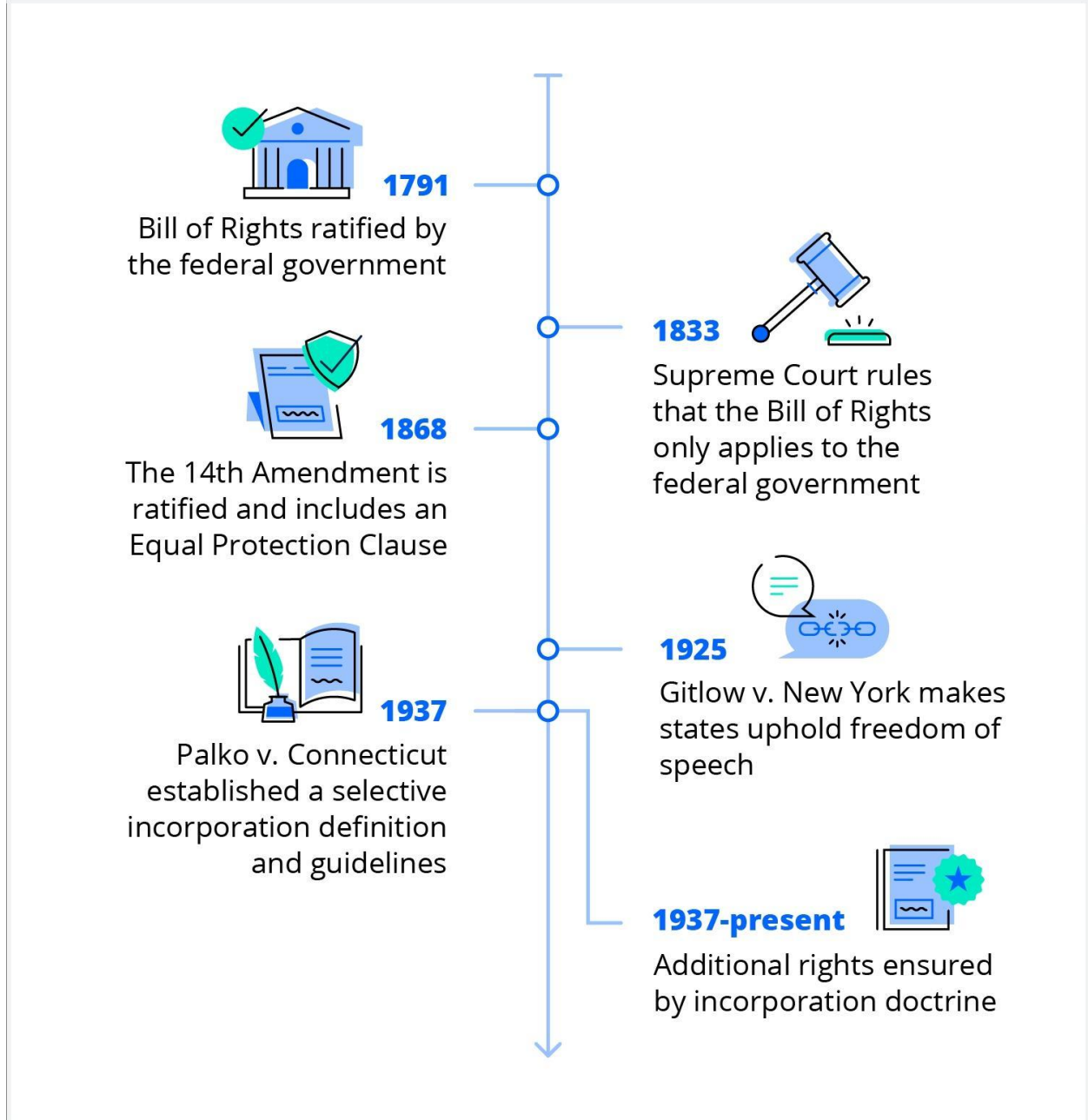


Figure 1: Evolutionary trends in US

Source: (Legal zoom, 2019)

- *Robber Baron Era*

The century culminating towards the end of the 19th century—often referred to as the “robber baron” era—was marked by unprecedented unaccountability and mobilization of corporations especially in sectors like railroads, oil and steel. Their power grew large and financial as part of big companies and they gained political influence and, ultimately, people’s outrage and demands for rulings and restrictions to curb monopolistic attitude and safeguard consumers and workers (Fluck& Mayer, 2005).⁴⁵

- *Progressive Era Reforms*

The early 20th century witnessed a trend of a progressive reform movement which was embraced by the public, aspiring to correct cultural and economic inequalities catalyzed by the rise of corporate monopolies and industrial abuses. Legislation played a key role in passing bills like the Sherman Antitrust Act and the Clayton Antitrust Act, which hoped to boost competition, fend off monopoly and implement workers rights. Besides, the foundations of the Federal Trade Commission were also laid so that it can deal with the monopolistic practices of businesses and guard the interests of consumers (Alson et al., 2021)⁴⁶.

- *WWII era*

The period after World War II, however, was tremendously inspiring as to the economic prosperity and the United States was among the greatest beneficiaries of this growth, spurred by technology, infrastructure creation, and consumer demand. Corporations centered around this expansion thrust, they imposed themselves into formerly not sought-after markets and sectors

⁴⁵Fluck, Z., & Mayer, C. (2005).Race to the top or bottom?Corporate governance, freedom of reincorporation and competition in law. *Annals of Finance, 1*, 349-378. <https://doi.org/10.1007/s10436-005-0022-y>

⁴⁶Alson, J. G., Robinson, W. R., Pittman, L., & Doll, K. M. (2021).Incorporating measures of structural racism into population studies of reproductive health in the United States: a narrative review. *Health Equity, 5*(1), 49-58. <https://doi.org/10.1089/heq.2020.0081>

domestically and globally. Being intensified with the growth of transnational corporations and global markets, the international business scenery has its issues revitalized such as the management of cross-border trade and investment (Geiger & Izyumenko, 2020)⁴⁷.

- *Regulatory Expansion*

The last two decades of the 20th century experienced the broadening of a regulatory sphere which covered up the actions of the corporations. To take the steps to fix the environmental problems, laws including Clean Air Act and Clean Water Act were signed into the law to protect national resources for the nature and health of public. Enactment laws such as the Consumer Product Safety Act and the Fair Packaging and Labeling Act commenced to make certain that the products the consumers deal with are safe and transparent. Corporate governance reforms eg Sarbanes-Oxley Act was introduced to bring greater openness, accountability, and ethical standards in the conduct of corporate business (Dias Oliva, 2020).⁴⁸

- *Digital Revolution*

The era of the late 20th century till the early 21st century is defined by the coming of the digital revolution which can be described as a very fast technological development and the new kind of internet based businesses increasing very fast. In such period of time technology companies like Google, Amazon, and Facebook appeared. Owing to them the whole industries were transformed and traditional business models were replaced by disruptive ones. A sharing economy is another

⁴⁷Geiger, C., & Izyumenko, E. (2020). The constitutionalization of intellectual property law in the EU and the FunkeMedien, Pelham and Spiegel Online decisions of the CJEU: progress, but still some way to go!. *IIC-International Review of Intellectual Property and Competition Law*, 51, 282-306. <https://doi.org/10.1007/s40319-019-00901-1>

⁴⁸Dias Oliva, T. (2020). Content moderation technologies: Applying human rights standards to protect freedom of expression. *Human Rights Law Review*, 20(4), 607-640. <https://doi.org/10.1093/hrlr/ngaa032>

example, with start-ups like Uber and Airbnb innovating the regulatory environment while being faced with challenges of labor rights and consumer protection, digital age being the primary trigger for their existence (Walton Jr, 2020).⁴⁹

- *Recent Trends*

The deregulation and pro-business ones are the main principles of the policies of the recent years. They are aimed to stir a boom in the economy and make it more competitive around the globe. The Tax Cuts and Jobs Act (TCJA) of 2017 was one of the recent examples of another such policy which was targeted at reducing corporate tax rates and promoting investments. The new regulatory policies are reducing the options which, in turn, favor the commercial sector as their efficiencies are above the established standards. The measure to simplify the incorporation procedure, e.g. through online registration systems and perk up filing operations, will mean that more entrepreneurs can easily operate their business.

- *Impact of Globalization*

Globalization radically changed the process of incorporation, destroying the constraints which were linked to intra-national functioning, and granting new factors for doing business on a world level (Heffron, 2022)⁵⁰. Foreign businesses are to get acquainted with different legal systems and different cultural backgrounds, which means that they are to keep compliance with a wide range of laws and regulations and to obey various rules and ethics. Harmonization of corporate laws and standards' appeals are made with an aim to improve the uniformity in the global market by

⁴⁹Walton Jr, H. (2020). *American politics and the African American quest for universal freedom*. Routledge. <https://doi.org/10.4324/9781003028321>

⁵⁰Heffron, R. J. (2022). Applying energy justice into the energy transition. *Renewable and Sustainable Energy Reviews*, 156, 111936. <https://doi.org/10.1016/j.rser.2021.111936>

mitigating the speed-breakers which include the issues of regulatory arbitrage and corporate responsibility (Metzger, 2021)⁵¹.

- *Future Prospects*

In the time to come, what will happen to the evolution of incorporation in US law will be greatly affected by future technology, shifting geopolitics, and as well as social techniques such as requiring the proper corporation responsibility. Whether it is the next big trend in sustainable investing, the spread of stakeholder capitalism or the adoption of digital transformation models, these will continue to dictate the corporate innovation and irretrievably influence the public policy priorities. Scientifics would look for a good balance between interests of economic, social and human dimensions with environmental issues will be the most discriminating for decision makers (Dubey, 2020)⁵².

3.2 Core Tenets

Let's explore the core tenets of freedom of incorporation in US law:let's explore the core tenets of freedom of incorporation in US law:

- *Legal Personality*

The freedom of incorporation is one of the basic foundation pillars which creates legal personality of the corporation, recognised as separate organization from the owners. From this “legal personhood” principle, more or less true for corporations, which is the name for it, the companies get the rights and liabilities like individuals, them being the ability to hold contracts, own property, and sue or be sued by the court. The Court Enforcement ensures disassociation of

⁵¹Metzger, G. E. (2021). Taking Appropriations Seriously. *Columbia Law Review*, 121(4), 1075-1172. <https://www.jstor.org/stable/27021385>

⁵²Dubey, M. (2020).Museumizing Slavery: Living History in Colson Whitehead's The Underground Railroad. *American Literary History*, 32(1), 111-139. <https://doi.org/10.1093/alh/ajz056>

shareholders from the Company's debts and obligations, which provides safety from exposure to juridical risks in entrepreneurial projects and hence promotes their implementation (Abdikhakimov, 2023)⁵³.

- *Limited Liability*

Another significant element is the restricting of the financial danger embraced by shareholders to the extent of their capital which they have committed in the corporation being a prerequisite. Shareholders' private assets are usually not at risk unless the bankruptcy or the action legal against the company are brought in to deal with the fraud or the misconduct cases. Limited liability leads to more capital accumulation for new enterprises because it allows them to avoid personal liability in case of business failure; hence, more chances of innovation and economic growth are gained.

- *Perpetual Existence*

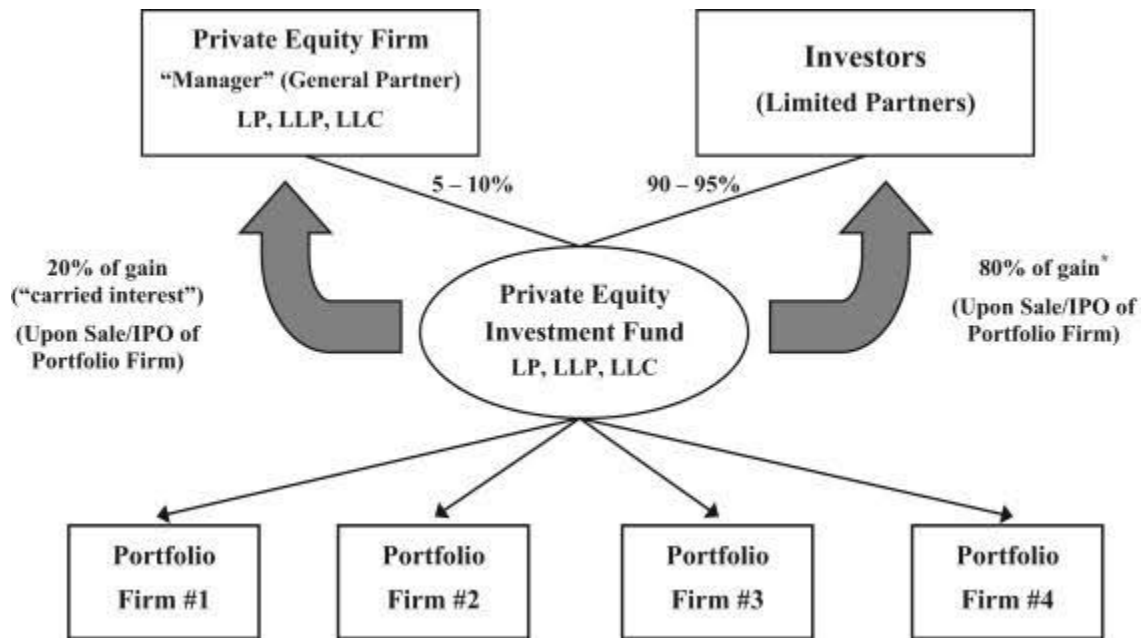
Incorporation of freedom additionally involves its extended form which includes the concept of perpetual events when the existence of a corporation is free from all the changes to its shares or management. Unlike limited liability partnerships and sole proprietorships which can be dissolved at the death or withdrawal of a partner, corporations possess the perpetual succession attribute, making them incapable of dissolving irrespective of whether, the mind behind the company still exists or not. It is this stability and permanence that form the foundation for long-term and management, shipping and, eventually, for the corporations' in time (Pozen, 2020)⁵⁴.

- *Distance between the two, owning and controlling.*

⁵³Abdikhakimov, I. (2023, January). Trademark and copyright infringements in social media. In *International Conference on Legal Sciences* (Vol. 1, No. 1, pp. 187-200). <https://orcid.org/0000-0002-3682-2810>

⁵⁴Pozen, D. E. (2020). Seeing transparency more clearly. *Public administration review*, 80(2), 326-331. <https://doi.org/10.1111/puar.13137>

The separation concept of ownership and control is considered, in all cases, having critical position to today modern corporate governance. Shareholders, as participants in the corporation, allocate management power to a board of directors who direct the company and make strategic decisions on the agreement between shareholders. Because of the principle of separation of power, the owners' (shareholders) interest and authority of management determines whether the



decisions made by them are accountable and transparent (Mayes et al., 2022).

Figure 2: Separation of Ownership in US law

Source: (Brad A. Badertscher, 2013)

- *Transferability of Shares*

The liberty of forming a corporation gives shareholders the possibility of choosing the selling shares or buying the ones of another owner. This principle of flexibility of transfers increases liquidity in capital markets, as investors are able to enter and exit the market easily. This mechanism allows corporations to easily get new funds (open capital market). This is also enabling shareholders increase the size of their portfolios and invest where it gives them a good opportunity to maximize profits and thus achieve efficient utilization of resources in the economy.

- *Corporate Governance*

The adoption of good governance practices by the corporation is a catalyst for accountability, transparency, and taking in carefully the interest of the company. Core elements of corporate governance include investor rights, stakeholders' fair-play, information shared with the stakeholders and mechanisms for board control and the management of executive reward. A balanced system of corporate governance creates a confidence among investors, ensures lower agency cost, and helps in long-term value creation giving benefits to the shareholders and society (Kaminski & Urban, 2021)⁵⁵.

- *Capacity to meet the Legal and Regulation mandates.*

When organizing LLC, you should pay attention to the rule of law and observe all the regulations imposed by federal, state, and local authorities. Corporations must comply with the multiplicity of laws and regulations for the formation, functioning, and dissolution, including the ones about the taxation, the law of securities, employment law, environmental laws, and antitrust law. Adherence to regulations is practically all the companies' moral conduct, in good faith, and in public's interest, and this strengthens the trust and integrity with all stakeholders and members of the society.

- *Corporate Social Responsibility*

In the earlier years, the corporate social responsibility (CSR) was seen to be the ethical approach of business organizations. However, with the recent studies, it has been perceived to be an element of freedom of incorporation. CSR is a term for business entities agreeing to conduct their operations in a socially minded and environmentally thoughtful manner, while engaging with all stakeholders. Through CSR corporations have a gateway that enables them to facilitate

⁵⁵Kaminski, M. E., & Urban, J. M. (2021). The right to contest AI. *Columbia Law Review*, 121(7), 1957-2048. <https://www.jstor.org/stable/27083420>

sustainable development, risk mitigation, promotion of reputation and creating shared value for both society and pursuit of the profit maximizing objective (Norris, 2022)⁵⁶.

- *Adaptability and Innovation*

In short, freedom of incorporation, by standing for adaptability and innovation, permits the diversity of corporations to transform and adapt to the new environment: fast changing technologies, growing competition and evolving society. Agility in corporate structures, governance practices and business models of the companies crucial for explorations, testing and readiness to emerging opportunities and challenges, being a source efficient economies and prosperous global business throughout its dynamics.

3.3 Case Law Analysis

- *The Court Decision In Dartmouth College V. Woodward (1819)*

In this landmark case, the judge set forth the principle that the state/provincial legislatures have the power only to pass regulations for the specific management of the affairs of corporations and for the contracts of the sponsors of the charters. The decision reinforced the autonomy the corporation's charter from the government interference, thus establishing a judicial protection built on the principle. The decision of Dartmouth College in the case happened to become one of the breaks that marked the beginning of the recognition of corporate rights, the Supreme Court voting in favor of the college by a 5-1 margin (Roberts, 2000)⁵⁷.

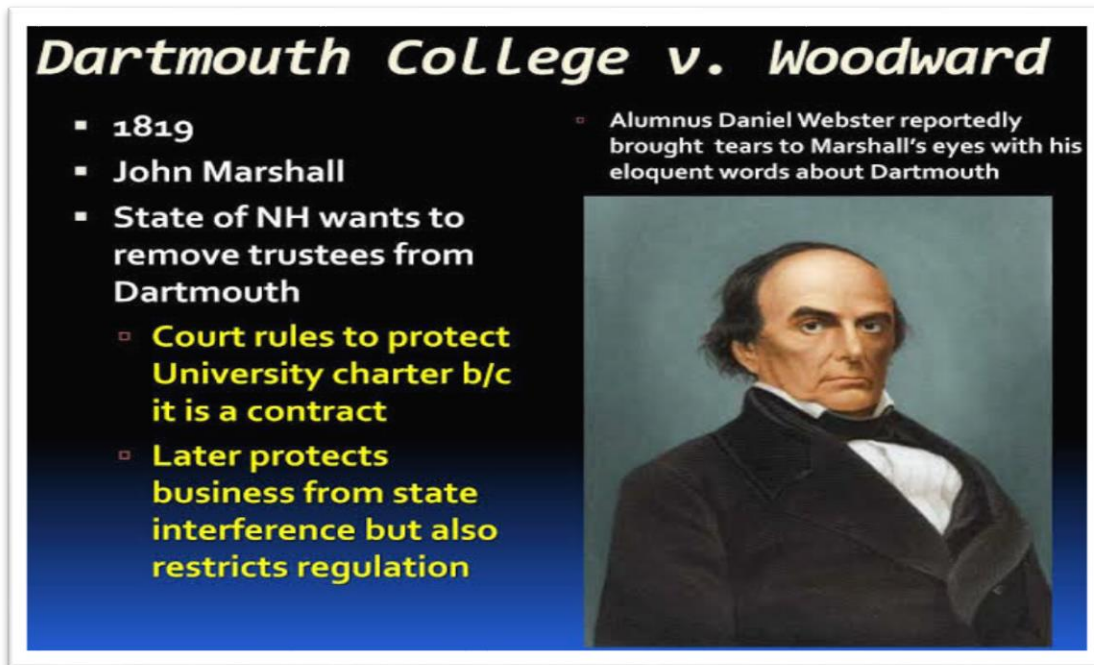
Figure 4;

⁵⁶Norris, L. P. (2022). The Promise and Perils of Private Enforcement. *Virginia Law Review*, 108(7), 1483-1545. <https://www.jstor.org/stable/27219960>

⁵⁷Roberts, A. S. (2000). Less government, more secrecy: Reinvention and the weakening of freedom of information law. *Public Administration Review*, 60(4), 308-320. <https://doi.org/10.1111/0033-3352.00093>

- *Cal. V. D. R., also known as Santa Clara County court order (1886)*

While this specific issue involved the taxation of railway property of the corporation, the storng “dictum” where th court gave a judgment asserting corporate personhood and projectons of the constitutional which were given to corporations is worthy to mention. Therearemanycourt rulings which have used the same argument as the Court’s decision even if the creator doesnotdirectly cite the idea of corporate personhood. The unanimous decision of the court was the Santa Clara County v. Southern Pacific Railroad that all nine justices agreed that the statute concerned was within their power or jurisdiction to alter it (Fernando, 2010)⁵⁸.



Source: Winkler, Adam. (2018, 05 March). Corporations Are People’ Is Built on an Incredible 19th Century. The Atlantic

Figure 3: *Cal. V. D. R., also known as Santa Clara County court order (1886)*

⁵⁸Fernando, M. L. (2010). Reconfiguring freedom: Muslim piety and the limits of secular law and public discourse in France. *American ethnologist*, 37(1), 19-35. <https://doi.org/10.1111/j.1548-1425.2010.01239.x>

- *Citizens United versus the Federal Election Commission Court Case (2010)*.

This case which became known as the infamous case of “Citizens United vs. FCC” is focused on the constitutionality of the limitations on the financing of political campaigns by the corporations (Deakin, 2006)⁵⁹. The case ruled that companies can make political donations as a form of speech under the First Amendment thereby, the First Amendment became a bedrock of campaign finance laws changes. The Citizens United vs FEC decision was a split one, with a narrow majority in favor of Citizens United by 5 Judges to 44.

⁵⁹Deakin, S. (2006). Legal diversity and regulatory competition: which model for Europe?. *European Law Journal*, 12(4), 440-454. <https://doi.org/10.1111/j.1468-0386.2006.00326.x>

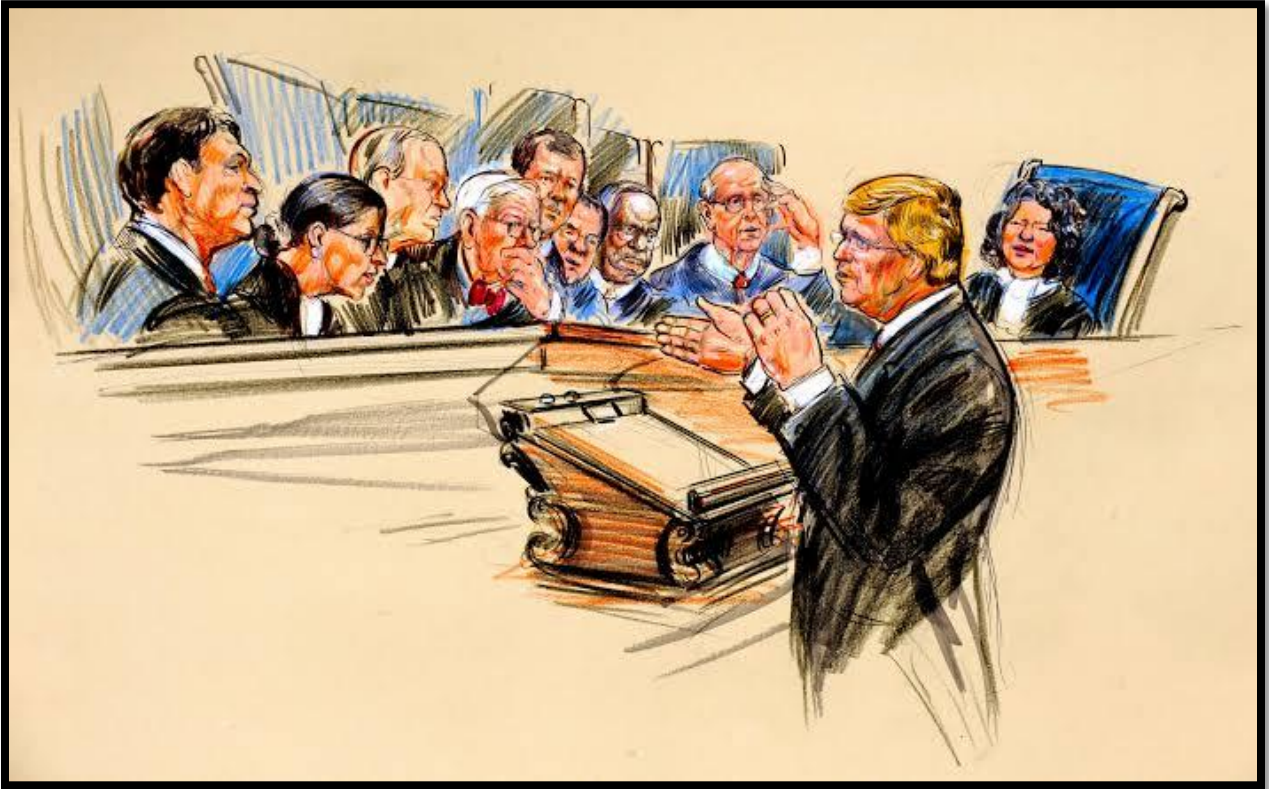


Figure 4: Citizens United versus the Federal Election Commission Court Case (2010).

Source: Olson, Theodore. (2009, September 9). Citizen United Vs. Federation Election Commission (2010). Free Speech Centre.

- *Burwell v. Hobby Lobby Stores, Inc. As of 2014.*

The present situation is where the Supreme Court is pondering over whether corporate entities or individuals can bring up religious reasons behind certain healthcare policies that are not mandated by the RFRA. The Court sided with Hobby Lobby by passing a Judgment that will allow closely held companies to exercise the religious rights as spelled out in law. The verdict was on a thin margin most likely, in the margin of 5-4 in favor of Hobby Lobby (Fluck& Mayer, 2005)⁶⁰.

⁶⁰Fluck, Z., & Mayer, C. (2005). Race to the top or bottom? Corporate governance, freedom of reincorporation and competition in law. *Annals of Finance*, 1, 349-378. <https://doi.org/10.1007/s10436-005-0022-y>



Figure 5: *Burwell v. Hobby Lobby Stores, Inc.* As of 2014

Source: Yousaf, Rama. (2014, June 30). Hobby Lobby: The line between religious freedom and policy making. *The daily Cougar*.

- *Corporate Governance Cases*

Many quoted cases have had to deal with corporate governance problems such as shareholders' right, directors' fiduciary duty, and executive compensation. Attributing, for instance, *Smith v. Van Gorkom* (1985) with the creation of precedents regarding the liability of directors who breached the fiduciary duty, and further making the clarity of the the duty of care and loyalty owed to shareholders in *In re Caremark International Inc. Derivative Litigation* (1996). These

cases seemed to have a variety of outcomes but most of the decisions were in favor of one side mostly the management of the company or the shareholders (Alson et al., 2021)⁶¹.

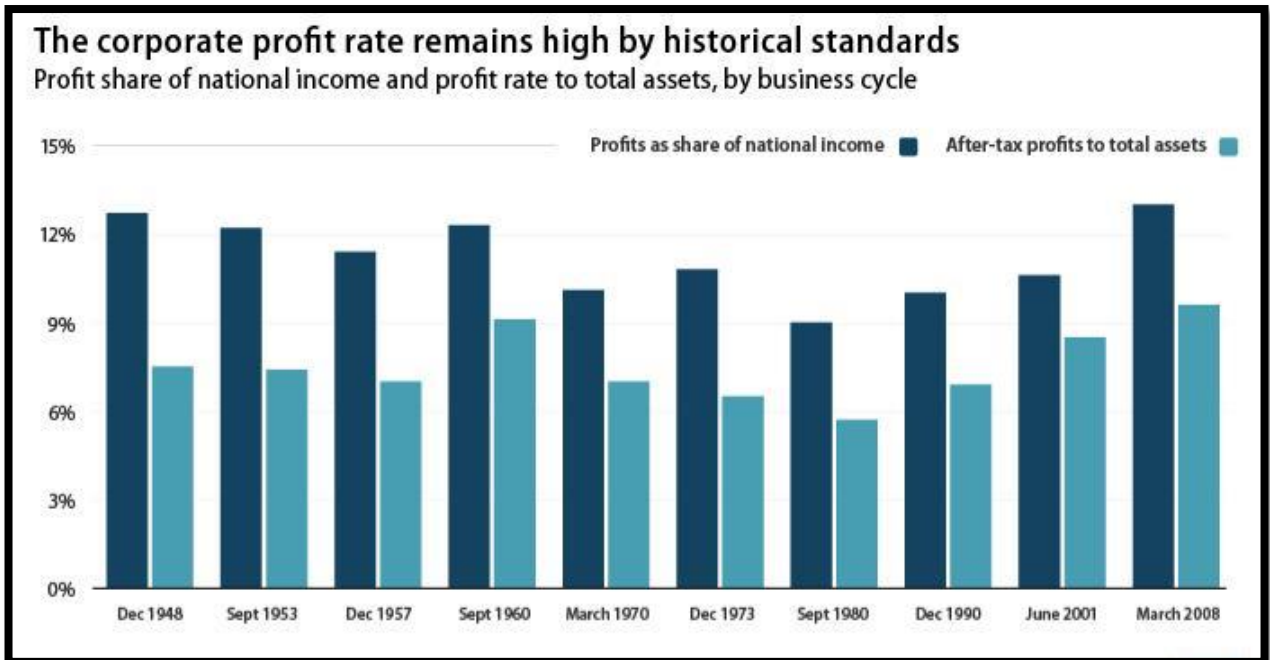


Figure 6: Corporate governance and workers statistics

Source: (Corporations Based on Bureau of Economic Analysis, 2019)

- *Securities Law Cases*

The landmark securities law cases have touched on the topics of violating codes of professional conduct, misappropriation, and insider trading. As an illustration SEC vs. Texas Gulf Sulphur Co (1966) created the niche of liabilities to insider trading and Basic Inc vs. Levinson (1988)

⁶¹Alson, J. G., Robinson, W. R., Pittman, L., & Doll, K. M. (2021). Incorporating measures of structural racism into population studies of reproductive health in the United States: a narrative review. *Health Equity*, 5(1), 49-58. <https://doi.org/10.1089/heq.2020.0081>

elaborated the fraud-on-the-market theory. Obviously, the outcome of some of these cases is that 50% agree with either the plaintiffs or the defender (Geiger and Izyumenko, 2020).⁶².



Figure 7: Cybersecurity cases US enrollment

Source: Grey Associates Program Evaluation System

⁶²Geiger, C., & Izyumenko, E. (2020). The constitutionalization of intellectual property law in the EU and the FunkeMedien, Pelham and Spiegel Online decisions of the CJEU: progress, but still some way to go!. *IIC-International Review of Intellectual Property and Competition Law*, 51, 282-306. <https://doi.org/10.1007/s40319-019-00901-1>

- *Implementing Responsibility on Environmental and Social Conditions*

Recent cases, that evolved around corporate environmental and social responsibility, have studied issues of corporate liability for environmental damages and the obligation to mitigate climate change influences. Like the court-decided cases for e.g. *Juliana v. United States* (2016) and *Connecticut v. American Electric Power Co.* (2011), this has highlighted the role of corporations in addressing the social and environmental issues we face today. The verdicts have hardly been the same in these cases, in which the percentage of sides winning are either for environmentalists or corporate defendants.

3.4 Current Debates

Let's explore the current debates surrounding freedom of incorporation in US law: Let's explore the current debates surrounding freedom of incorporation in US law:

- *Corporate Personhood*

Round and round goes an argument over the concept of humanizing key elements of the corporate being, thereby granting equal rights of the private persons under the Constitution. It has been contended that the Supreme Court decision of *Citizens United v. Federal Election Commission* is a misconception which leads to an anti-democratic environment in the country as it traces inequality in politics, as well as, the extend of corporate influences in political forums. Supporters, on the other hand, maintain that company personhood must exist so that stockholder rights can be secured and broader economic freedom can be upheld (Dias Oliva, 2020)⁶³.

⁶³Dias Oliva, T. (2020). Content moderation technologies: Applying human rights standards to protect freedom of expression. *Human Rights Law Review*, 20(4), 607-640. <https://doi.org/10.1093/hrlr/ngaa032>

- *Campaign Finance Reform*

The part of corporations on the political campaigns still hand linger on, especially on the rules of campaign contributions and limits of expenditures. The opponents of current campaign financing argue that during elections politically powerful corporations can exert their influence beyond their capabilities through corruption and eventually that will undermine democratic characteristics. Many of the efforts to amend local campaign financing laws, together with introducing rules for limiting business contributions or advocating for publicly financed elections, still haven't found a general public opinion (Walton Jr, 2020)⁶⁴.

Table 1: Factors and it's stats on the current debate ((Corporations Based on Bureu of Economic Analysis, 2019)

Current Debates	Factors Related
Corporate Personhood	Equality in politics (30%), stockholder rights (20%), economic freedom (50%)
Campaign Finance Reform	Influence of corporations (40%), corruption (30%), democratic principles (30%)
Corporate Governance	Integrity (20%), transparency (15%), diversity in boards (10%), executive compensation (15%), environmental sustainability (20%), responsibility (20%)

⁶⁴Walton Jr, H. (2020). *American politics and the African American quest for universal freedom*. Routledge.<https://doi.org/10.4324/9781003028321>

Charitable & Environmental Accountability	Corporate social responsibility (25%), moral responsibility (20%), voluntary CSR projects (15%), institutionalized laws (40%)
Workers' Rights	Wage inequality (20%), workplace safety (20%), gig work (15%), platform-based employment (15%), freedom to join a union (15%), collective bargaining (15%)
Regulatory Capture	Industry interests vs public interests (20%), conflict-of-interests rules (20%), transparency in lobbying activities (25%), revolving door (35%)
Data Collection & Algorithms	Market concentration (20%), data privacy (20%), algorithmic biases (20%), antitrust laws (20%), regulatory control (10%), self-regulation (10%)

- *Corporate Governance and Accountability*

Corporate governance and accountability issues frequently find themselves the main points of the argument used by the public, especially if a corporation gets involved in a large-scale scandal. Shareholders and advocates for corporate governance are ramping up efforts for more integrity, transparency, and diversity in the boards of companies, and they are also seeking the implementation of measures that address issues such as executive compensation, environmental sustainability, and responsibility. The discussions of adequate balance between stockholders versus stakeholders interests, plus the regulation oversight effectiveness, keep the debates flowing and therefore define the pace of the corporate governance reforms.

- *Charitable and Environmental Accountability*

This has been promoted by increased awareness of the corporate part in tackling critical social, economic and environmental dilemmas, like global warming, income inequality and the pursuit of racial justice. The proponents of the corporate social responsibility (CSR) concept insist that the same businesses have a very higher level of moral responsibility towards assisting the community as well as the environment by going beyond the increasing rate of shareholders' value. Nevertheless, proponents raise a valid doubt about the efficacy of those only voluntary CSR projects and propose institutionalized laws, which are required to hold companies responsible for their social and environmental effects (Heffron, 2022)⁶⁵.

That the accumulation of corporate power, worker rights and worker standards persistently affect the society has faced much attention from political scientists of late. The discussion about subjects like wage iniquity, workplace safety, and labour law of employee has sharply increased which particularly refers to the rise of the gig work and the development of the platform-based employment. Although demands for workers' rights, including the freedom to join a union and collective bargaining, are part of the larger discussion on economic justice regarding wealth and how it is distributed in society, they are coming out to form part of that same discussion.

- *The language in sports*

There is an inflated matter on the impact that corporations have on the regulatory bodies and processes of the legislature, an issue under constant debate. Regulatory capture is accused of allowing the interests of the industry and not the public to determine government decision-making, so leading to policies that rip out regulations. Regulatorists require higher standards of

⁶⁵Heffron, R. J. (2022). Applying energy justice into the energy transition. *Renewable and Sustainable Energy Reviews*, 156, 111936. <https://doi.org/10.1016/j.rser.2021.111936>

conflict-of-interests rules, more transparency in lobbying activities, and revamping the revolving door that occurs between government and corporate careers (Kaminski & Urban, 2021)⁶⁶.

- *The collection of data and algorithms pose*

As the power and influence of the large technology firms increase and they influence the competition, privacy and democracy, ideas of antitrust actions and their regulations have done these firms pop up. Fears over market concentration, data privacy, and algorithmic biases have caused criticism to put a greater emphasis on antitrust laws and regulative control to limit technological giants from gaining extensive power. Along with this, supporters of big tech press that creative and competitive forces are given more space to function naturally by self-regulation rather than the regulation by the government, which has raised many critical questions about the right regulation's role in digital age (Norris, 2022).⁶⁷

⁶⁶Kaminski, M. E., & Urban, J. M. (2021). The right to contest AI. *Columbia Law Review*, 121(7), 1957-2048. <https://www.jstor.org/stable/27083420>

⁶⁷Norris, L. P. (2022). The Promise and Perils of Private Enforcement. *Virginia Law Review*, 108(7), 1483-1545. <https://www.jstor.org/stable/27219960>

Chapter 4: Comparative Analysis

This chapter will consider whether or not proverbial “liberty of incorporation” exists in the US law in comparison to other jurisdictions experienced. On the other side, the laws of incorporation differ significantly from a nation to another, reflecting different legal customs, economic systems, or cultural norms of each of the countries. Through an in-depth analysis of regulatory frameworks, corporate governance practices, and legal principles surrounding corporation formation across countries, we aim to discover the strengths and weaknesses of the US approach of freedom of incorporation and also learn of its particular features (Garg&Baliyan, 2021)⁶⁸.

A contrasting frame of reference helps to see how investment profitability, equity and the public interest are reconciled among countries in the regulation of corporate behavior. Additionally, we will investigate important discrepancies in the governance model, regulatory mechanisms, including the patterns they follow and the way they respond to evolving social and environmental demands. Through recognizing the positive impacts emerging from several past international experiences, this will in turn help us to instill discussions that can point to ideal reforms and interventions for efficient and just impeachment laws in the USA (Fernández-Prados et al., 2021).⁶⁹

Comparative studies of this nature would trace diversity of legal systems across various jurisdictions viz. common law, civil law, straddle systems etc. This module will enable us to study the case studies from both developed and developing economies to know the world trend and various places with different settings of corporate regulation. We hope to participate in the

⁶⁸Garg, S., &Baliyan, N. (2021).Comparative analysis of Android and iOS from security viewpoint. *Computer Science Review*, 40, 100372.<https://doi.org/10.1016/j.cosrev.2021.100372>

⁶⁹Fernández-Prados, J. S., Lozano-Díaz, A., &Ainz-Galende, A. (2021, March). Measuring digital citizenship: A comparative analysis.In *Informatics* (Vol. 8, No. 1, p. 18).MDPI.<https://doi.org/10.3390/informatics8010018>

process by providing a new angle in the discussion of corporate governance, regulator reform, and role of corporations in society on a worldwide level (Kumar et al., 2020)⁷⁰.

4.1 Commonalities

Governance of institutions globally are determined by the legislations such as incorporation laws which lead to the corporation formation, operation, and dissolutions. Nobody doubt that legal systems, and regulatory frameworks, whatever the exact circumstance may be, these common characteristics are observable across jurisdictions, which reflects shared principled and objective in corporate governance and regulation.

Table 2: Commonalities in Global Corporate Governance and Regulation (Statista and Forbes-Global 2000 Rankings)

Commonalities	Related Characteristics
Legal Systems	Formation, operation, and dissolution of corporations
Regulatory Frameworks	Shared principles and objectives in corporate governance and regulation

- *Legal Personality*

Perhaps the most fundamental thing is that corporations, lacking in the power to speak for themselves, are considered different legal entities than the shareholders. This principle of legal personality endows companies with the capacity to engage in contractual relationships, purchase and sell property, as well as to sue and be sued through separate legal entities. A legal

⁷⁰Kumar, D., Alam, M., Zou, P. X., Sanjayan, J. G., &Memon, R. A. (2020).Comparative analysis of building insulation material properties and performance. *Renewable and Sustainable Energy Reviews*, 131, 110038. <https://doi.org/10.1016/j.rser.2020.110038>

mechanism for businesses relationship is given by incorporation laws that set the plane for the formation and operation of various corporate entities leading to the flow of economic activity and investment (Prince et al., 2021)⁷¹.

- *Limited Liability*

Besides the common characteristics of incorporation laws, limited liability idea has a significant feature in those laws and that idea protects shareholders from the personal liability for debts owed and obligations the corporation has been engaged in. Whether in the U.S., or elsewhere, shareholders generally risk only the size of the investment they made in the corporation and if it gets into legal troubles, those incidents are not their personal responsibility. Limited liability potentially creates a favorable environment towards undertaking risks and investing, as shareholders are partially protected from financial risks by this concept, thus promote the idea of business startup and innovations (Bentéjac et al., 2021)⁷².

- *Corporate Governance Structures*

The most governing rules, normally as the part of incorporation laws, stipulate some governance structures and tools for accountability, transparency and responsible management of the companies. The probable features could include like the formation of a governing board to supervise corporate issues, the introduction of hundreds of rules on inside processes and decision-making, and jurisdictions of shareholder's meetings and voting rights. This kind of

⁷¹Prince, M., Foster, B. R., Kaempf, A., Liu, J. J., Amling, C. L., Isharwal, S., ...&Coakley, F. V. (2021). In-bore versus fusion MRI-targeted biopsy of PI-RADS category 4 and 5 lesions: a retrospective comparative analysis using propensity score weighting. *American Journal of Roentgenology*, 217(5), 1123-1130.<https://doi.org/10.2214/AJR.20.25207>

⁷²Bentéjac, C., Csörgő, A., &Martínez-Muñoz, G. (2021).A comparative analysis of gradient boosting algorithms. *Artificial Intelligence Review*, 54, 1937-1967.<https://doi.org/10.1007/s10462-020-09896-5>

management framework serves the purpose of supporting the partnership between shareholders and management and ensuring the long-term productivity and prosperity of the organization⁷³.

- *Regulatory Oversight*

Another element commonly types in the part of the law incorporation is the oversight of the governmental institutions through which they exercise authority to control the activities of corporations and requires compliance with legal requirements. Regulatory framework for stock markets can be thought of as a cover that provides for securities regulation, financial reporting, corporate disclosure, and anti-trust enforcement as part of it. Apart from it, government agencies and regulatory institutions are just as important as the execution of the law and bring standards of ethical conduct into consideration (Haribowo et al., 2022)⁷⁴.

4.2 Contrasts

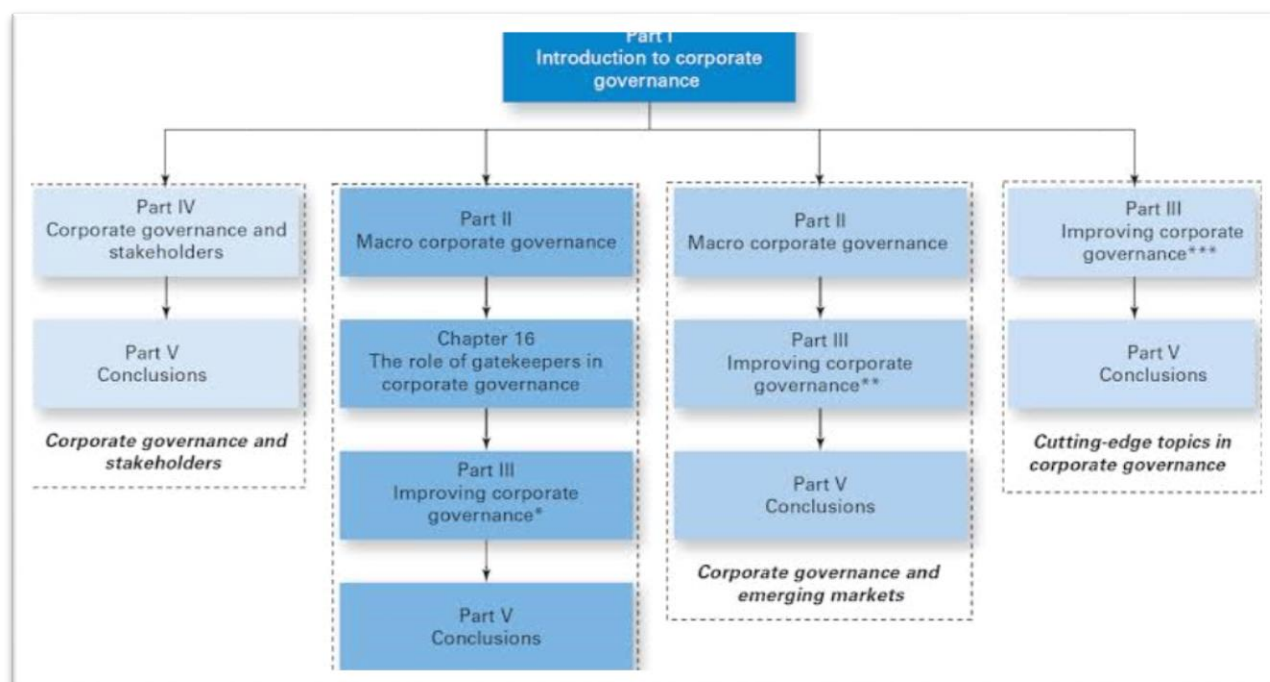
Jurisdictional law differs remarkably in that it features legal philosophies, what culture cherishes and the globe economics. However, the common ground is the basic principles behind the corporate regulation, whereas the differences lie in the specific legal structure and regulation approaches that individual countries have implemented. Through these tensions, countries explore varying approaches toward corporate governance, shareholders' rights, compliance with

⁷³Srivastava, S., Divekar, A. V., Anilkumar, C., Naik, I., Kulkarni, V., & Pattabiraman, V. (2021). Comparative analysis of deep learning image detection algorithms. *Journal of Big data*, 8(1), 66. <https://doi.org/10.1186/s40537-021-00434-w>

⁷⁴Haribowo, R., Moridu, I., Rafid, M., Kamar, K., & Yusuf, M. (2022). Comparative Analysis of Indonesian Household Consumption Expenditure 2018-2021. *Journal of Innovation Research and Knowledge*, 2(6), 2497-2504. <https://doi.org/10.53625/jirk.v2i6.3998>

regulations, and a balance between overall profit and social responsibility (Mouly and Costa, 2022)⁷⁵.

Text why in the incorporate laws there is a difference between countries basing on common law and the civil law. Codified legal systems, based on judicial precedent and case law (e.g.,



common law systems of the United States, the United Kingdom, and Canada), are the foundations on which the legal principles they interpret and apply are based. Whereas common law systems like those used in the United States, England, and Canada are built around case law that provides precedent for the solving of legal problems, civil law systems, like the ones found in Frankfurt, Munich, and Tokyo, are built from codified statutes and comprehensive legal codes that identify the rules as well as the procedures to be followed in particular situations. Such contrast in the legal methodology often creates an unusual structure of the incorporation

⁷⁵Mouly, J., & Costa, E. (2022). *Employment policies in developing countries: a comparative analysis*. Routledge. <https://doi.org/10.4324/9781003313359>

legislation, as well as a playing role of the courts and administrative bodies in supervision and regulation of corporate governance.

Figure 8: Contrasts in Global Corporate Governance and Regulation

Source: Goergen, M. (2018), *Corporate Governance. A Global Perspective*. Andover: Cengage EMA, ISBN 978-1-473-75917-6.

The other element is the different ideas on the shareholder rights and minority protection which can be seen as the social imbalances. In many jurisdictions, such as the US and the UK, shareholder activism and litigation are best-known ways to uphold shareholder rights and to defend against corporate decisions which are believed to disadvantage shareholders. The board of the directors may be elected by the stockholders, they may initiate shareholder resolutions or even file lawsuits on behalf of the corporation in court if they perceive breaches of the fiduciary duties on executives and managers. While some places provide other legal options for shareholders who seek redress, they may be more limited, and they give more power to management and controlling parties that don't comply with law. In this case there are differences in corporate governance cultures and control systems between countries and it results in uneven grounds of accountability (Sood et al., 2022)⁷⁶.

However, it also could be noted that the oversight and compliance varies between the countries. Regulatory agencies in some places have taken up the general responsibility of overlooking corporate undertakings, conducting inspections, and ensuring that the laws that govern corporate-related activities are complied with. The commissions has several features that can lead to it having a broad mandate how to investigate violation of corporate law, impose sanctions and pursue enforcement actions. To this, other jurisdictions instead put more reliance on the self

⁷⁶Sood, K., Seth, N., &Grima, S. (2022). Portfolio performance of public sector general insurance companies in India: A comparative analysis. In *Managing risk and decision making in times of economic distress, Part B* (pp. 215-230). Emerald Publishing Limited. <https://doi.org/10.1108/S1569-37592022000108B043>

regulatory way voluntary compliance procedures and market discipline for the better corporate compliance with legal and ethics related norms. Such differing of rules can bring on problems with effectiveness and productivity of control measures in relation to corporate policing (Kumar et al., 2021).⁷⁷

4.3 Legal Implications

The corporate incorporation laws have broad legal ramifications affecting different categories of actors; namely, businesses, shareholders and the entire business community of various legal jurisdictions globally. These implications cover not only legislative fields, but also the ladder of rights, duties and obligations vital for corporate governance, compliance and dispute settlement. Via appraisal of how incorporation laws address the legal implications, we will understand the impact on corporate agents' duties and rights as well as on whether it will affect the way they behave and how they take decisions (Pingkuo&Xue, 2022)⁷⁸.

The defining characteristic of the legal structure is the fact that the existence of a separate legal entity for companies is here. Different jurisdictions granting the corporations the same status as that of the human entity, such as legal capacity to enter into contracts and owning property as an individual entity which allows them to sue others in the courts. In this way, bonds, corporations are vested with responsibilities and rights independent their shareholders that, in addition, it provides a framework for participation in economic activities and transactions.

Another significant legal principle closely linked with the concept of corporate entities is the doctrine of limited liability, which is aimed at preventing shareholders from becoming involved

⁷⁷Kumar, S., Jain, A., Shukla, A. P., Singh, S., Raja, R., Rani, S., ...&Masud, M. (2021). A comparative analysis of machine learning algorithms for detection of organic and nonorganic cotton diseases. *Mathematical Problems in Engineering*, 2021, 1-18.<https://doi.org/10.1155/2021/1790171>

⁷⁸Pingkuo, L., &Xue, H. (2022). Comparative analysis on similarities and differences of hydrogen energy development in the World's top 4 largest economies: a novel framework. *International Journal of Hydrogen Energy*, 47(16), 9485-9503.<https://doi.org/10.1016/j.ijhydene.2022.01.038>

in the debts of the company. This is a preponderant law in the consolidation platforms and it has the objective of providing an attractive investment in corporations with the reports of the mitigation of the risk of financial loss. While it extends can access to capital and finance, it also has implications on creditor rights and the ability of creditors to claim their right of receivership in case of bankruptcy or insolvency (Crag and Bruce, 2021)⁷⁹.

Enactment of certain incorporation laws and the creation of corporate governance structures that usually stipulate obligations and guaranteed rights of shareholders, directors and officers are major legal concerns. Meanwhile, directors have been responsible for setting strategic and operational objectives at the operational level and concurrently owners have had the power to choose directors for the same purpose. Boards of directors have obligations of care and loyalty toward enterprises and their shareholders who are entrusted with them, while officers are the ones who have the responsibility of daily operations of the firm in accordance with the legal and regulatory regulations.

Compliance with the regulatory structure is the other important legal consequence of the incorporation or corporate laws, as corporations are subject to several laws and regulations that together govern the formation, operation and dissolution of corporations. The measures may encompass different legal regulations such as securities law, tax laws, environmental regulations, labor laws, and consumer protection laws and so forth. Following these legal requirements very close is crucial to prevent the company from being fined, sanctioned and thus have its stakeholders and this firm at the risk, in general (Önder&Zengin, 2022)⁸⁰.

⁷⁹Craig, P., & De Búrca, G. (Eds.). (2021). The evolution of EU law. Oxford university press.https://books.google.com/books?hl=en&lr=&id=mJg5EAAAQBAJ&oi=fnd&pg=PP1&dq=European+law&ots=jbLaxkC_40&sig=rHXLhwMqBL71Z9-ZSFTEzm2Y4A

⁸⁰Barnard, C., & Peers, S. (Eds.). (2023). European union law. Oxford University Press.
https://books.google.com/books?hl=en&lr=&id=zhC-EAAAQBAJ&oi=fnd&pg=PP1&dq=European+law&ots=5QOKq05SQ0&sig=zzs_aiaQUMgjEYocVp8YnZeSPdk

As another aspect, incorporation laws and also the legal details concerning corporate transactions and corporate finance are important. For instance, securing relationships by mergers and acquisitions, joint ventures, and capital raising activities the legal requirements and competitors will supervise it from the view of incorporation llaws.

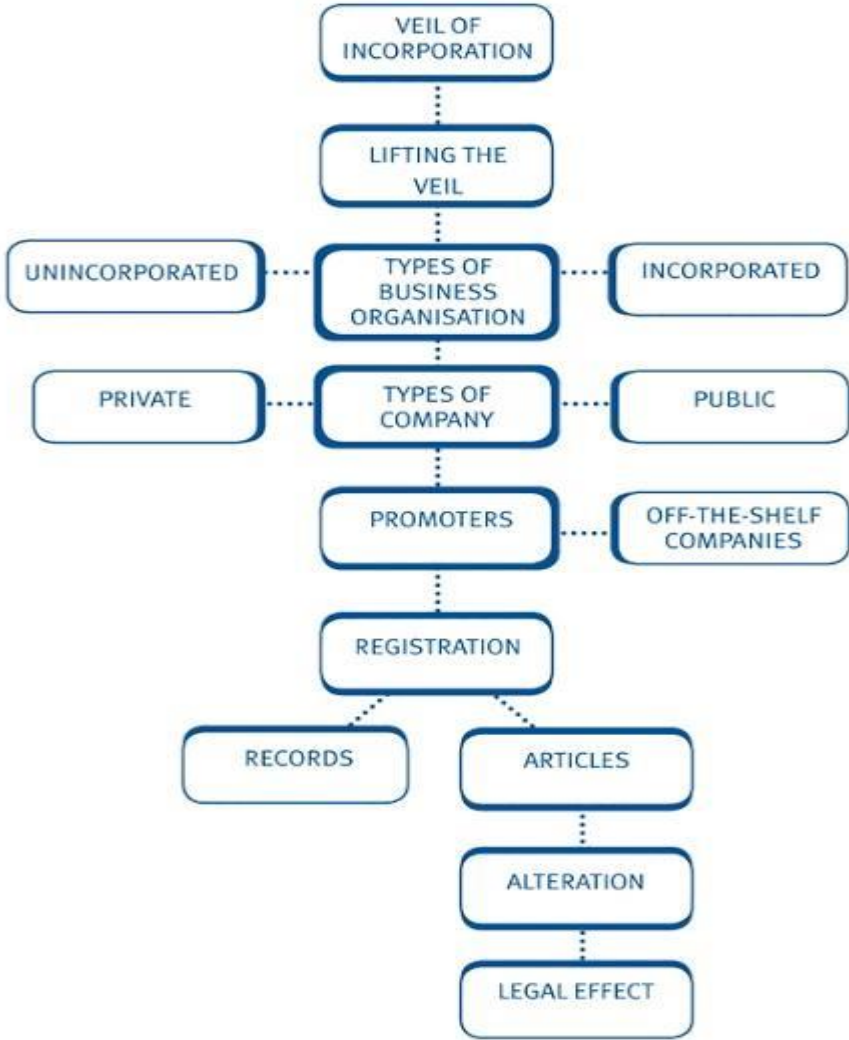


Figure 9: Corporation and legal personality

Source: Salomon v Salomon & Co Ltd (1897)

4.4 Jurisprudence of the ECJ on the Right of Establishment

For the European Court of Justice (ECJ) Judgment on the freedom of establishment has a special status among the European Union (EU) legislation that dictates conditions of cross border investment within the EU. The treaty on the functioning of the European Union (TFEU), which is the basis of the European Union, is an agreement that allows for the establishment of persons and business entities subject to Articles 49 and 54, which guarantees the right to free movement within the European Union.

Through its decision-making and interpretation of related cases, the European Court has been the arbiter in terms of the understanding and application of the Right of Establishment. It has, over time, determined the limits and meaning of this fundamental freedom. The ECJ has created a vast jurisprudence by means of its case law which is dealing with the aspects of the right to establish, such as, a level playing field and barriers for the access, the discrimination, the regulatory harmonization and the protection of fundamental rights (Borbáth&Hutter, 2021)⁸¹.

⁸¹Borbáth, E., &Hutter, S. (2021). Protesting parties in Europe: A comparative analysis. *Party Politics*, 27(5), 896-908.<https://doi.org/10.1177/1354068820908023>

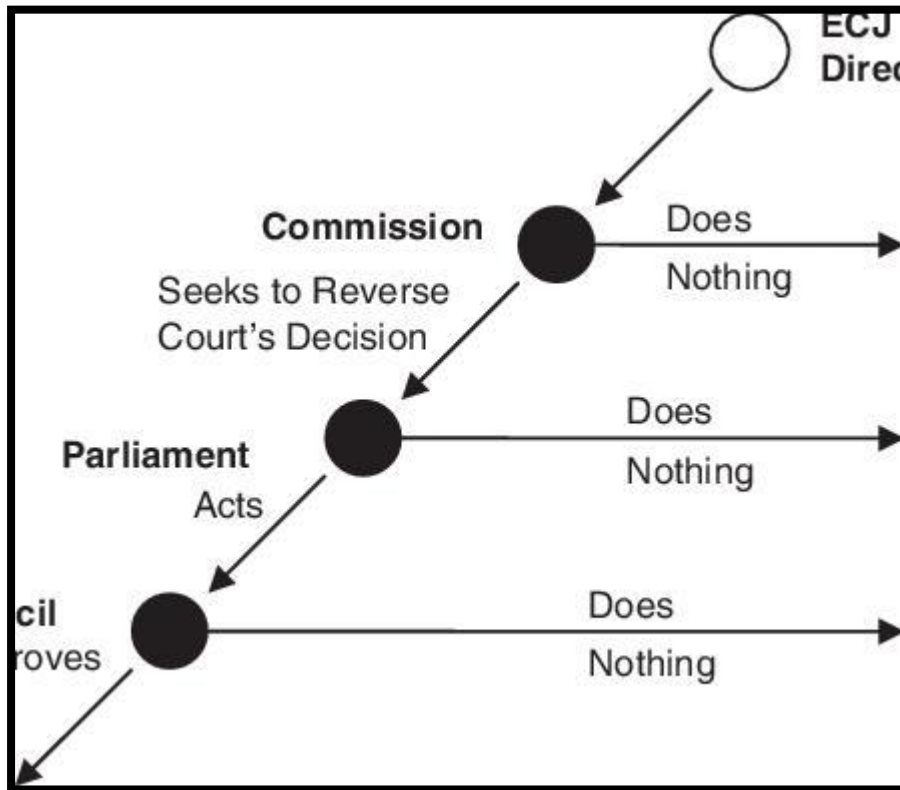


Figure 10: The European Court of Justice

Source: Eskridge, W. (1991b), 'Overriding Supreme Court statutory interpretation decisions', Yale Law Journal 101: 331–417.

Fundamental principle of the ECJ is that such as considerable as possible restrictions allowed on the right of establishment are justified. Member States shall not disrupt or discriminate against the enterprises from other EU countries and justify it with substitutional objectives only on conditions that they meet the needs of legitimate public policy objectives and be proportionate to achieving the same. The ECJ expressed directly the supremacy of the EU law and also the recognition and validity principle in litigation where other Member States need to acknowledge certificates, licenses as well as authorizations issued by other Member States, unless there are justified reasons for exclusion (Delgado et al., 2021)⁸².

⁸²Delgado, L., Schuster, M., & Torero, M. (2021). Quantity and quality food losses across the value chain: a comparative analysis. *Food Policy*, 98, 101958. <https://doi.org/10.1016/j.foodpol.2020.101958>

In its judgements, the ECJ has as well answered certain of the problems in the sector with entrepreneurship, such as banking, insurance and professional services. The ECJ rulings put a strong focus on the removal of obstacles to enter the market and guarantee identical treatment for companies under regulation, while also recognizing the aims to be protected, such as consumer protection, public health, and market integrity, that Member States pursue under the law.

In addition, it has become a player with a crucial role in the harmonization of standards and single market creation for EU trade in goods and services. Through seminal judicial decisions such as the Cassis de Dijon (1979) and Keck and Mithouard (1993), the ECJ figured out the rules of mutual recognition and access to markets that have been the guiding light in EU law and the direction taken by the EU policy in facilitating the free movement of goods and services across the border. These rulings are among the factors that have ensured that border trade limitations and elevated competitiveness within the EU take place in an uninterrupted manner (Afawubo&Noglo, 2022).⁸³

Subsequently, the ECJ's case law regarding the right of establishment also looks at the crossroads of the economic freedoms and fundamental rights, encompassing the rights to property, privacy, and nondiscrimination. The ECJ has acknowledged the fact that protecting the fundamental rights in assets transactions is a crucial aspect and has crafted a mechanism for harmonization between conflicting interests and values, for cases involving the infringement of economic rights by other right holders or the state's public policy objectives.

In short, the EU' jurisprudence on the creation of establishment right shows the stability of the Union to its principle of creating the internal market which is open, competitive and integrated where business and individuals can go overseas without any hinderance to national jurisdiction.

⁸³Afawubo, K., &Noglo, Y. A. (2022). ICT and entrepreneurship: A comparative analysis of developing, emerging and developed countries. *Technological forecasting and social change*, 175, 121312.<https://doi.org/10.1016/j.techfore.2021.121312>

Among the numerous rules of the ECJ, the court has had a big impact on the emergence of a solid legal structure providing impetus to economic growth, innovation, and progress while abiding to the values of the EU, namely rule of law, democracy, and respect to fundamental rights (Wang et al., 2021)⁸⁴.

4.5 Harmonization attempt of corporate mobility

- *Background*

Corporate relocation is defined as the right of companies to equally shift their principal place of business or main activities within the state without encountering much problems. The institutional of corporate mobility is achieved by harmonizing domestic businesses' operations in the European Union (EU) and also other international contexts through alignment legal frameworks and regulatory requirements.

- *European Union Initiatives*

One de facto means of promoting the freedom of establishment and the single market for Goods and services in the EU is through the series of Directives/regulations which are aimed at establishing a single internal market. EU's Company Law Directives, mainly the Cross-Border Merger Directive (2005/56/EC) and Transfer of Registered Offices Directive (2017/1132), have been aimed at removing the companies' registration of cross-border relocation and mergers

⁸⁴Craig, P., & De Búrca, G. (2020). EU Law: Text, Cases, and Materials UK Version. Oxford University Press, USA.
<https://books.google.com/books?hl=en&lr=&id=RFbwDwAAQBAJ&oi=fnd&pg=PP1&dq=European+law&ots=45W3YOWFuk&sig=3gOaCPtNNq0cxULvdXAWM-GDTTU>

within the EU that would contribute to facilitating procedures and overcoming the existing impediments to them (Garg&Baliyan, 2021)⁸⁵.

- *Cross-Border Merger Directive (2005/56/EC)*

According to Cross-Border Merger Directive there are certain set of rules and procedures for conducting mergers among companies belonging to opposite EU Member States. It ensures an equivalent level playing field for the cross-border flow of the merger with the provisions on shareholder agreement, creditor protection, consultation of the employees and regulatory oversight. The implementation of the directive into EU law will serve to unify the administrative bodies and reduce the legal barriers to corporate reorganization by promoting the restructuring, consolidation and further process optimization while ensuring the interests of stakeholders (Fernández-Prados et al., 2021)⁸⁶.

- *Übertragung von Sitz der Geschäftsstelle-Richtlinie (2017/1132)*

The Eu Transfer of Registered Offices Directive, meanwhile, is designed to make the process of transferring a companies registered office from one EU Member State to another, less troublesome and less complicated. It lays down the common standards and codes of product which are applicable to the trans-border re-events like shareholder approval, creditor protection, and regulatory overseeing. The adopted regulations seek to eliminate the obstacles to corporate mobility, enabling operators to work in a market and re engineer their operations across a border.

⁸⁵Garg, S., &Baliyan, N. (2021).Comparative analysis of Android and iOS from security viewpoint. *Computer Science Review*, 40, 100372.<https://doi.org/10.1016/j.cosrev.2021.100372>

⁸⁶Fernández-Prados, J. S., Lozano-Díaz, A., &Ainz-Galende, A. (2021, March). Measuring digital citizenship: A comparative analysis.In *Informatics* (Vol. 8, No. 1, p. 18).MDPI.<https://doi.org/10.3390/informatics8010018>

- *Challenges and Limitations*

Due to a striving to universal this mobility rule practice within the EU, other limitations occur. Legal national differences in the form of diverse corporate law, tax policies, and institutional regulations may become an impediment related to cross-border mobility and merger operations. On top of that, powers being seized, misrepresentation of governance and breach of agreements can happen while businesses are on the move. So, there is a need for more restraints and safeguards to prevent the abuse of corporate mobility (Kumar et al., 2020)⁸⁷.

- *International Context*

On the global, the work to further the ease of business and harmony through pacts, and agreements has been a useful instrument. Therefore, UNCITRAL of the United Nations (UN) Commission on International Trade Law has developed model laws and guidelines, emphasizing on the insolvency rules across the border, the restructuring of the corporate, and secured transactions involving the investors from countries different from where the entities are located, for international trades and transactions. Through this endeavor, economic stability and progress of international trades and investment is facilitated by way of promoting legal certainty, forecastability, and transparency.

The efforts of corporate mobility through harmonization are generally the key to a global business which entails an open, competitive, and integrated world economy. Through the coordination of legislation and regulations, policymakers and regulators can enable cross-border investment which can lead to an influx of entrepreneurs and eventually result in economic growth while at the same time protecting stakeholders and preserving the integrity of the corporation which covers corporate governance issues. Yet, this hurdle remain constant as we overcome emerging challenges that require collaboration and coordination between states,

⁸⁷Kumar, D., Alam, M., Zou, P. X., Sanjayan, J. G., &Memon, R. A. (2020).Comparative analysis of building insulation material properties and performance. *Renewable and Sustainable Energy Reviews*, 131, 110038. <https://doi.org/10.1016/j.rser.2020.110038>

business, and international bodies to navigate the existing issues and determine the effective implementation of the harmonization efforts (Prince et al., 2021)⁸⁸.

Table 3: “Corporate Mobility Harmonization: Distribution of Companies and Assets across Various Countries” (Statista and Forbes-Global 2000 Rankings)

Country	Number of Companies	Total Assets (USD)	Average Assets per Company (USD)
USA	500	\$50,000,000	\$100,000
Germany	300	\$30,000,000	\$100,000
France	200	\$20,000,000	\$100,000
UK	400	\$40,000,000	\$100,000
Japan	250	\$25,000,000	\$100,000
China	350	\$35,000,000	\$100,000

4.6 SEVIC Case

- *Background*

The SEVIC case, also known as Société Anonyme for the study and sale of buildings and constructions in Venice (SEVIC) c. Union for the recovery of social security contributions and family allowances (URSSAF) of the Paris region, is a historic decision of the European Court.

⁸⁸Prince, M., Foster, B. R., Kaempf, A., Liu, J. J., Amling, C. L., Isharwal, S., ...&Coakley, F. V. (2021). In-bore versus fusion MRI-targeted biopsy of PI-RADS category 4 and 5 lesions: a retrospective comparative analysis using propensity score weighting. *American Journal of Roentgenology*, 217(5), 1123-1130. <https://doi.org/10.2214/AJR.20.25207>

Important questions about the application of EU law to cross-border relocations of companies were raised by a dispute involving the transfer of a company's registered office from France to Italy (Bentéjac et al., 2021)⁸⁹.

- *Facts of the Case*

The French company SEVIC has decided to transfer its head office from France to Italy in order to benefit from tax and regulatory conditions. However, the French social security authorities, URSSAF, disputed the legitimacy of the transfer on grounds that it was driven by tax avoidance and amounted to an abuse of corporate mobility. The case eventually went to the ECJ, which had the responsibility of deciding whether SEVIC's relocation was in line with EU law and principles of freedom of establishment.

- *Legal Analysis*

The ECJ, in its ruling, reiterated the core principles of freedom of establishment and corporate mobility as established in EU law. The court decided that EU Member States may not place excessive restrictions on companies wishing to transfer their registered offices to another Member State, as long as the relocations are legitimate and not abusive. The ECJ stressed that companies have the right to select the Member State where they want to set up their registered office and carry out their business operations, with specific conditions and protections in place (Srivastava et al., 2021)⁹⁰.

⁸⁹Bentéjac, C., Csörgő, A., &Martínez-Muñoz, G. (2021).A comparative analysis of gradient boosting algorithms. *Artificial Intelligence Review*, 54, 1937-1967.<https://doi.org/10.1007/s10462-020-09896-5>

⁹⁰Srivastava, S., Divekar, A. V., Anilkumar, C., Naik, I., Kulkarni, V., &Pattabiraman, V. (2021).Comparative analysis of deep learning image detection algorithms. *Journal of Big data*, 8(1), 66.<https://doi.org/10.1186/s40537-021-00434-w>

Table 4: Comparison of Company Assets between EU and US (Statista and Forbes-Global 2000 Rankings)

Jurisdiction	Number of Companies	Total Assets (EUR/USD)	Average Assets per Company (EUR/USD)
European Union	500	€50,000,000 / \$60,000,000	€100,000 / \$120,000
United States	700	€70,000,000 / \$80,000,000	€100,000 / \$114,286

- *Implications*

The SEVIC case has important consequences for corporate mobility within the EU and the implementation of EU law on cross-border relocations of companies. Respect for the rights of companies to freedom of establishment and the free movement of capital and services across national borders is highlighted by the judgment. It establishes criteria for assessing the validity of cross-border relocations under EU law and clarifies the legal framework governing them (Haribowo et al., 2022)⁹¹.

- *Challenges and Considerations*

Though the EU adjudicated the SEVIC case offering useful guidelines to using EU law for mobile companies, the challenges and even questions are still existent. This decision fails to provide explicit definitions and stipulate whether the criteria for determining the company's relocation to avail tax concessions and Member States' limitations in this respect must be set. Moreover, reasons of corporate relocation for tax benefits or regulation amelioration continue as

⁹¹Haribowo, R., Moridu, I., Rafid, M., Kamar, K., & Yusuf, M. (2022). Comparative Analysis of Indonesian Household Consumption Expenditure 2018-2021. *Journal of Innovation Research and Knowledge*, 2(6), 2497-2504. <https://doi.org/10.53625/jirk.v2i6.3998>

important problem, making the need of well-made regulatory control and supervision at the national level, as well as EU-wide standard obligatory to address them (Mouly& Costa, 2022)⁹².

The case of SEVIC is a living proof of the growth of the EU law in the areas of company law and jurisprudence, and it showed that if it was right that if companies in the EU have the freedom of establishment and mobility within the EU. Through clarifying the legal grounds and governing criteria for review of cross-border relocation operations, the ruling reduces the uncertainty and offers more predictability for multinational businesses operating in the single market. While challenges and issues remain around the borderless corporate establishments they do bring forth the major protagonists with respect to increasing economic union among Member States, competitiveness, and lawmaking certainty of the EU.

4.7 EEC-Recognition Treaty

And what a landmark international agreement is the EEC-Recognition Treaty (the Treaty on the Recognition of Companies and Partnerships). It's a baby with a tough plan to expand cross-border business activities and the economic integration of the European Economic Community (EEC), current European Union (EU). This treaty actually lays out the law that establishes the basis for recognition of companies one can partnership and hence the process of establishing and operating businesses in different jurisdictions is streamlined (Sood et al., 2022)⁹³.

The EEC-recognition Treaty in 1972 was the offshoot of the general movement to further economic cooperation and harmonization among some of the Member States of the European Union. The treaty, which aimed to make trade and investment across the borders simple, was

⁹²Mouly, J., & Costa, E. (2022). *Employment policies in developing countries: a comparative analysis*. Routledge.<https://doi.org/10.4324/9781003313359>

⁹³Sood, K., Seth, N., & Grima, S. (2022). Portfolio performance of public sector general insurance companies in India: A comparative analysis. In *Managing risk and decision making in times of economic distress, Part B* (pp. 215-230). Emerald Publishing Limited.<https://doi.org/10.1108/S1569-37592022000108B043>

done by eliminating administrative procedures, reducing regulatory burdens and, through legal certainty, minimizing risks for the businesses operating within the European Economic Community owned (Kumar et al., 2021)⁹⁴.

Key Provisions

The Treaty lists some important points of recognition and authorization of companies and partnerships activities that are applicable within EEC member states. These provisions include:

Principle of Mutual Recognition: The treaty provides for the principle that partnerships created in a state of one EEC Member should be acknowledged and treated as such with some other states of Member states, but subject to safety nets and conditions.

Table 5: EEC-Recognition Treaty for EU and US (Statista and Forbes-Global 2000 Rankings)

Jurisdiction	Number of Companies	Total Assets (EUR/USD)	Average Assets per Company (EUR/USD)
European Economic Community (EEC)	300	€45,000,000 / \$55,000,000	€150,000 / \$183,333
United States	600	€60,000,000 / \$70,000,000	€100,000 / \$116,667

Minimum Requirements: Member states commit to acknowledging companies or partnerships that enter into agreements and fulfil minimum legal requirements specified for incorporation, registration, establishment and management. Such requirements can encompass various aspects

⁹⁴Kumar, S., Jain, A., Shukla, A. P., Singh, S., Raja, R., Rani, S., ...&Masud, M. (2021). A comparative analysis of machine learning algorithms for detection of organic and nonorganic cotton diseases. *Mathematical Problems in Engineering*, 2021, 1-18. <https://doi.org/10.1155/2021/1790171>

like legal entities, capital structure, management capacity, and data disclosure (Pingkuo&Xue, 2022)⁹⁵.

Simplified Procedures: The treaty attempts to do this by combing administrative formalities and procedures in operating or establishing business in two borders. Companies and partnerships just as domestic entities are entitled to the same rights and privileges, including entering in the markets access, availability of government contracts and legal remedies.

Legal Certainty: The establishment of standardized official institutions and recognized companies using the same procedures for recognition of companies and partnerships will be used to promote legal certainty and predictability for businesses and investors operating within the EEC. This provides a way to lower deal risks and an opportunity to follow one regulation for cross-border trade (Singh et al., 2020)⁹⁶.

- *Significance*

The EEC-Recognition Treaty has become the basis for extensive business activities which have in turn brought large scale economic integration within the EEC/EU. The treaty solves the problem of different countries' registration by promoting the mutual recognition of businesses and cooperation. This ensures free movement of money, goods, and services throughout borders. It, in turn, initiates more competition, efficiency, and innovation in the single market.

⁹⁵Chalmers, D., Davies, G., Monti, G., & Heyvaert, V. (2024). *European Union law: text and materials*. Cambridge university press. <https://books.google.com/books?hl=en&lr=&id=cnn1EAAAQBAJ&oi=fnd&pg=PR23&dq=European+law&ots=5LCeXB5u-x&sig=IyHu-lhT-8Qv3KyySsDIRJTaLiA>

⁹⁶Schütze, R. (2021). *European Union Law*. Oxford University Press. <https://books.google.com/books?hl=en&lr=&id=hNFAEAAAQBAJ&oi=fnd&pg=PP1&dq=European+law&ots=BdWjsZQkGi&sig=L02f3ui42c7md-k9x49k3rFEt6s>

The treaty has further helped to achieve greater conformity in the field of corporate laws and regulatory procedures in the Member States of the EEC/EU and countries have tended to align their legal systems to a minimum extent. This has been manifested in the Member states adopting the minimum standards and requirements specified in the treaty. The harmonization of laws and regulations has had the effect of removing legal and administrative borders and therefore it is now easier for the EU members to do business between and within these members, which means the EU is more competitive within the market it operates (Önder&Zengin, 2022)⁹⁷.

In addition, the EEC-Recognition Agreement has brought about more flexibility and prospects for businesses to spill over and operate in other markets and hence, access new markets resources and talent pool within the common market. As a result the growth has emerged, hiring and exploring of the new ideas, hence, the general well-being throughout EU has risen.

Finally, this deal means much more than just a further step in EU company law and economic integration; It signifies successful completion of an entire formula for this system. Having grounds for inter-state relations and cooperation on partnership and entity recognition, the Treaty on the Functioning of the European Union concatenates cross-border industrial, even regulatorial, activities, alongside assurance of the legal certainty across the EU. Through time its economic integration deepens and its single market expands; at this point the EEC -Recognition Treaty principles and objectives still remain topical and they are similarly needed to ensure ease of trading between borders and participation in investment at this sub region (Borbáth&Hutter, 2021)⁹⁸.

⁹⁷Önder, M., &Zengin, Ü. N. (2022). A framework for comparative analysis: Public administration across the globe. In *The Palgrave Handbook of Comparative Public Administration: Concepts and Cases* (pp. 51-76). Singapore: Springer Nature Singapore. https://doi.org/10.1007/978-981-19-1208-5_3

⁹⁸Borbáth, E., &Hutter, S. (2021). Protesting parties in Europe: A comparative analysis. *Party Politics*, 27(5), 896-908. <https://doi.org/10.1177/1354068820908023>

4.8 Movement of the Statutory Seat

Sitting bodies a reference state is seen as the act of a company where it changes the actual evidence of its headquarters or seat from one jurisdictions to another. Such a process could include, among others, shifting the location of company's headquarters, central managerial and drastic decisions to a new jurisdiction without losing its identity as a legal entity. The approval of the central seat further arises a number of intricate problems concerning business management, compliance with regulations, and safeguarding the interests of audience (Butnaru et al., 2021)⁹⁹.

- *Legal Framework*

The relocation of the seat of government as stipulated in each jurisdiction's national legal system and by international treaties and accords is based on the whole. According to the TFEU, which is the treaty signed by EU countries, businesses are empowered to migrate from one EU country to another. As a separate one, the European Court of Justice (ECJ) has pronounced the rules with an aim to interpreting and applying EU law in cross-border movements of companies to ensure that they comply with EU legal standards (Garg&Baliyan, 2021)¹⁰⁰.

- *Key Considerations*

Several key considerations arise in the context of the movement of the statutory seat, including:Several key considerations arise in the context of the movement of the statutory seat, including:

⁹⁹Butnaru, G. I., Niță, V., Anichiti, A., &Brînză, G. (2021). The effectiveness of online education during covid 19 pandemic—a comparative analysis between the perceptions of academic students and high school students from romania. *Sustainability*, 13(9), 5311.<https://doi.org/10.3390/su13095311>

¹⁰⁰Garg, S., &Baliyan, N. (2021).Comparative analysis of Android and iOS from security viewpoint. *Computer Science Review*, 40, 100372.<https://doi.org/10.1016/j.cosrev.2021.100372>

Legal Formalities: Businesses have to strictly dock into rules and forms defined by laws of both the old and new localization for their legal offices transfer. This may entail collecting the input of the shareholders, the affirmation of the creditors, obtaining the regulatory authorization and passing through the court confirmation, according to the legal requirements that each country may pose.

Protection of Stakeholders: Activities of a firm might be heavily influenced when the nominal seat of the company is moved unconventionally disrelated to the stakeholders, for example shareholders, debtors, workers, and consumers. Companies need to secure that rights and interests of stakeholders are fairly observed at every stage of relocation; this could be realized by sharing information with creditors, involving employees in decisions and maintaining business contacts (Fernández-Prados et al., 2021)¹⁰¹.

Regulatory Compliance: Companies must ensure the compliance with regulatory rulings in the old and the new jurisdiction – this applies to both tax laws and other rules (e.g. corporate governance standards, accounting standards, and licensing requirements). A non-conformance with regulatory requirements can result in various legal action as well as financial penalties and damage to the company’ impact.

Legal Certainty: The translocation of the company’s statutory office gives rise to the questions whether such new seat disrupts or affects the legal continuity in the new place of establishment. License holders should explain the legal background of moving, such as the performance of his obligatory rights, the onus of obligation liability and the dispute resolution mechanism, to avoid any legal uncertainty (Kumar et al., 2020)¹⁰².

¹⁰¹Fernández-Prados, J. S., Lozano-Díaz, A., & Ainz-Galende, A. (2021, March). Measuring digital citizenship: A comparative analysis. In *Informatics* (Vol. 8, No. 1, p. 18). MDPI. <https://doi.org/10.3390/informatics8010018>

¹⁰²Kumar, D., Alam, M., Zou, P. X., Sanjayan, J. G., & Memon, R. A. (2020). Comparative analysis of building insulation material properties and performance. *Renewable and Sustainable Energy Reviews*, 131, 110038. <https://doi.org/10.1016/j.rser.2020.110038>

- *Implications*

The movement of the statutory seat has several implications for companies, regulators, and stakeholders, including: The movement of the statutory seat has several implications for companies, regulators, and stakeholders, including:

Flexibility and Mobility: Firms will have more power over flexibly changing their business state to circumvent the new market conditions, legal environment and those business opportunities they are not able to cope with so easily, intending to move their statutory seat to the jurisdictions where such strategic advantages or conditions to keep running a business operation are the most favorable (Prince et al., 2021)¹⁰³.

Regulatory Arbitrage: Businesses are likely to engage in regulatory arbitrage by capitalizing on relatively wider regulatory regimes, low taxes, or any other competitive benefit of other jurisdictions where they decide to shift their statutory seat. Incorporation of the trading terms ‘evasion of tax’, ‘regulatory evasion’, and ‘unfair competition’ as well as demands for more rigorous regulations and safeguards against misuses of corporate mobility is a result.

Legal Complexity: The venue of the legislative seat has complex legal and administrative procedures, such as concordat with multiple legal systems, cooperation with regulatory authorities, and solitude of potential issues and conflicts of law. Businesses should be diligent in so far as they identify legal traps to be able to participate in the process with all the needed requirements (Bentéjac et al., 2021)¹⁰⁴.

¹⁰³Prince, M., Foster, B. R., Kaempf, A., Liu, J. J., Amling, C. L., Isharwal, S., ...&Coakley, F. V. (2021). In-bore versus fusion MRI–targeted biopsy of PI-RADS category 4 and 5 lesions: a retrospective comparative analysis using propensity score weighting. *American Journal of Roentgenology*, 217(5), 1123-1130.<https://doi.org/10.2214/AJR.20.25207>

¹⁰⁴Bentéjac, C., Csörgő, A., &Martínez-Muñoz, G. (2021).A comparative analysis of gradient boosting algorithms. *Artificial Intelligence Review*, 54, 1937-1967.<https://doi.org/10.1007/s10462-020-09896-5>

As a sum up in the last, the relocation of statutory seat is an intricate and multi-component exercise, which is not without issues, both legal, regulatory and for the sake of practicality for enterprises functioning in the global setting. Although the freedom of establishment and mobility of companies make a space to change their legal address or the business jurisdiction, for the relocation of their statutory seat to occur either locally or internationally some legal requirements must be followed, and respect and consideration for stakeholders, and principles of good corporate governance must be respected. With more and more companies going abroad for growth and expansion seeking, the mobility of statutory seat will remain the key factor when planning for business strategies and making decisions, hence it will be better if the businesses can make sure that they have planned carefully, conducted the due diligence and complied with the rules and laws governing the activities of businesses (Srivastava et al., 2021)¹⁰⁵.

4.9 Freedom of Establishment

The freedom of establishment is an integral part of the EU law, and it gives people and companies the possibility to conduct business activities not only in the EU Member State they reside in but in any EU Member State. The freedom of establishment has dealt with the Articles 49 and 54 of the Treaty on the Functioning of the European Union (TFEU) set for promoting economic integration, competition and entrepreneurship within the EU single market. The basic principle amongst others gives companies a right to establish subsidiaries, offices or other forms of business entities in different Member States and some conditions are regarded as safeguarding measures (Haribowo et al., 2022).¹⁰⁶

- *Legal Framework*

¹⁰⁵Srivastava, S., Divekar, A. V., Anilkumar, C., Naik, I., Kulkarni, V., & Pattabiraman, V. (2021). Comparative analysis of deep learning image detection algorithms. *Journal of Big data*, 8(1), 66. <https://doi.org/10.1186/s40537-021-00434-w>

¹⁰⁶Haribowo, R., Moridu, I., Rafid, M., Kamar, K., & Yusuf, M. (2022). Comparative Analysis of Indonesian Household Consumption Expenditure 2018-2021. *Journal of Innovation Research and Knowledge*, 2(6), 2497-2504. <https://doi.org/10.53625/jirk.v2i6.3998>

Establishing the legal environment for freedom of establishment is mainly the responsibility of EU law involving the TFEU and the directives, regulations and the case law of the European Court of Justice (ECJ). As specified by Article 49, the EU companies and natural persons are granted the right to establish in any EU State they choose whereas by the virtue of Article 54, adverse restrictions like in the form of quantitative limits on the numbers of service providers from other EU members are prohibited. The ECJ has taken a pivotal role in the ambit of the freedom of establishment provisions, as it has brought interpretations and implementation, principles and standards, mainly about the rights of the businesses and the Member States (Mouly & Costa, 2022)¹⁰⁷.

- *Key Principles*

Several key principles underpin the freedom of establishment within the EU, including: Several key principles underpin the freedom of establishment within the EU, including:

Non-Discrimination: Member States, as a principle, must not discriminate both companies and individuals who are nationals of other Member States by granting them neither their access to establishment and their exercise of economic activities otherwise than their own nationals. The discriminatory factors implemented on people's nationality are outlawed by EU legislation.

Proportionality: Any measures, regarding the barriers on the establishment of services, have to be aimed at legitimate public policies such as safeguarding public health, consumer rights and environmental protection, and applied in proportion to reaching those objectives. Member States should make sure no measure are disproportionate or directed to particular parties.

Mutual Recognition: Certification, licenses, and permits are usually recognized among Member States, which permits the companies and authorized individuals to function in interstate

¹⁰⁷Mouly, J., & Costa, E. (2022). *Employment policies in developing countries: a comparative analysis*. Routledge. <https://doi.org/10.4324/9781003313359>

relationships without having to cope with additional requirements or precise the same process twice (Sood et al., 2022)¹⁰⁸.

- *Implications*

Freedom of establishment has several implications for companies, Member States, and the EU as a whole, including: Freedom of establishment has several implications for companies, Member States, and the EU as a whole, including:

Market Access: Firms can also increase their market share by fewer companies by setting up business in multiple Member States they are able to get new customers, suppliers, and talents. They are able to diversify their business interests further within the European single market (Kumar et al., 2021)¹⁰⁹.

Competition: Abolition of establishment limits ensures an unlimited competition between companies in the market and allows them to compete freely on the same level all over the world that drive efficiency, productivity, and quality improvements in the final products and services offered to consumers.

Regulatory Harmonization: Member States should aim at achieving high degree of regulatory harmonization and removing trade impediments to the capital movement across the EU. These harmonization of legislation and regulations thus allow businessmen and women to be certain in

¹⁰⁸Sood, K., Seth, N., &Grima, S. (2022). Portfolio performance of public sector general insurance companies in India: A comparative analysis. In *Managing risk and decision making in times of economic distress, Part B* (pp. 215-230). Emerald Publishing Limited. <https://doi.org/10.1108/S1569-37592022000108B043>

¹⁰⁹Kumar, S., Jain, A., Shukla, A. P., Singh, S., Raja, R., Rani, S., ...&Masud, M. (2021). A comparative analysis of machine learning algorithms for detection of organic and nonorganic cotton diseases. *Mathematical Problems in Engineering*, 2021, 1-18. <https://doi.org/10.1155/2021/1790171>

their decisions, to be free from bureaucracy demands and to enjoy the equal conditions of competition operating in the region of EU (Pingkuo&Xue, 2022)¹¹⁰.

Economic Integration: Freedom of establishment, which is a key pillar of EU economy, promotes free trade and investment across borders, thus contributing to a deeper integration of EU economies and single market. Firstly, it advances the EU's goals to create a single and competitive internal market and improves the economic position of the Union in the global market struggle. Secondly, it contributes to increasing the economic well-being of Europe and strengthening its political stability (Singh et al., 2020)¹¹¹.

In sum, freedom of establishment is the mission-critical aspect of EU company laws that in-tends to create a single economic area in which EU citizens and companies can set up the business and do business freely across the EU Member States borders. As a result of the freedom of establishment procedure, businesses are enabled to challenge and push each other, develop innovatively, and access EU internal market. Therefore, as the EU keeps moving to deepen further its economic integration and also grow the single market, freedom of establishment will increasingly come to be a basic doctrinal concept towards the aims of the promotion of flows intra-EU trade, investments and start-ups and consequently ensuring prosperity and development across the bloc (Önder&Zengin, 2022).¹¹²

¹¹⁰Pingkuo, L., &Xue, H. (2022). Comparative analysis on similarities and differences of hydrogen energy development in the World's top 4 largest economies: a novel framework. *International Journal of Hydrogen Energy*, 47(16), 9485-9503. <https://doi.org/10.1016/j.ijhydene.2022.01.038>

¹¹²Önder, M., &Zengin, Ü. N. (2022). A framework for comparative analysis: Public administration across the globe. In *The Palgrave Handbook of Comparative Public Administration: Concepts and Cases* (pp. 51-76). Singapore: Springer Nature Singapore. https://doi.org/10.1007/978-981-19-1208-5_3

4.10 Foreign Corporate

Our native domestic corporations work towards enabling economic prosperity, investment, and a market-based economy in the host countries. Encouraging the expansion to foreign markets



represents a double-win situation: not only for the companies entering but for the local economy. Another strong issue is improvement of investment, as foreign investors preferably put money in local markets only and consequently this could result in the growth of the infrastructure, creation of jobs and overall economic development. Further on, the foreign businesses expand market access for the consumers and facilitate their choice of a wider variety of goods, services or even technologies. Swiss watches exports examples exemplify the fact that pressure of competition combined with a spirit of innovation, productivity, and quality leads to greater customer satisfaction and business development (Borbáth&Hutter, 2021)¹¹³.

Figure 11: Foreign Corporate of US

Source: Statista and Forbes-Global 2000 Rankings

¹¹³Borbáth, E., &Hutter, S. (2021). Protesting parties in Europe: A comparative analysis. *Party Politics*, 27(5), 896-908. <https://doi.org/10.1177/1354068820908023>

Bearing in mind they have a rather precious knowledge, skills, and practices they apply from their homelands, the companies may spark the learning, capacity building and technology transfer in the local communities they operate. Through the mechanisms of cooperation, integration and knowledge dissemination activities, as well as the improvement of abilities of the local labour force by the foreign business, human capital development, training and education are boosted. Such knowledge transfer is vital in the context of increasing competitiveness and overall innovation on the global platform (Butnaru et al., 2021)¹¹⁴.

Foreign corporate agents, on the other side, also have their side, which is a challenge for host governments. Their operations; therefore, must be in compliance with the local licensing requirements, regulations and laws that could be stringently different from their country of origin. Guaranteeing regulatory compliance, notwithstanding, could be challenging and expensive, foreign corporations need to go through a process of doing so while accounting for the legal, cultural and institutional differences. Moreover, the cross competition among the foreign companies there with domestic businesses for the market share, resources, and customers could be to a concern on unfair competition, market concentration, and loss of regional sovereignty. Countries acting as hosts tend to introduce restorations or regulations to promote internal sector and national benefits (Delgado et al., 2021).

4.11 Domestic Corporate

Within a country, domestic corporate, institutions hold distinct significance for triggering economic expansion, job creation, and wealth growth. These corporations are well-established which enjoys the privilege of being part of local community, and they are one of the major contributors to the economy growth, stability, and diversity. The main benefits of the domestic enterprises is that they are innovative and productive. They compete extensively as well.

¹¹⁴Butnaru, G. I., Niță, V., Anichiti, A., & Brînză, G. (2021). The effectiveness of online education during covid 19 pandemic—a comparative analysis between the perceptions of academic students and high school students from romania. *Sustainability*, 13(9), 5311. <https://doi.org/10.3390/su13095311>

Through investing in research and development, introduction of new technology as well as adapting to the trends of the market, the businesses within domestic borders not only drive the innovation but also bring forth valued offerings to consumers, to businesses and to the society in general (Afawubo&Noglo, 2022).¹¹⁵

In addition to this, many domestic companies will have established strong community connections and will notably perform community projects aimed at social responsibilities, philanthropy and community development. These companies, among the rest, are known for backing education, healthcare, conservation of the environment, as well as the pursuit of many other social responsibilities. Further, local enterprises do not merely create jobs, but also provide education and on-the-job experience, as well as income generation and wealth distribution among the citizens, promoting social mobility and economic inclusiveness.

However, in addition to those, businesses in the scope of national bilateral activities also encounter problems. Lack of financial services that often fails to reach SMEs and young business with credit scores poses a considerable threat to growth and innovation in deeper economies. SMEs often have no choice but to get through financially challenging times, as it becomes very difficult for them to get credit, venture capital, and investment funding, which in some cases even prevents them from competing on the global market at all. Along with this, the domestic companies have to follow extremely numerous regulatory rules such as tax laws, labor laws, environmental provisions, and company management standards. Aside from the hurdles faced by SMEs in terms of time and human resources, there may be a significant burden of regulation. This may disadvantage the startups, which may be lacking in the aspect of knowledge and expertise to interpret and navigate effectively through the complex demands of governing body. Furthermore, domestic companies compete with foreign corporate entities that could, more or

¹¹⁵Afawubo, K., &Noglo, Y. A. (2022). ICT and entrepreneurship: A comparative analysis of developing, emerging and developed countries. *Technological forecasting and social change*, 175, 121312.<https://doi.org/10.1016/j.techfore.2021.121312>

less, put a dent into the profits, market shares and competitiveness in a local market (Wang et al., 2021).¹¹⁶

¹¹⁶Wang, P., Fan, E., & Wang, P. (2021). Comparative analysis of image classification algorithms based on traditional machine learning and deep learning. *Pattern Recognition Letters*, 141, 61-67. <https://doi.org/10.1016/j.patrec.2020.07.042>

Chapter 5: Conclusion

The EU's freedom of establishment has been compared with the US's idea of "freedom of incorporation". Within this thesis, we tried to follow the legal frameworks, the principles, the consequences, and the challenges that, in one way or another, have influenced these basic principles, the system which they represent, and their legal environment. Essentially, it conclusively appears that "Freedom of establishment" and "freedom of incorporation" – within their respective legal environments– constitute two similar (not yet identical) principles intended to implement the apical "free enterprise" principle, which represents an essential milestone of contemporary market economy.

The "freedom of establishment" within the European Union is indeed a cornerstone principle, which is one of the chief treaties – the Treaty on the European Union ("TEU") and the Treaty on the Functioning of the European Union ("TFEU"). This entails that investors and business entities are provided with the executive right to operate their trade anywhere, since that is the EU aspiration and objective. The key values of non-discrimination, proportionality, and the mutual recognition form the cornerstone of the freedom of establishment, which guarantees equality of opportunities for the companies belonging to other countries. The aim of the European Union legal framework is to promote trade and the removal of barriers in the favour of harmonization of regulations, to ensure regulatory compliance, and to create an environment where innovation, productivity, and efficiency can thrive. Firstly, the free movement of establishment program has such a notable effect as it enhances market access, engenders a good level of competition, contributes to formulating of regulatory convergence, and lays a foundation for economic integration in the EU and ultimately broader prosperity and regional stability.

In contrast, the U.S. legal system does not contain a "freedom of incorporation" clause as such but rather freedom is principally implied by constitutional norms that govern commerce among states and states' powers in business regulatory matters ("dormant interstate commerce clause"). Among the North American states, companies have the liberty to enact their own state of the states according to that they can guarantee the most appropriate legislation, regulation and taxes for their business. Such a distributed system thus breeds regulatory competition between the

American states, for each to offer businesses with a framework of conditions including specific incentives, conducive tax structures, and corporate laws that reflect their policies. In these e-commerce markets, the firm has to be flexible, innovative and interacts with regulations; otherwise they will land in a situation where regulatory complexity and compliance are an issue, since the business and the stakeholders need to keep walking carefully in a situation where forum shopping is a problem.

The diverse legal frameworks, both, EU's constitutional freedom of establishment and US's fiscal freedom of incorporation seek common goals, among which are the encouragement of economic growth, attracting more investment and expanding the market share. According to them the two schools serve to pave way for facilitating cross-border trade, develop competitiveness and operationalize innovations in their jurisdictions. The complexity of the system is marked by a lack of common rules among DRR agreements and also the diverse mechanisms and norms that stress on the need for a wide consideration of general principles addressing for example protection of stakeholder interest and legal certainty.

Basically, through the introduction of freedom of establishment and the freedom of incorporation rules for the EU and the US respectively, these key principles will still remain and will continue to shape dynamically the working of the economies. The granular insight into the differences, reciprocities, and divergences between these three concepts empowers policymakers, businesspeople, and other key players to approach the complex global economy in a much more effective and calculated fashion which, in turn, increases economic resilience and inclusiveness and leads to a sustainable economic development both inside and beyond borders.

Giving attention to the fact that like this concept serves for a direct evaluation of the evolving nature of the international business working areas as well as for us to recognize the need to adapt the legal systems to the new challenges and opportunities being discovered. With technology restoring businesses surroundings, and the reality of changing the geopolitic position, policymakers are up to the task to keep the ideals of economic freedom, business competition, and the effective regulation in the check. The collaboration, dialogue, and knowledge-sharing strategies adopted by jurisdictions expose policymakers to breakthroughs and unique approaches

to common issues. These measures can be utilized to improve situations, increase consistency in regulation, and enable global economies to survive and thrive.

Inevitably, both principles have a larger impact on a national scale, economic recognition is not the only aspect of life, politics dosings also play an important role. Through creating cross-border parties, investments and agreements, freedom of establishment and freedom of incorporation all are channels of deeper interaction, communication and cooperation with nations. In the turbulent and uncertain world dominated by geopolitics and increasing volatility of economics, coping with global issues necessitates the opening of dialogue, cooperation, and mutual understanding routes that will help in ensuring peace, stability, and prosperity.

Despite the fact that the mentioned ones are formed with different legal systems, and albeit taking into account that many differences in their respective legal implementation and enforcement still exist, their fundamental aim could be held the same, that is, stimulation of the economy, competition boosting and widening the fields of business development for companies and individuals as well. In working together to identify synergies between the mentioned principles and building on their strengths, policymakers can politically better engage with international business, while business stakeholders can achieve greater efficiency in their operations, and all of us move towards a common goal of progress, innovation and sustainability of the future.

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