

# **Cross-border Mobility**

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**Let My People Go**

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The Way Forward  
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# Message: Let My People Go!

- Moses and Pharaoh

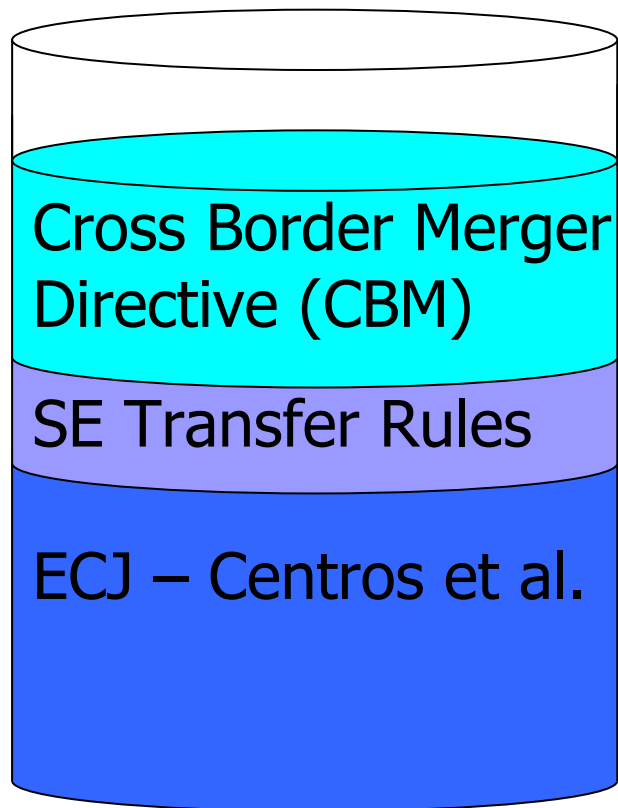


**“Let my people go!”**



# A Cup Almost Full

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**...or less than half  
empty**



# Merger Route No Equivalent

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- Can transfer registered office via cross-border merger.
- Can do savvy triangular mergers.
- For SMEs a simpler, faster and leaner process is the solution.



# Protection of Creditors

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- Remedies: adequate safeguards - security to protect un-matured obligations.
- Familiar standard (2nd and 3rd Directives): as needed (when necessary) and if creditor is otherwise not protected.
- Does this work in the Member States? What is the experience? How does this work?



# Creditor Protection Mutatis Mutandis

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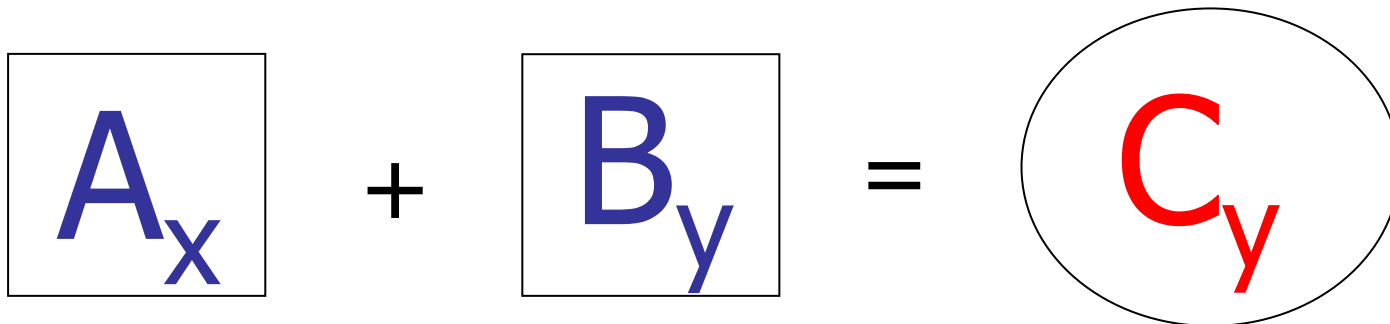
- Cross-border Merger: Transaction Risk + Transfer of Seat Risk (Internal Affairs Risk)
- Transaction Risk: surviving entity is a combination of the assets and liabilities of the merging entities. Not the Same Entity.
- Transfer of Seat Risk: surviving entity is the Same Entity, which is governed by the company laws of another jurisdiction.



# Creditor Protection Mutatis Mutandis

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- Transaction Risk - Merger of company A in Member State X and company B in Member State Y



# Creditor Protection Mutatis Mutandis

- Transfer Risk Only

$A_x$



$A_y$

- Same if SPV (shelf company) is used

$A_x$

+

$B_y$



$A_y$



# Internal Affairs Risk

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- Capital: minimum amount, increase, reduction, maintenance - distributions
- Majority – minority relations
- Governance, status and liability of directors
- Internal reorganization rights
- Limited liability – removal (piercing the corporate veil)
- Insolvency, Bankruptcy – real concerns



# What Can You Shop Around For?

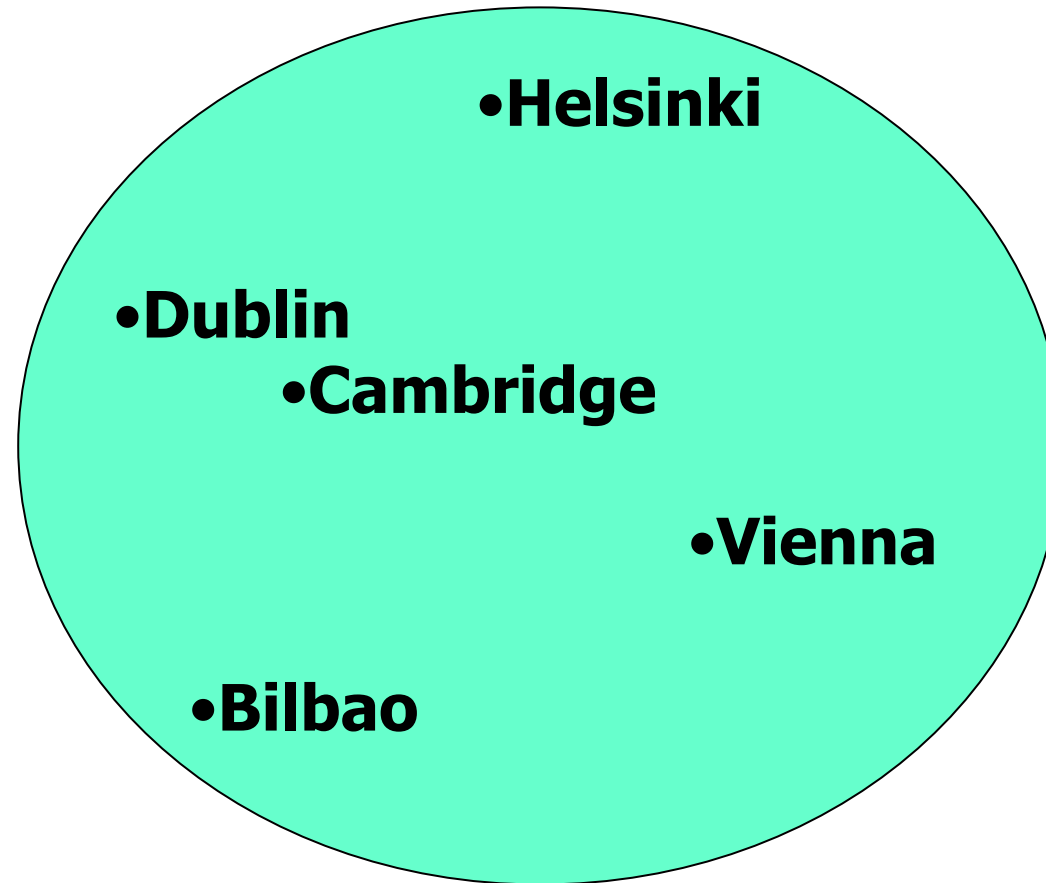
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- Internal Affairs „only“. Maybe a bit of insolvency.
- Applicable law:
  - Contracts (product liability) – Rome I
  - Torts (environment) – Rome II.
  - Bankruptcy: COMI (Center of Main Interest)
- Venue – where to sue – Brussels I. Almost everywhere.



# European Start Up Mobility

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# Conclusion: Reprise – Let My People Come and Go

