



Becoming similar while remaining different: company law in the EU

Company law
in the EU

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Abstract

Purpose – To review the latest management developments across the globe and pinpoints practical implications from cutting-edge research and case studies.

Design/methodology/approach – This briefing is prepared by an independent writer who adds their own impartial comments and places the articles in context.

Findings – As globalization continues to increase, it is even more important for business systems across the world to have some degree of cohesion. In addition to helping companies operate on a global scale, having a level of compatibility benefits analysts and others whose accuracy of assessment depends on the business information that is available. However, the cultural, social, political and other differences that potentially exist between countries can also spawn a diversity of business regulations and financial systems. This is especially significant in the European Union, where significant differences in the business framework could hinder trade and shatter ambitions of achieving a truly single market.

Practical implications – Provides strategic insights and practical thinking that have influenced some of the world's leading organizations.

Originality/value – The briefing saves busy executives and researchers hours of reading time by selecting only the very best, most pertinent information and presenting it in a condensed and easy-to-digest format.

Keywords Company law, European Union

Paper type Viewpoint

Introduction

As globalization continues to increase, it's even more important for business systems across the world to have some degree of cohesion. In addition to helping companies operate on a global scale, having a level of compatibility benefits analysts and others whose accuracy of assessment depends on the business information that is available. However, the cultural, social, political and other differences that potentially exist between countries can also spawn a diversity of business regulations and financial systems. This is especially significant in the European Union (EU), where significant differences in the business framework could hinder trade and shatter ambitions of achieving a truly single market.

Codification and case law

The biggest obstacle to EU unity in this context would appear to be the different legal systems that set the UK and Ireland apart from the rest of the constitution. Most of the EU has codified legal systems that provide a set of legal principles that law practitioners must adhere to religiously. In contrast, UK legislation continues to be influenced by case law, whereby legislation is established through interpretation of former cases.

The principle vs precedent conflict also shapes the respective accountancy systems. In the EU, accountancy regulations are bound by law and can only be altered through legal procedures. This formality strengthens the profession's links with the legal system, not least because accountants are responsible for ensuring that companies



abide by the law. Accountancy in the UK is, however, a different animal altogether. Traditionally, the profession has applied mainly technical rulings and has been directed by best practice rather than law. As a self-regulatory body, accountancy's responsibility to the courts is consequently much less evident.

Analysts point to several benefits of codification including:

- having a clearly defined system;
- general rules instead of subjective interpretation. However, some analysts believe that interpretation itself can eventually develop and define law;
- fewer voids, overlaps and inconsistencies in the law;
- a system that is more accessible especially to those from a non-legal background; and
- easier for students to learn.

The system also allows codes to be applied to new situations not necessarily anticipated at the time of construction. Consequently, until codes are updated or modified, the system remains both flexible and stable. Case law supporters would also argue that their method allows for changing circumstances, though others believe the system's dependency on which cases have previously been to court illustrates its spontaneous nature.

But codification is also not without its shortcomings. Codes are notoriously difficult to draw up and some areas of law are trickier to codify than others, particularly when statutes are founded on different and sometimes conflicting principles. In such circumstances, even law practitioners can find subtle differences hard to detect and understand. Codification must, therefore, minimize any potential problems relating to interpretation. Furthermore, the complexity and cost involved in preparing codes is likely to discourage attempts at alteration. The unmodified law may remain consistent but its relevance can in time become open to question.

English and Scottish law: historical developments

Many observers point to the increasing remoteness of the UK system but acknowledge that the UK would be loath to abandon its loyalty to judicial precedent. Does this suggest something of a stalemate? History would indicate not. For example, the impact of Cannon law and Roman law ensured that law in Scotland was based on principle rather than precedent, but subsequent influence of English law has somewhat narrowed the divide between the two systems.

A parallel to the current situation in the EU occurred at the end of the 19th century when businesses in Scotland demanded a standardization of commercial laws in order to facilitate better trade with England and the empire. This led to English company law becoming more influential, while allowing differences to remain in other areas such as family law and criminal law. Since then, much of English and Scottish commercial law has been incorporated into UK wide legislation that also permits different judgments to be reached for circumstances unique to Scotland, such as those applying to receivership and company legislation. Clarification in these situations merely involved replacing an English legal term with its Scottish equivalent, although the process was not straightforward when no corresponding term existed. Observers argue that it emphasizes the significance of context when rulings are intended to be applied to more than one jurisdiction.

The increase of company legislation throughout the 20th century has likewise not affected the influence of case laws in other areas such as legal entity, minority protection and conduct of meetings.

History also shows the difficulties inherent in applying a codified system across national boundaries. Successful codification of small branches of the law that brought such as the Partnership Act and Sale of Goods Act in the 1890s led to a demand for an empire wide code. However, the onset of war in South Africa and other developments ensured this did not materialize. But codification did occur in India and it was widely recognized as being responsible for bringing order to a legal system perceived as chaotic. The example clearly suggests that applying codes is much easier when one nation wields obvious power over another and thus has implications for entities like the EU, where rulings are agreed rather than imposed.

Harmonization, subsidiarity and uniformity

Historical developments between English and Scottish laws illustrate the value of harmonization, a process whereby systems are made broadly similar while allowing certain differences to remain in force. Harmonization sets limits on the degree of variation allowed between practices and, in this context, the EU tolerates individual differences that do not impede on the wider responsibilities of the whole.

The evidence also indicates that legal disparities need not provide a barrier to successful relations, although such differences clearly need to be recognized. To its credit, the EU is seemingly aware of this, as the concept of subsidiarity shows. Emerging as part of the 1993 Maastricht Treaty, subsidiarity declares that the EU must not rule when the issue can be resolved at national, regional or local level – apart from when issues relate to areas where the constitution has exclusive power. Uniformity is arguably a more extreme form of harmonization and is a process where different authorities aim to pass laws that are as similar as possible to each other. One example of uniformity occurs when the EU specifies common goals but allows member states to pass its own laws to achieve these goals. Definitions and degrees of harmonization vary but each serves to recognize that workable differences must be allowed within any structure or system.

Comment

The review is based upon: “Harmonisation of company law: lessons from Scottish and English legal history” by Paisey and Paisey (2004). The authors point out that different legal systems exist between the UK and other EU members. Their comprehensive article explores these disparities and the authors use historical examples to illustrate that such differences need not be impede relations and commerce. Paisey and Paisey discuss the concept of harmonization, suggest that the process offers the best solution for the EU and note the growing importance of subsidiarity within the constitution.

Reference

Paisey, C. and Paisey, N.J. (2004), “Harmonisation of company law: lessons from Scottish and English legal history”, *Management Decision*, Vol. 42 No. 8, pp. 1037-50, ISSN 0025-1747.

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