



The Concept of a Virtual Registered Office in EU Law: Challenges and Opportunities

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RESEARCH ARTICLE

 ubiquity press

ABSTRACT

The advancement of digital technologies leads to more legislative initiatives in this area. The 2018 draft law in Lithuania on the introduction of a virtual registered office was prepared but has not yet been approved and it is not clear whether it will be adopted. This article takes a closer look at the reasons for this, discusses the concept of a virtual registered office and analyses the future perspectives of its introduction. For this purpose, EU law as well as the laws of two jurisdictions, Lithuania and Estonia, are studied to evaluate the proper way in which this concept might be introduced. To this end, the concept of a registered office is assessed in more detail from different angles. The article proceeds with an analysis of the main functions of a virtual registered office and how they can be achieved: connection to applicable law and jurisdiction, and communication with third parties. Based on the above, the authors devise solutions and recommendations for EU law.

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KEYWORDS:

virtual registered office;
physical address;
digitalisation; applicable law;
communication

TO CITE THIS ARTICLE:

Bitė, V and Romashchenko, I, 'The Concept of a Virtual Registered Office in EU Law: Challenges and Opportunities' (2023) 38(1) *Utrecht Journal of International and European Law* pp. 25–38. DOI: <https://doi.org/10.5334/ujiel.605>

I. INTRODUCTION

Digital transformations, among other things, also touched the law, including company law. Meetings of corporate bodies often take place virtually. Companies and other legal persons are formed remotely using digital technologies. Information about corporate events is filed online. These examples indicate how digitalisation has affected the corporate reality. Many papers have already been devoted to various aspects of the use of digital technologies in company law: digitalisation in corporate governance, including virtual meetings of shareholders,¹ online formation of companies,² and use of artificial intelligence by corporate boards.³ Still, there is clear lack of research on the notion of the *virtual registered office* (hereinafter – VRO).⁴ Lina Mikalonienė is one of the few scholars who has studied this concept.⁵ She outlined it as an ‘innovative corporate law concept’ that found its way into a new legislative initiative of the European Commission.⁶ In this initiative, the VRO is mentioned merely as a potential development that has not yet been addressed by EU rules, and that might be developed by Member States on their own in case of no policy change.⁷

Indeed, some Member States have been moving towards the development of fully online communication between entities, as was noted in the report by Adelė Jaškānaitė and Raminta Olbutaitė, prepared within the ‘Create Lithuania’ programme.⁸ The authors of the mentioned report analysed the Lithuanian experience on the use of digital tools and came to the conclusion that, even in the absence of a legal framework on virtual offices, Lithuania possessed the technical resources necessary to ensure communication with public institutions as a basis for the establishment of VRO.⁹ They concluded that there was a need to replace the physical address with a virtual one.¹⁰ One of the reasons for such a statement was the fact that a physical address, as an official registered office, had not fulfilled its purposes effectively. Legal entities had often been registered at so-called ‘mass addresses’, with some addresses serving as the registered offices of hundreds of companies. For example, in Vilnius, one address serves as the registered office for 2,605 incorporated legal entities and another for 2,397, in Kaunas, – one address is used for 1,677 legal entities, etc.¹¹

On the one hand, finding a company registered at a mass address as well as its management and corporate bodies has always been an issue for state authorities, creditors, etc. On the other hand, the founders of companies faced with the need to find an address have often turned to intermediaries to ‘buy’ one. The latter would be unnecessary if there was the opportunity for simpler and swifter communication with authorities and other parties via a virtual office. For these reasons, an e-delivery service was suggested by the ‘Create

Lithuania’ report as a basis to introduce the *virtual office* concept in the legislation.¹² This system was designed to provide individuals and legal entities with the opportunity to send and receive electronic documents and messages while ensuring their originality and accuracy.¹³

After the ‘Create Lithuania’ report was published a draft law on the introduction of a VRO (hereinafter – the Draft Law on VRO) was submitted to the Lithuanian parliament, the Seimas.¹⁴ Although the Seimas in general supported the idea, the Draft Law on VRO was rejected. The Legal Department of the Seimas pointed out the fact that introducing the concept of a VRO would not be in line with EU law.¹⁵ As a result, the VRO concept had not yet found its way to Lithuanian law.

Despite the lack of regulation at the EU and national levels and the apparent lack of academic consideration of virtual offices, researchers and practitioners have displayed enthusiasm concerning the opportunities that the introduction of VRO might provide.¹⁶ The idea of a VRO is also a product of the aspiration for more rapid and cost-effective economic activity. If it were to be introduced properly, this idea would reduce the financial burden on both public authorities and companies. Therefore, the purpose of this article is to evaluate the proper way in which the latter concept might be introduced. The article focuses on EU legislation, using the example of two Member States to show what could be done on EU level. This entails the search for solutions aimed at contributing to the existing discussion and initiating more debate around this problematic topic. Among others, the article discusses the mechanism of the introduction of a VRO, namely whether a physical address as a registered office should be replaced with a VRO immediately or gradually.

The latter research question explains the article’s structure. In chapter II, the article provides a short guidance into the meaning of VRO, its characteristics, and its correlation with other concepts commonly used in business practice. Chapter III proceeds with the national perspectives regarding the introduction of VRO. The Lithuanian and Estonian jurisdictions were chosen for deeper analysis, with a particular focus given on Lithuania. These jurisdictions have shown considerable progress in the digitalisation of corporate relations by introducing the online formation of companies more than 10 years ago and embracing other eGovernment initiatives.¹⁷ Both Estonia and Lithuania belong to pioneers in the sphere of company law digitalisation among EU Member States, while Lithuania was close to introducing the concept of VRO in its legislation. Therefore, much attention is paid to the arguments that were used by the Seimas when rejecting the Draft Law on VRO. *Inter alia* it was argued that the introduction of a VRO would not be in line with EU law. This fact respectively forces us to study the *registered office* term in EU law more thoroughly. For these reasons, chapter IV proceeds with the investigation of how registered office is regulated at the EU level and

whether the introduction of VRO meets the requirements of EU law.

Here it should be stressed that the article does not deal with the issue of transfer of registered office. As opposed to how infrequently the concept of a VRO has been studied by scholars and developed in legal sources, much discussion and law-making has occurred regarding the transfer of a registered office. After the much-debated *Cartesio* judgment (C-210/06)¹⁸ followed by the failure of the draft 14th Company Law Directive on the cross-border transfer of the registered office¹⁹ – and before the adoption of the Directive on cross-border conversions, mergers and divisions²⁰ – the European Court of Justice (ECJ) produced at least two milestone judgments on the cross-border migration of legal entities: *VALE*²¹ and *Polbud*.²² During this period, one could observe how the term *registered office* was repeatedly mentioned in the context of cross-border conversions by different scholars.²³ Discussions focused on the implications of cases coming from the ECJ and possible future interventions in this area – either from the side of EU authorities or from national legislators.²⁴ The discussion in the present article is confined to the term *registered office*, the legal significance of which is important as it correlates with possible future developments in the concept of the VRO.

While chapter IV discusses whether the *registered office* concept can be interpreted as VRO in EU law, chapters V and VI further elaborate on the main functions of VRO: application of relevant substantive and procedural law, and proper communication between a company and its counterparties. These two functions can be attributed to the physical address as the registered office.²⁵ The authors analyse which conditions should be fulfilled to ensure that VRO achieves the same functional goals as physical address so that nothing precludes VRO from being introduced. In chapter VII, solutions and recommendations for EU law are developed and articulated while chapter VIII provides final remarks and recommendations.

II. VRO: THE MEANING OF THE CONCEPT

Much ambiguity exists around the term ‘*virtual registered office*’ as it is not defined in statutes or other sources of law. Some authors have used this term in a context that does not imply the use of digital technologies.²⁶ Other authors referred to the concept of *virtual office* to describe labour conditions in companies where work is performed in remote locations (away from the office location).²⁷ Teams working remotely in fact can create or design the so-called virtual offices at various web-sites where they would be able to have virtual meetings and discussions.²⁸

Considering the non-official nature of the *virtual office* concept and the resulting flexibility of its interpretation, the creation of a virtual office in practice might also have goals that are not necessarily associated with the acquisition of a registered office, including mail forwarding, meeting and conference rooms and phone answering services.²⁹ Having a virtual office may be viewed as a convenient solution for entrepreneurs who do not need separate premises, at least not constantly. Even for those businesspeople who are in possession of physical premises, a virtual office might be a viable choice if they do not want to disclose their residential address or other contact details.

Based on the above, one may observe a connection between a VRO and the concept of a *letterbox company*.³⁰ Letterbox companies are often created with malicious purposes, without the goal of carrying out substantial economic activity,³¹ but rather of benefitting from more lenient tax regulation. Other characteristics of these companies include the intention to utilise international and cross-border elements,³² which might not necessarily be in place with what is often regarded as a virtual office. What a letterbox company and a so-called virtual office have in common is that a physical address provided to a company as its registered office is unlikely to be used as a corporate headquarters. However, there is a substantial difference between these notions. A letterbox company is incorporated in the territory of a state where it does not carry out economic activity.³³ On the contrary, a virtual office can be used in the same country where the entity conducts its business. As opposed to letterbox companies, virtual offices are not viewed as something totally irregular and have not been tackled by EU and national regulators the way it happened to letterbox companies.³⁴

If one tries to explain the term ‘*virtual registered office*’, or more simply ‘*virtual office*’, in a way that it is often used in business communication and in the advertisement of legal services,³⁵ it can be referenced to depict a situation where an intermediary provides its client with a registered office without actual access to the premises, but with the opportunity to receive correspondence at the address, to communicate with public authorities through the address or simply to mention the address in official documents. However, in a situation where a specialised agency provides an address to its client according to an online request so that the client records this address as an official registered office and as an address for correspondence, this concept merely means that parties communicate online. These actions do not revoke the requirement for a legal entity to have a physical address – they only mean that the founder of the legal entity finds a physical address and uses it indirectly, through an intermediary. That is why, although some service providers advertise the existence of VRO in different Member States, there still has to be a

physical address for a legal entity to be included in the national register. For these reasons, and at least for the purposes of this article, we suggest that the term ‘*virtual registered office*’ (VRO) not be identified with the idea of a physical address provided by a specialised agency.

As has already been mentioned, some authors attribute a more innovative understanding to the VRO concept.³⁶ This understanding was recently brought to light by the European Commission in its initiative as a new potential development that could help to make EU company law rules and procedures fit for the digital age.³⁷ It stands to reason that this would not have been characterised as a new development if it was already well known. Thus, the European Commission meant something different from what the webpages of many specialised agencies currently offer. As we earlier noted, the notion of a VRO does not concern a physical address obtained through an intermediary using well-known communication tools. It also cannot be confined to a simple corporate email or a designated website used to disclose mandatory information by certain types of companies – for example, listed companies.³⁸ Instead, a VRO refers to a virtual account which may even serve as an alternative to a physical address in terms of its use as a registered office.³⁹ If a VRO is viewed as an alternative to a physical address, then company founders should be able to choose between incorporating with a physical address and forming a company that operates fully virtually.⁴⁰ A company with a VRO would also possess a unique email address, indicated in a State-administered information system and recorded in a national business registry.

In the next chapter, we study how the latter understanding of VRO found its way to the Draft Law on VRO submitted to the Lithuanian parliament and why it was rejected.

III. LITHUANIAN AND ESTONIAN PERSPECTIVES ON VRO

The Draft Law on VRO as an alternative to a physical office was prepared by the Ministry of Economy of the Republic of Lithuania and submitted by the Lithuanian government to the Seimas, in 2018. If this draft law had been adopted, shareholders in companies would have been entitled either to stay at a physical address or to move to a virtual one, meaning that the e-delivery service would be used for communication.⁴¹ It was a rather unique case of an attempt to introduce a highly technological concept in the legislation. In case of success, Lithuania would have become the first EU Member State to have this kind of regulation.

The explanatory note to the Draft Law on VRO contained, among others, a reference to the ‘Create

Lithuania’ report.⁴² The indicated goals included the simplification of the establishment of legal entities, the formation of location-independent companies and safer and more efficient communication between parties.

Despite the submitted justification, the Draft Law on VRO received negative feedback from the Lithuanian parliament. At first, from the viewpoint of the Legal Department of the Seimas,⁴³ both the ECJ’s case law (reference was made to cases *Commerzbank AG* (C-330/91)⁴⁴ and *Inspire Art* (C-167/01))⁴⁵ and the EU secondary legislation, in particular Directive 2017/1132,⁴⁶ referred to the territorial character of a registered office. The response of the Legal Department raised doubts as to the compliance of the Draft Law on VRO with the principles of economic activity and the freedom of fair competition. The reviewers pointed out the potential monopolistic status of the State if the law was to be adopted. In addition, the Legal Department expressed doubts as to whether counterparties of a legal entity with a VRO – that is, creditors, employees and consumers – could effectively protect their rights, as they might not have the necessary tools, e.g., an electronic signature, to communicate with such an entity.

In its conclusion,⁴⁷ the Economic Committee of the Seimas essentially agreed with its fundamental purpose: to provide regulation allowing a virtual office to be considered a legal entity’s domicile and to simplify the establishment of legal entities by avoiding the services of intermediaries. However, considering the risks outlined by the Legal Department, the Committee decided to return the draft law to the initiators. As an additional remark, the Committee indicated that the draft law did not consider how communication with foreign partners without access to the e-delivery system would be carried out.

As the Draft Law on VRO was not adopted, the Civil Code of the Republic of Lithuania still describes the registered office of a legal entity as the address of the premises where its office is located.⁴⁸ However, article 2.49 has nonetheless been subject to other amendments. On 17 June 2021, the Seimas allowed all official correspondence with a legal entity to take place through the electronic delivery box address.⁴⁹ In 2020, there were also important changes to the Law on Public Administration which identified the e-delivery system as having the same legal and evidentiary power as registered mail delivery.⁵⁰ All in all, despite the failure to introduce a VRO in the legislation for the reasons mentioned above, the Seimas managed to locate a reference to the e-delivery system in the legislation.⁵¹

As for Estonia, it should first be noted that the country has not introduced the concept of a VRO in its legislation. The term *registered office* is used rather often in the Commercial Code of Estonia, which stipulates that the former should be indicated both in the official

documents of a legal entity and on its website⁵²; entered into a commercial register,⁵³ on a registry card,⁵⁴ in the memorandum of association as well as in the articles of association of a private or public limited company⁵⁵; and outlined in the partnership agreement of a partnership.⁵⁶

Although Estonia has not managed to remove the *registered office* concept and replace it with that of the VRO, much effort has been made to facilitate the establishment of legal entities by, among other measures, introducing the concept of a *contact person*.⁵⁷ A contact person must be designated by a legal person whose management is in a foreign State. To prevent money laundering and related wrongful activities, this designated contact person can be chosen only from notaries, advocates, law offices, sworn auditors, audit firms, tax representatives or providers of trust and company services in terms of respective regulation on the prevention of money laundering and terrorist financing. In this case, the address of such a designated person would serve as the address of the company in question. This might be used for sending and receiving procedural documents and other correspondence.

The existence of the concept of a *contact person*, together with e-Residency, allows easier formation of companies in Estonia from abroad. This procedure is accessibly described on the respective website.⁵⁸ A person wishing to establish a company in Estonia may apply online for e-Residency, pay State fees and obtain a digital ID at a pickup location in a foreign country. E-Residency does not allow one to enter or reside in Estonia, but provides the opportunity to form a company therein. This is where the concept of a *contact person* comes in. To form a company in Estonia, a foreigner, having acquired e-Residency status, can choose a contact person through a virtual office service provider.⁵⁹ Again, the term *virtual office* is here used not to refer to a VRO, but rather to describe the remoteness and digital nature of communication between the potential founder of a legal entity and a service provider. As is the case in Lithuania and many other countries, intermediaries are used to provide registered offices to founders.

A study of the laws of Lithuania and Estonia allows the conclusion to be formed that the concept of a VRO is not introduced in these countries, despite their efforts and the shared aspiration to digitalise their economies. Instead, both Lithuania and Estonia possess other solutions that make communication among legal entities efficient. Indeed, the national laws of both countries contain *registered office* concepts that have a territorial character. Moreover, during the attempt to introduce the VRO as an alternative to the physical registered office in Lithuania, one of the arguments against such a development was that it is against EU law. Therefore, in the next chapter we analyse the usage of the term *registered office* in the instruments of EU law to assess

whether the introduction of the VRO would be in line with the requirements of EU law.

IV. THE REGISTERED OFFICE CONCEPT IN EU LAW REGULATIONS

IV.A. THE REGISTERED OFFICE IN EU LAW FROM DIFFERENT ANGLES

The idea of introducing the concept of a VRO into national laws requires a study of the usage of the term *registered office* in EU acts. To understand the scale of its usage in EU law, we employed the eur-lex.europa.eu search engine with the following filters: domain – EU law and case-law; subdomain – legal acts; limit to legislation in force – true; published in – English; results containing – registered office in-text; search language – English. As a result of the search carried out on 18 July 2022, 476 results were procured. These results included various EU instruments: directives, regulations and decisions of EU bodies. Based on the analysis of the acts where the term *registered office* is mentioned, the following can be elaborated.

First, it should be noted that there are no legal acts in EU law where the term *registered office* is defined or explained. To the contrary, other notions are often defined or explained using the term *registered office*. For instance, in Directive 2011/61/EU, many definitions employ the term *registered office*, including the definitions of *branch*, *competent authorities* and *legal representative*.⁶⁰ According to the latter directive, collective investment undertakings, legal persons managing them, depositaries and representatives that are legal persons are viewed as being established in a certain country if they have their registered office there.⁶¹ The same meaning of *established* can also be found in other acts of EU law.⁶²

In terms of corporate law regulations in the EU – that is, Directive 2017/1132 – the concept of a *registered office* is important in several aspects. This is a significant concept by itself, as it must be indicated in the statutes or instruments of incorporation,⁶³ must be available free of charge through the system of interconnection of registers,⁶⁴ must be present on letters and order forms⁶⁵ and changes to it must be publicly disclosed.⁶⁶ Second, this concept is mentioned in the context of the transfer of the registered office to another jurisdiction, which is a type of cross-border conversion.⁶⁷ Within the procedure of cross-border conversion, Directive 2017/1132 necessitates that the registered office is stipulated in the draft terms of a cross-border conversion drawn up by the company's administrative or management body.⁶⁸ The registered offices of companies must also be stipulated in the draft terms of mergers,⁶⁹ divisions,⁷⁰ cross-border mergers⁷¹ and cross-border divisions.⁷²

The term *registered office* is used to link a company to the EU as a whole, or to one of the EU Member States specifically. First and foremost, with reference to the EU the term *registered office* is used in Article 54 of the Treaty on the Functioning of the European Union in the context of the right of companies to be treated the same way as natural persons in the EU.⁷³

This concept might also be observed in EU law when a registered office serves as a connection to the law of a Member State. For instance, in the Shareholder Rights Directive, the concept of a *registered office* is used to define the scope of the act – that is, the Directive applies to the general meetings of companies that have their registered office in an EU Member State.⁷⁴ There are also other EU instruments where the *registered office* concept is used to link the location of an entity to the competence of respective authorities and to the law of a particular Member State.⁷⁵ One example is Directive 2017/1132, which uses the *registered office* concept as a connecting factor to determine which law should apply in case of cross-border mergers or cross-border divisions of limited liability companies.⁷⁶

Besides determining the applicable law, the place of the registered office is also used to define the relevant jurisdiction: as a rule, for disputes involving European groupings of territorial cooperation (EGTCs), the courts where an EGTC has its registered office are competent.⁷⁷ For the purposes of Regulation 1215/2012, the *registered office* concept is a tool to determine the domicile of a legal person. Knowledge of the legal person's domicile matters for the applied jurisdiction as, for instance, persons are normally to be sued in the Member State of their domicile.⁷⁸ As Regulation 1215/2012 stipulates, a company or other legal person is domiciled at the place where it has its statutory seat, central administration or principal place of business.⁷⁹ As Article 63(2) of Regulation 1215/2012 reads, 'for the purposes of Ireland, Cyprus and the United Kingdom, "statutory seat" means the registered office or, where there is no such office anywhere, the place of incorporation or, where there is no such place anywhere, the place under the law of which the formation took place'. What matters in the text of Article 63(2) is that this allows for cases when a legal person does not have a registered office. There are also other EU acts allowing situations when a legal person does not have a registered office under national law. For those situations, EU law instruments seek a connection to the legal entity's head office so that the legal person is linked to the Member State where it actually carries out its business.⁸⁰

In many acts, the *registered office* concept is used with reference to a physical address. It is often the case that a specific address with reference to a street in a town or city is mentioned.⁸¹ In Directive 2017/1132, a registered office is also sometimes implicitly used as a reference to the company's physical

address and premises – one example is the right of shareholders to inspect the documents of a merger at the company's registered office.⁸² Likewise, there is an inspection right belonging to the shareholders in case of a company's division.⁸³ In Commission Delegated Regulation 2021/528, the *registered office* concept is used in connection with the telephone number as part of the information to be published for a prospectus exemption.⁸⁴ However, in some cases, registered office and address are differentiated. For instance, in Regulation 2137/85, the registered office is differentiated from the permanent address.⁸⁵ In a similar manner, in Directive 2015/849 the registered office is distinguished from the correspondence address.⁸⁶ Most probably, this is the case because the real correspondence address of a company might differ from the official address – that is, the address of its registered office. This approach can be seen in Regulation 2015/848 on insolvency proceedings mandating that the registered office of the debtor – and, if it is different, the postal address – be made public.⁸⁷

IV.B. CONCLUDING REMARKS ON THE REGISTERED OFFICE CONCEPT IN EU LAW

Having studied the concept of the *registered office* in EU law, this chapter concludes with a discussion of how the notions of *registered office* and *virtual registered office* correlate in EU law, and whether the introduction of the VRO concept would be in line with EU law. As mentioned earlier, the Draft Law on VRO in Lithuania was suspended after the Legal Department of the Seimas issued negative comments. One of their arguments in doing so was that the draft law contradicted EU law, in particular Directive 2017/1132, and ECJ case law. According to the reasoning of the Legal Department, EU law and ECJ case law are based on the premise that the registered office has a territorial character, and the registered office cannot, therefore, be replaced with a term that has no territorial connection.

Firstly, we would like to elaborate on how EU legal acts approach the *registered office* concept. One can easily observe that the registered office is often viewed as a physical address.⁸⁸ However, analysis of the *registered office* concept does not always allow for the straightforward conclusion that a physical address is what is meant. For instance, when the registered office of a company is used to link relationships to certain material or procedural (jurisdiction) law,⁸⁹ this might be construed as referring to an electronic address in respective EU instruments. Furthermore, when it comes to the company's instrument of incorporation, the requirement to indicate the registered office does not necessarily mean that only a physical address can be stipulated.⁹⁰ Overall, when there is a reference to EU law or the law of an EU Member State, rather than to a specific postal address (building, apartment, office or other premises), then there exists the possibility of deploying a different

understanding of a registered office, which might include a VRO.

Secondly, two ECJ cases were mentioned by the Legal Department of the Seimas to support the statement that the VRO concept is not welcome in EU law: *Commerzbank AG* (C-330/91) and *Inspire Art* (C-167/01). Regarding these two cases, it should primarily be noted that there is no explicit indication that the registered office has a territorial nature and that the VRO is against the ECJ rulings. Nevertheless, in case *Inspire Art* (C-167/01) the Court expressed concerns that might be relevant to what the introduction of a VRO could bring. The Court then stated that ‘...a Member State is entitled to take measures designed to prevent certain of its nationals from attempting, under cover of the rights created by the Treaty, improperly to circumvent their national legislation...’.⁹¹ There is no doubt that a VRO might be used for the goals listed in the latter paragraph of the judgment. However, these considerations do not inherently turn a VRO into something malicious. A State is free to impose the safeguards necessary to deter any unlawful economic activity effectively and proportionately. However, this does not mean that circumvention and fraudulent activities are not happening without a VRO. Moreover, as the Court further noted, ‘...the fact that a company does not conduct any business in the Member State in which it has its registered office <...> is not sufficient to prove the existence of abuse or fraudulent conduct...’.⁹² Therefore, it is not an entirely valid argument to allege that ECJ case law provides for the territorial nature of a registered office and completely prohibits the introduction of a VRO.

Having studied EU law as to whether it precludes VRO from being introduced, in chapters V and VI we will investigate the main functions of VRO. It remains to be seen whether the VRO effectively copes with the same tasks as physical address and which steps need to be taken to make these functions work.

V. PRIVATE INTERNATIONAL LAW CONSIDERATIONS REGARDING VRO

One of the issues that merits discussion in terms of the *registered office* concept is its interpretation from the viewpoint of conflict-of-law principles. As has earlier been mentioned, the application of substantial law and procedural law is one of the key functions of physical address as a registered office.⁹³ In this context, it is worthwhile analysing whether a registered office could be viewed as a VRO from the perspective of private international law. This perspective corresponds to the function of the registered office: to ensure that the applicable law and jurisdiction are determined with respect to the legal person.⁹⁴

As has been mentioned in previous chapters, the notion of a *registered office* might be linked to the physical

address of a legal person, to the law of an EU Member State or to EU law in general. It is most significant for private international law when a registered office is used to link a legal person to the law of a specific Member State. For instance, if a company employing a person on board a vessel at sea under the flag of one Member State has a registered office in another Member State, then the person shall be subject to the latter Member State’s law in case they reside in that Member State.⁹⁵

As stated earlier, the concept of a *registered office* is not defined in EU law and is not always viewed as a physical address, thus allowing for a wider interpretation of the registered office in those cases when a physical address is not meant. Thus, if we interpret registered office as including VRO for situations allowing so, including for the purpose of defining a connecting factor, then this will respectively mean that a legal entity might be subject to the applicable national law based on where its VRO is located. This conclusion arises from the right of a Member State to define the connecting factor for a legal entity. This right of the Member State ‘...includes the possibility for that Member State not to permit a company governed by its law to retain that status if the company intends to reorganise itself in another Member State by moving its seat to the territory of the latter, thereby breaking the connecting factor required under the national law of the Member State of incorporation.’⁹⁶

The fact that a registered office can serve as a connecting factor to link a certain legal entity to respective applicable law and jurisdiction poses the question of how precisely a Member State should define the location of a legal person so that it is linked to applicable law and jurisdiction. This question needs to be answered to understand whether linking a particular legal entity to applicable material and procedural law requires a specific address with a street and house number to be obtained, or whether a reference to a country where an entity is situated is sufficient.

Earlier in this article we mentioned some EU law provisions where the registered office was used as a connecting factor to determine applicable law.⁹⁷ In none of those cases did the application of the registered office as a connecting factor depend on where exactly in a country a particular legal entity was located. The same is true of cases when jurisdiction was defined.⁹⁸ Likewise, European private law regulations do not refer to specific local laws within the respective region, city (town) or district where a legal entity is located. If one analyses the EU law acts containing conflict-of-law provisions, it can be concluded that applicable law means the law of a Member State as a whole, meaning that national law is universally applied in its entirety, subject to well-known exceptions such as *renvoi* and public policy.⁹⁹ In case a State is comprised of several territorial units with their own laws, then the internal conflict-of-law rules will determine the relevant territorial unit whose rules are to

apply.¹⁰⁰ In case there are no such internal conflict-of-law rules, the law will most probably be linked to the law of the territorial unit that is most closely connected. In case national law does not comprise of the laws of territorial units, a Member State would determine for itself how to subject a legal entity to its local laws and which local authorities would be able to issue regulations covering legal entities. For instance, in Estonia one could find that the registry contains reference to local authorities where an entity is located.¹⁰¹ This confirms that national laws usually determine which local acts and regulations would apply to a particular legal entity.

Therefore, there are reasons to conclude that applicable law and jurisdiction can be determined without knowing the exact physical location of a legal entity. Instead, information about the country where the entity is located should suffice. This conclusion means that the VRO would be perfectly able to cope with the function of ensuring a connection between a legal entity and applicable law, even if we only knew the country that the legal entity came from. In that case, national law would be assigned the task of connecting the entity with the proper local laws and regulations, as well as the relevant local authorities. For instance, as far as Lithuania is concerned, a legal entity might have a VRO with a link to Vilnius and its city authorities.

Additionally, as we mentioned in the previous chapter, the use of VRO does not by itself mean fraud or circumvention activities. Its introduction will not be able to fully prevent forum shopping when it is available to parties. However, delaying the introduction of VRO is not beneficial either. Physical address as a registered office cannot offer adequate safeguards against fraudulent behaviour, regulatory competition and forum shopping practices because founders can anyway create companies by acquiring registered offices through intermediaries. At the same time, companies are ‘creatures of national law’ as it was eloquently noted in the famous *Daily Mail* case (81/87) decided by the ECJ.¹⁰² So, it is in the competence of Member States to define connecting factors for companies. As has been shown above, VRO would suffice for this purpose.

In the next chapter, we will proceed with analysing another function of registered office, that is communication with third parties, and conditions that should be achieved so that VRO effectively performs this function.

VI. COMMUNICATION CONSIDERATIONS REGARDING VRO

Besides aiming to link a legal entity to the material and procedural law of a certain country, a registered office has the function of ensuring proper communication between a legal entity and its counterparties, including

public authorities, creditors, consumers and other third parties.¹⁰³

It should primarily be stressed that the current way in which registered offices are often acquired in different EU Member States through intermediaries – that is, when hundreds of legal entities are located at one physical address – is hard to tolerate. State authorities and creditors do not always manage to communicate properly with these legal persons; direct communication would be much more efficient. Shareholders and the management of companies, except for sham companies, would also find it more convenient to directly communicate with their parties instead of using an intermediary for these purposes. The VRO, as an innovative concept, might provide solutions to these issues.

As has been demonstrated by a Lithuanian study, VRO might bring economic benefits to both private and public actors by reducing the financial burden, facilitating communication and strengthening the transparency and competitiveness of companies.¹⁰⁴ Indeed, Lithuania has presented a national e-delivery system, where all correspondence using the e-delivery system is equated, by legal and evidentiary effect, to standard correspondence using registered mailing services.¹⁰⁵ It would perhaps be desirable to have such an e-delivery system at the EU level on a cross-border basis, but it is rather naïve to expect such a mechanism in the near future. Much effort is needed to create the tools necessary to have an operational and well-functioning electronic delivery system containing VRO for legal entities in all EU Member States.

Our expectations regarding the future development of e-delivery systems should not be confined only to national users: foreign actors should also have the opportunity to connect through the respective national e-delivery systems in order to send and receive letters through them. This opportunity should be made available to both private and public entities, including state and municipal authorities. This does not necessarily mean that a foreign legal entity with a registered office abroad should create a separate VRO in the system, creating double or multiple registered offices. Instead, the system should allow foreign natural and legal persons to create electronic addresses that are not VRO *per se*, but where sending and receiving e-messages would have the same power as registered mail.

In the context of the Lithuanian e-delivery system, two issues, *inter alia*, were raised during the discussion on the Draft Law on VRO in Lithuania: competition and privacy protection. The fact that all communication in the system among various actors with registered addresses would go through one service provider is risky from both perspectives. Several competing providers would be able to achieve more elaborate digital solutions faster than if one provider was assigned this role. The task of the State, or more generally the EU, would then be to provide

adequate regulation, with licensing requirements for potential service providers. The State would not act as a participant in these relations, but rather would establish rules for other actors and supervise their compliance. With many service providers, one of the functions of the State would be to maintain the database and the website where VRO and registered emails for entities without VRO would be officially announced and publicly available. As a result, anyone would be able to find the VRO of a certain legal person via the respective web portal.

As noted above, the existing regulation – where intermediaries are involved in providing legal entities with addresses, also widely called virtual offices – needs change. Such change needs to move in the direction of wider digitalisation, so that legal entities can act through a VRO instead of a physical address. However, while moving in this direction care should be taken not to forget about weaker parties, including consumers, some of which might be forced to communicate by regular mail due to poor digital skills or the absence of access to electronic tools. In addition, it is possible that some foreign state authorities might be prohibited to use such electronic system and be allowed to use only regular mail or services of clerks. For this reason, a link to a physical address to establish communication between a legal entity and its counterparties seems temporarily practical for the transition period till all players and society adapt to the system of e-communication and accept it more easily. Several solutions may be proposed to the EU to regulate this area.

First, the national solution of Estonia might be employed as an approximate model at the EU level. Following the Estonian model, the EU may provide for a definition of a contact person – that is, a person to whom procedural documents of the undertaking and the declarations of intent may be delivered.¹⁰⁶ Similarly to what the law stipulates in Estonia, it is advisable that the physical address of a contact person is considered as the address of the respective company – that is, its registered office.¹⁰⁷ Under such circumstances, again following the example of Estonia, the name of the contact person, their code, the registered office and place of central administration as well as the person's consent to act as a contact person may be included in the business register.¹⁰⁸ This solution may be practical as it would allow for the incorporation of companies with a VRO and without a physical address. The drawback to this solution is that it might lead to the massive accumulation of paper shipments at one postal address, leading to delivery shortcomings. Additionally, paper mail would then go through the hands of outsiders, who are unlikely to offer their services for free.

Another possible tool to link a legal entity with a VRO to a physical address is by connecting the VRO to the address of the entity's director. In this way, if a legal entity decides not to have a physical address as its registered

office, then the address of its director should be publicly disclosed as the official address for correspondence with third parties. Communication through the director's address should then have a legal and evidentiary effect comparable to registered mail services with the legal entity itself. The advantage of this solution compared to the previous one is that it might escape the shortcomings of the so-called addresses of mass registration. This idea also gives the opportunity to encounter a natural person at their real address. Thus, for parties using exclusively paper communication, this could present an alternative, albeit only temporarily. The latter compromise solution could be introduced in combination with the other technological communication tools earlier described in this chapter, presenting positive perspectives for future development. After some time, when society and actors adapt to the new regulation, the link to a physical address should be removed for those companies that can effectively function without any connection to physical premises.

In the next chapter, we will discuss the existing solutions and make recommendations to find the most proper way of intervention in EU law to introduce VRO.

VII. SOLUTIONS AND RECOMMENDATIONS FOR EU LAW

In case of the introduction of the VRO, one would be able to discuss further developments in making the economy of the EU and its Member States more digitalised. If implemented properly, this would facilitate digital interaction both with State authorities and with industry, leading to improved economic outcomes. Besides bringing apparent advantages – including swifter, more efficient and effective procedures – digitalisation might be used for wrongful purposes. A VRO as a potential product of digitalisation might also be employed for goals that have nothing to do with the enhancement of existing procedures, such as fraud, money laundering, other criminal activities and the concealment of a certain person's identity. Therefore, if any rules on VRO are proposed at the EU level, these risks should be considered by creating adequate safeguards against any abusive and wrongful behaviour of corporate actors.

If we return to the Lithuanian Draft Law on VRO proposed in 2018, it, as Lina Mikalonienė noted in her article, was aimed at 'introducing the incorporation approach in relation to the virtual corporate seat of a company established under Lithuanian law, and, at the same time, maintaining the real seat approach in relation to the physical corporate seat of a domestic company'.¹⁰⁹ The author further considered efforts regarding the transition of substantive company law from real seat theory to incorporation theory, but opined in favour of full-scale transition to this theory such that

domestic legal entities with physical addresses are also covered by incorporation theory.¹¹⁰ We also acknowledge the clear advantages of incorporation theory, namely its certainty and formality, and support the suggestion of Lina Mikalonienė.¹¹¹ Although in some sources Lithuania is posited as an incorporation theory jurisdiction,¹¹² the Lithuanian Civil Code defines the legal entity's registered office as the seat of its principal managing body, which is a sign of the real seat theory.¹¹³ For foreign entities, the situation is different because according to the Lithuanian Civil Code they are governed by the laws of the state where they are founded.¹¹⁴ Hence, foreign entities in Lithuania are covered by the incorporation theory. This is even more pronounced as, according to some authors, the need for the real seat theory as an anti-abuse mechanism is reduced by the international jurisdiction and conflict of laws rules in other areas of law, such as insolvency and tort. This, in turn, has mitigated the need for the real seat theory to play its part as an anti-abuse mechanism.¹¹⁵ In addition, in our opinion, the latter approach should be combined with proper safeguards. As we recommended in the previous chapter of this article, a legal entity with a VRO must maintain its link to a physical address. This can be accomplished by connecting a legal entity to the address of the director or another contact person, so that one could ensure contact with a real person for communication purposes. This safeguard is justified by reasons of public interest and the prevention of abuse.

The introduction of the VRO concept requires not only adequate safeguards, but also changes in the interpretation of registered offices in EU law. As mentioned earlier, there is no definition of a *registered office*, but in some EU instruments it appears to involve reference to a specific physical address.¹¹⁶ In some acts, a reference to a physical address is implied. For instance, Directive 2017/1132 empowers all shareholders to inspect documents at the registered office of the company at least one month before the date fixed for the general meeting which is to decide on the draft terms of a merger.¹¹⁷ Here one would interpret a registered office to mean a physical address where hard copies of documents are located. It is unlikely that a registered office would be viewed here as a specific repository where scanned copies of documents are contained. Based on the above, and to remove any misinterpretations of the term *registered office* so that a VRO is permitted at the national level, it is necessary to change the provisions of the EU laws in which a registered office is explicitly or implicitly referred to as a physical address. Firstly, such changes need to provide for an official definition of a *registered office* which would allow a registered office to be construed either as a physical address (a specific postal address with an indication of a street name and a house number in a city, town or village) or as a VRO

(an e-box with an electronic mail capability allowing for messages that have a legal and evidentiary effect to be sent and received, with a connection to certain local area in a Member State). Secondly, changes must touch upon the provisions of directives where the registered office is implicitly viewed as a physical address. For instance, we recommend that the right of shareholders to inspect documents at the company's registered office in Directive 2017/1132 should be worded differently.¹¹⁸ It should instead be articulated so as to provide for their right to inspect paper copies at the company's physical address, when a physical address is used as a registered office, or to access scanned copies in the company's file storage system, if a VRO is employed.

Without these changes at the EU level, it is unlikely that Member States will proceed with any changes at the national level due to different interpretations. Therefore, it is important that the notion of a *registered office* is understood both as a physical address and as an electronic address (a VRO) in EU law, allowing for the further unification of requirements in all Member States. The format of a directive would suit these purposes as it would allow time for Member States to formulate the requirements in their national statutes and plan their application.

In addition, it is preferable that EU law approaches the issues outlined in the previous chapters of this article, as far as conflict-of-law rules and communication mechanisms matter.

Firstly, the rules on VRO in the respective EU directive should provide for the opportunity of company founders to select a VRO when incorporating a company and should also allow for the possibility to change a registered office to a virtual one if it is formulated as a physical address. The system should also allow for the indication of the municipality or other location of a Member State that the VRO should relate to. As a result, it will be clear which national and local laws should apply to a particular legal person.

Secondly, as far as communication is concerned, the EU directive should stipulate requirements for organisations that provide a VRO. The communication mechanism should be constructed in a way that allows national and foreign participants to create both VRO and electronic addresses without the status of a VRO. The example of the Lithuanian law regarding the mechanism and legal regulation of e-delivery can be instrumental in this regard, setting out the fundamentals for the use of VRO at the EU level. To be specific, all correspondence with an entity through its publicly announced electronic mailbox, which is identified as a virtual address, should have the same legal power as correspondence using regular registered mail. Such a clause, if it appeared at the EU level, would allow legislators to move forward with the further implementation of VRO in national laws.

VIII. CONCLUSION

Digitalisation in the EU has intensified the development of communication among various actors and led to the emergence of new technological solutions for legal entities. Despite the apparent advantages of VRO, it has not been introduced in the laws of the EU Member States. One of the reasons for this has its roots in the EU itself. EU law in this area often uses the concept of a *registered office* by reference to a physical address or uses it in a context that implies the use of a physical address. In addition, there are still obstacles to cross-border communication via VRO for foreign actors. This is also true for weaker parties who might not be able to employ the same digital solutions.

For these reasons, it is recommended that the EU interferes in this sphere by removing any misunderstandings and defining a registered office as including both a physical address and a VRO. EU intervention should also stipulate requirements for organisations that provide VRO in Member States, as well as setting out a legal basis for selecting a virtual address instead of a physical one and for the communication of domestic and foreign actors through VRO. These new rules need to contain safeguards against fraudulent practices. To protect the rights of weaker parties, people who are not digitally advanced and other potential interested parties, all legal entities using VRO should temporarily maintain a link to a physical address – for instance, the address of the director or another contact person. The suggested connection to a physical address is a temporary compromise solution to overcome the existing difficulties on a path to full VRO. These changes, in the authors' opinion, would represent a step towards the gradual development of improved virtual cross-border communication and the future replacement of the traditional registered office with its virtual counterpart.

NOTES

- 1 See, e.g.: Dirk A Zetsche, Linn Anker-Sørensen, Roberta Consiglio and Miko Yeboah-Smith, 'Enhancing virtual governance: comparative lessons from COVID-19 company laws' (2022) 22 JCLS 115; Gerald Spindler, 'Digitalization and Corporate Law – A View from Germany' (2019) 16 ECFR 106; Piotr Pinior, 'Impact of the COVID-19 Pandemic on Company Law. Shareholders' Meetings and Resolutions' (2022) 19 ECFR 100; Mark Fenwick and others, *Organizing-for-Innovation: Corporate Governance in a Digital Age* (Springer Singapore 2023).
- 2 See, e.g.: Segismundo Álvarez Royo-Villanova, 'Proposal Regarding the Use of Digital Tools and Processes in Company Law: The Practitioner's Perspective' (2019) 16 ECFR 149; Sebastian Omlor, 'Digitalization and EU Company Law: Innovation and Tradition in Tandem' (2019) 16 ECL 6; Florian Möslin, 'Back to the Digital Future? On the EU Company Law Package's Approach to Digitalization' (2019) 16 ECL 4.
- 3 See, e.g.: Eva Thelisson, Jean-Henry Morin and Johan Rochel, 'AI Governance: Digital Responsibility as a Building Block: Towards an Index of Digital Responsibility' (2019) 2 Delphi 167; Gian Domenico Mosco, 'AI and the Board Within Italian Corporate Law: Preliminary Notes' (2020) 17 ECL 87; Michael Hilb, 'Toward artificial governance? The role of artificial intelligence in shaping

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- 10 *ibid.*, 10.
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- 12 Jaškanaite and Olbutaitė (n 8), 11.
- 13 SE Centre of Registers, 'E-delivery. About the system' <<https://epristatymas.lt/>> accessed 25 February 2023.
- 14 The draft law on the amendment of Article 2.49 of the Civil Code, No. XIIIIP-2833 (02 November 2018) <<https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/595f00c0de6d11e8b45fd5e76c92eb79?positionInSearchResults=2&searchModelUUIID=7fcc6580-005a-4a75-bd22-981ed5502daa>> accessed 29 December 2022.
- 15 Conclusion of the legal department regarding the draft law to amend Article 2.49 of the Civil Code, No. XIIIIP-2833 (13 November 2018) <<https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/899a5600e73b11e894a78279b4c56611?fwid=-10204pubfd>> accessed 29 December 2022.
- 16 Mikalonienė (n 6), 5; Jaškanaite and Olbutaitė (n 8), 11.
- 17 European Commission, 'eGovernment Benchmark 2022 Insight Report, Synchronizing Digital Governments' (2022) 8 <<https://digital-strategy.ec.europa.eu/en/library/egovernment-benchmark-2022>> accessed 29 December 2022.
- 18 Case C-210/06 *Cartesio* [2006] ECLI:EU:C:2008:723.
- 19 See, e.g.: Stephan Rammelloo, 'The 14th EC Company Law Directive on the Cross-Border Transfer of the Registered Office of Limited Liability Companies – Now or Never' (2008) 15 MJ 15 359, 393–394; Gert-Jan Vossestein, 'Transfer of the Registered Office: The European Commission's Decision Not to Submit a Proposal for a Directive' (2008) 4 Utrecht Law Review 53, 54–55; Blanca Ballester and Micaela del Monte, 'European Added Value Assessment EAVA 3/2012. Directive on the cross-border transfer of a company's registered office (14th Company Law Directive)' (2012) Brussels, European Union <[https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/494460/IPOL-JOIN_ET\(2013\)494460_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/494460/IPOL-JOIN_ET(2013)494460_EN.pdf)> accessed 29 December 2022.
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- 22 Case C-106/16 *Polbud – Wykonawstwo sp. z o.o., in liquidation* [2017] EU:C:2017:804.
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- 24 See, e.g.: Thomas Papadopoulos, 'The Different Legal Concepts of 'Seat' and 'Registered Office' in Cyprus Company Law' (2022) 19 ECL 131.
- 25 Jaškanaite and Olbutaitė (n 8), 5.

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- 28 See, e.g.: Digitally induced GmbH, 'The place for Home-Office Teams' <<https://virtualoffice.team/>> accessed 23 February 2023; Kumospace, 'Work from anywhere with a virtual office', <<https://www.kumospace.com/virtual-office>> accessed 23 February 2023; Teemyco, 'Remote Work Succeeds in a Virtual Office', <<https://www.teemyco.com/>> accessed 23 February 2023.
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- 32 *ibid*, 7–8.
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- 34 Karsten Engsig Sørensen, 'The fight against letterbox companies in the internal market' (2015) 52 CML Rev. 85, 85.
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- 37 European Commission (n 7), 2.
- 38 Vanessa Knapp, 'What the Issues Relating to Digitalisation in Company Law? In-Depth Analysis' (2016) 21–22 <[https://www.europarl.europa.eu/RegData/etudes/IDAN/2016/556961/IPOL_IDA\(2016\)556961_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2016/556961/IPOL_IDA(2016)556961_EN.pdf)> accessed 29 December 2022.
- 39 Here we do not mean to give a universal definition of VRO, only some characteristics of this concept are discussed.
- 40 Mikalonienė (n 6), 5.
- 41 Draft Law on VRO (n 14).
- 42 Explanatory letter regarding the draft law on the amendment of Article 2.49 of the Civil Code, No. XIII-P-2833 (02 November 2018) <<https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/b3bf2450de6d11e8b45fd5e76c92eb79?jfwid=-10204pubfd>> accessed 29 December 2022.
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- 44 Case C-330/91 *The Queen v Inland Revenue Commissioners, ex parte Commerzbank AG* [1993] ECLI:EU:C:1993:303.
- 45 Case C-167/01 *Kamer van Koophandel en Fabrieken voor Amsterdam v Inspire Art Ltd* [2003] ECLI:EU:C:2003:512.
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- 49 Law on the amendment of Articles 1.73, 1.122, 2.44, 2.49, 2.54, 2.66, 6.166, 6.192, 6.228-7, 6.228-14, 6.901, 6.991 and 6.993 of the Civil Code of the Republic of Lithuania, No. XIV-421 (2021), Article 4.
- 50 Law amending articles 1 and 2 of the Law of the Republic of Lithuania on Public Administration (No. VIII-1234 amending Law no. XIII-2987, No. XIII-3329 (2020), Article 1.
- 51 *ibid*.
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- 54 *ibid*, Article 64.
- 55 *ibid*, Articles 138, 139, 243, 244.
- 56 *ibid*, Article 82.
- 57 *ibid*, Article 63-1.
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- 60 Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 [2011] OJ L 174, Article 4.
- 61 *ibid*, Article 4(1)(j).
- 62 See, e.g.: Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 [2015] OJ L 337, Article 3(5); Commission Implementing Regulation (EU) 2017/1 of 3 January 2017 on procedures for watercraft identification under Directive 2013/53/EU of the European Parliament and of the Council on recreational craft and personal watercraft [2017] OJ L 1, Article 2(b).
- 63 Directive (EU) 2017/1132 (n 46), Articles 4(a).
- 64 *ibid*, Article 19(2)(b).
- 65 *ibid*, Article 26.
- 66 *ibid*, Article 14(g).
- 67 *ibid*, Article 86b(2).
- 68 *ibid*, Article 86d(b).
- 69 *ibid*, Article 91(2)(a).
- 70 *ibid*, Article 137(2)(a).
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- 78 Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2012] OJ L 351, Article 4(1).
- 79 *ibid*, Article 63(1).
- 80 See, e.g.: Directive (EU) 2021/2167 of the European Parliament and of the Council of 24 November 2021 on credit servicers and credit purchasers and amending Directives 2008/48/EC and 2014/17/EU [2021] OJ L 438, Articles 3, 5, 7, 10, 17, 19, 30.
- 81 See, e.g.: Decision of the Authority for European political parties and European political foundations of 25 July 2017 to register European Liberal Forum [2017] OJ C 351, Article 2.
- 82 Directive (EU) 2017/1132 (n 46), Article 97(1).
- 83 *ibid*, Article 143(1).
- 84 Commission Delegated Regulation (EU) 2021/528 of 16 December 2020 supplementing Regulation (EU) 2017/1129

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- 86 Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC [2015] OJ L 141, Article 3(7).
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- 94 *ibid*.
- 95 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems [2004] OJ L 166, Article 11(4).
- 96 *Cartesio* (n 18), paragraph 110.
- 97 See also, e.g.: Regulation (EC) 1082/2006 (n 77), Article 2(1); Council Regulation (EC) No 1435/2003 (n 90), Articles 17, 52, 53, 72; Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) [2001] OJ L 294, Articles 3(1), 15, 53, 63, 66.
- 98 See, e.g.: Regulation (EC) 1082/2006 (n 77), Article 15.
- 99 See, e.g.: Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes [2016] OJ L 183, Articles 20, 31, 32.
- 100 See, e.g.: Council Regulation (EU) 2016/1103 (n 99), Article 33.
- 101 Commercial Code (n 52), Article 62(4).
- 102 Case 81/87 *The Queen v H. M. Treasury and Commissioners of Inland Revenue, ex parte Daily Mail and General Trust plc* [1988] ECLI:EU:C:1988:456, paragraph 19.
- 103 Jaškūnaitė and Olbutaitė (n 8), 5.
- 104 *ibid*, 10–11.
- 105 The Law of the Republic of Lithuania on Public Administration, Nr. VIII-1234 (n 50), Article 1.
- 106 Commercial Code (n 52), Article 63-1 (1).
- 107 *ibid*, Article 63-1(2).
- 108 *ibid*, Article 63-1(5).
- 109 Mikalonienė (n 5), 219.
- 110 *ibid*, 225.
- 111 The incorporation doctrine and the real seat doctrine are two main approaches to determine the law applicable to legal entities. In many jurisdictions one can find the elements of both theories. According to the *incorporation* doctrine the rules applicable to companies are determined by the law at the place of incorporation. The *real seat* theory determines the applicable rules using the closest connection to a company, most often, by reference to the location of the central administration or the headquarters. For more details regarding these two approaches see: Carsten Gerner-Beuerle, Federico M. Mucciarelli, Edmund Schuster and Mathias Siems (eds), *The Private International Law of Companies in Europe* (C.H.BECK 2019), 2–3.
- 112 Edmund-Philipp Schuster, Carsten Gerner-Beuerle, Mathias M Siems and Federico M Mucciarelli, ‘Study on the Law Applicable to Companies. Final report’ (European Commission, June 2016) 262, 270 <<https://doi.org/10.2838/527231>> accessed 24 February 2023.
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- 114 *ibid*, Art. 1.19.
- 115 Marc Van de Looverbosch, ‘Real Seat Theory v Incorporation Theory: The Belgian Case for Reform’ (2017) 28 ICCLR 1, 15.
- 116 See, e.g.: Decision of 25 July 2017 (n 81), Article 2.
- 117 Directive (EU) 2017/1132 (n 46), Article 97(1).
- 118 *ibid*, Articles 94(b), 97(1), 111(b), 113(b), 140(b), 143(1), 154(b).


FUNDING INFORMATION


This research is funded by the European Social Fund under measure No 09.3.3-LMT-K-712 ‘Development of Competences of Scientists, other Researchers and Students through Practical Research Activities’.

COMPETING INTERESTS

The authors have no competing interests to declare.

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TO CITE THIS ARTICLE:

Bitė, V and Romashchenko, I, 'The Concept of a Virtual Registered Office in EU Law: Challenges and Opportunities' (2023) 38(1) *Utrecht Journal of International and European Law* pp. 25–38. DOI: <https://doi.org/10.5334/ujiel.605>

Submitted: 05 January 2023

Accepted: 04 April 2023

Published: 19 April 2023

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