ECFR Symposium

„The law applicable to the European Private Company (Societas Privata Europaea – SPE)“

Den Haag, 2 October 2009

Prof. Dr. Christoph Teichmann
What *should* be the law applicable to the SPE?

- **Content**
  - What matters for potential users of the SPE is not the content of the rules but their Europe-wide uniformity

- **Sources of law**
The reality of the common market
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Surface treatment technology: metal cleaning, electroplating

1993 – Unilever spin-off (management by-out)

2009 – 80 employees (D)

42% of turnover outside Germany

23 subsidiaries in other countries
- Relationship to third parties: reliable framework, good reputation
- Internal affairs: contractual freedom
European Regulation + Articles of Association \[\Rightarrow\] as complete as possible

Annex I: „drafting tasks“

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No references to national law.
Articles of association

incomplete

unfair
Judicial review by national courts:
- Closing gaps in the articles
- Assessing unfair provisions

Guideline: „Model Articles“

- Solutions to be found in the SPE-Regulation
- Application of national law

intention of the parties
Harm-Jan de Kluiver:
Observations on Inspire Art (ECFR 2004, p. 121)

„The coming years will certainly be exciting times for everybody interested in, and affected by, company law.“