

**Basic Principles for an European Corporate Groups' Liability
with privately held limited liability Companies**

– a comparative analysis –

Summary of the doctorate thesis for the awarding of the degree of “doctor of law”

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Objective of this doctorate thesis is to offer with the laid out basic foundations and the formulated theses a proposal of ideas for the advancement of European corporate law and corporate group law that should give an impulse for a further intensification of the academic discussion on the field of corporate groups' liability on the EU level. Hereby, the EU legislator could shall be provided with academically resilient foundations to overcome the legal policy obstacles to a deepening harmonization in the field of corporate groups' liability with privately held limited liability companies.

In a comparative analysis unifying core principles and maxims regarding the design and impact of liability rules are evolved, which would be suitable to constitute consensus reaching foundations on the supranational level of the European Union. As comparative legal systems of EU Member States those of the German and French serve. Both comprise special features making them suitable legal systems of reference. Characteristic for the German liability system is that it is partly based on the analogous application of a specific codified law of corporate groups. Characteristic for the French liability system on the contrary is that with the Rozenblum-doctrine it offers of justification statement of intent which has been already been discussed as a role model for harmonization efforts on the EU-level. A further comparative legal system is the U.S-American in form of the law of the State of Delaware. The U.S-American legal system thereby shall not be understood as being a harmonization reference but rather as an inspiration to find rules of reasonable comprise for an European corporate groups' liability system. Additionally, the legal position on the EU-level will be analyzed, focusing on the investigation of the initially planned but already withdrawn proposals for a privately held limited liability company in form of *Societas Privata Europaea* and the *Societas Unius Personae*.

Research object of the work are the multilayered liability circumstances within a corporate group as well as those regarding outside creditors. Thus, liability claims towards the managers of an affiliate, towards the managers of a parent company as well as towards a parent itself constitute the fundamental research object. These are complemented by supplementary and parallel rules having an impact on the liability system in a wider sense. Those are at first examined regarding their design and dogmatic position and in a second stage are critically analyzed regarding their protective effect. To be able to achieve perceptions for unifying core principles and maxims of a corporate groups' liability system the protective effect of liability rules is considered essential. As epicenter of protective worthy subjects the minority-shareholders and creditors of affiliates are identified. On the contrary minority-shareholders and creditors of parent companies are considered to be not as protective worthy. An additional subject which is considered fundamental for the protective effect of liability rules is according to the opinion represented here the interest of a corporate group. Supplementary to the legal assessment the liability rules are in the sense of a general outline analyzed concerning their economic significance. Hereby an understanding for an efficient and effective union-wide liability system shall be laid out bearing in mind the economic reality.

Preceded the solution approach for foundations of corporate groups' liability with privately held limited liability companies on the level of EU-law itself advantages of a solution on the EU-level are examined and laid out. Hereof on the one hand positive effects of legal clarity and certainty are analyzed. Those derive from a necessity for a multinational liability concept for the European Union from a perspective of International Private Law and especially from the advantages which could be found for a parent

company and the manager of an affiliate on one side and from those for minority-shareholders and creditors of an affiliate on the other side. On the other hand, positive effects regarding the politically and economically desirable facilitation of the deepening of the Common Market are analyzed. Those derive from the simplification of the setup and especially from the enhanced possibilities of managing of a cross-border corporate group – especially for small and medium sized companies – as well as from expected a lowering of costs for the economy and consumers.

Essential principle for the formulated solution approach and starting point for the concluding theses for an European corporate groups' liability system shall be the balance between a protective law focusing on the interests of minority-shareholders and creditors of an affiliate and an enabling law focusing on the facilitation of a coherent unified management of a corporate group. At this an accentuation of the enabling law is aimed for. Hereby a simplification and enhancement of the legal framework for businesses within in the European Union shall be achieved while not abandoning the protective worthy subjects of the corporate group. In a formal sense the preference is made to achieve this objective not by aiming at complete regulation of the corporate group matter but rather aiming at special liability rules on the level of the EU-law.