

Implementation of the Commission Recommendation of 7 December 1994 on the Transfer of Small-and Medium-Sized Enterprises in Albania: A German or Italian Model?

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Abstract: In recent years, the European legislature and national parliaments have become more interested in allowing some types of intergenerational transfer before death. While the Albanian Civil Code establishes the invalidation of any succession agreement, other civil codes recognize some rights to dispose of or renounce the inheritance before death. This research investigates the possibility of implementing the Commission Recommendation of 7 December 1994 on the transfer of small-and medium-sized enterprises (94/1069/EC) in Albania by considering the Italian and German models. This contribution suggests that Albanian lawmakers could consider these models to align the Albanian legislation with the EU law.

Résumé: Ces dernières années, le législateur européen et les parlements nationaux se sont davantage intéressés à autoriser certains types de transfert intergénérationnel avant le décès. Alors que le Code civil albanais prévoit l'invalidation de tout accord successoral, d'autres codes civils reconnaissent certains droits de disposer ou de renoncer à l'héritage avant le décès. Cette recherche étudie la possibilité de mettre en œuvre la recommandation de l'UE du 7 décembre 1994 sur le transfert des petites et moyennes entreprises (94/1069/CE) en Albanie en considérant les modèles italien et allemand. Cette contribution suggère que les législateurs albanais pourraient envisager ces modèles pour aligner la législation albanaise sur le droit de l'UE.

Zusammenfassung: In den letzten Jahren sind der europäische Gesetzgeber und die nationalen Parlamente stärker daran interessiert, bestimmte Formen der Übertragung von Erbschaftsansprüchen zwischen Generationen vor dem Tod zuzulassen. Während das albanische Zivilgesetzbuch die Ungültigkeit aller Erbschaftsvereinbarungen festlegt, erkennen andere Zivilgesetze bestimmte Rechte an, über das Erbe vor dem Tod zu verfügen oder darauf zu verzichten. Der vorliegende Aufsatz untersucht die Möglichkeit, die Empfehlung der Kommission vom 7. Dezember 1994 zur Übertragung kleiner und mittlerer Unternehmen (94/1069/EG) in Albanien umzusetzen, indem die italienischen und deutschen Modelle berücksichtigt werden. Der Beitrag schlägt vor, dass der

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albanische Gesetzgeber diese Modelle in Betracht zieht, um die albanische Gesetzgebung an das EU-Recht anzupassen.

Resumen: En los últimos años, el legislador europeo y los parlamentos nacionales se han interesado más en permitir algunos tipos de transmisión intergeneracional antes de la muerte. Si bien el Código Civil albanés establece la invalidez de cualquier acuerdo sucesorio, otros códigos civiles reconocen algunos derechos para disponer o renunciar a la herencia antes de la muerte. Este trabajo investiga la posibilidad de implementar en Albania la Recomendación de la Comisión de 7 de diciembre de 1994 sobre la transmisión de pequeñas y medianas empresas (94/1069/CE) teniendo en cuenta los modelos italiano y alemán. Esta contribución sugiere que los legisladores albaneses podrían considerar estos modelos para alinear la legislación albanesa con la legislación de la UE.

1. Introduction

1. This research investigates the management of family businesses by examining their importance to national economic growth.¹ Therefore, several legal institutions shall guarantee the transfer of family businesses regarding succession. In the scientific literature, between the 1970s and 1990s, the use of the term *management* regarding succession increased by more than 250%.² This is also because family businesses are essential to the national and international economies. One of the main advantages of family businesses compared to other types of companies, particularly partnership or limited liability companies, is that family businesses are less costly by making it more suitable for small companies working in the agricultural or textile sectors.³
2. At the EU level, since the 1990s, the European Commission has understood the importance of intergenerational succession. Indeed, on 7 December 1994, the Commission published the Commission Recommendation on transferring

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Division of the work: Enkelejda Koka: S. 2. Introduction to the Albanian Succession Law; Overview of the Albanian Constitutional Court Decision, no. 69 of 27 Dec. 2023; Denard Veshi: Conclusions; Carlo Venditti: Abstract; S. 1. Introduction; S. 4. Intergenerational Transfer of Family Firms Before Death in Italy and Germany; S. 4.1. Intergenerational Transfer of Family Firms Before Death in Italy; S. 4.2. Intergenerational Transfer of Family Firms Before Death in Germany; Fiorela Cekaj: S. 3. Succession Contracts and Possibility of Intergenerational Transfer Before Death in the Albanian Legal System.

2 I.F. KESNER & T.C. SEBORA, 'Executive succession: Past, present & future', 20. *Journal of management* 1994, p (327), doi: 10.1177/014920639402000204.

3 A. SHLEIFER & R.W. VISHNY, 'A survey of corporate governance', 52. *The journal of finance* 1997, p (737), doi: 10.2307/2329497.