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Cross-border transfers of undertakings

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Propositions

regarding the doctoral thesis by K.C. Henckel, entitled:

‘Cross-border transfers of undertakings’

1. The 'retention of identity'-test applies equally to cross-border and domestic transfers of undertakings;
2. The main legal uncertainties arising in relation to cross-border transfers of undertakings befall the area of private international law;
3. The issue of transfers of undertakings does not require a concurrence (*Gleichlauf*) between jurisdiction and applicable law;
4. The issue of transfers of undertakings is incompatible with the conflict of laws regime that exists under the Rome I Regulation;
5. The Acquired Rights Directive is in need of a complementary multilateral conflict of laws provision;
6. The provisions stemming from the Acquired Rights Directive do not amount to overriding mandatory provisions of European descent;
7. No transfer of undertaking should be subject to a *conflict mobile*;
8. The applicable law for transfers of (land-based) undertakings should be made dependent upon the location of the undertaking to be transferred;
9. The scope rules existing in European directives bring uncertainty to the area of the conflict of laws;
10. The recent changes to the Acquired Rights Directive have failed to place seafaring workers on equal footing with land-based workers.