

Corporate Mobility Comes to Europe : The Evidence

Better Regulation in EU Company Law, Process and Substance

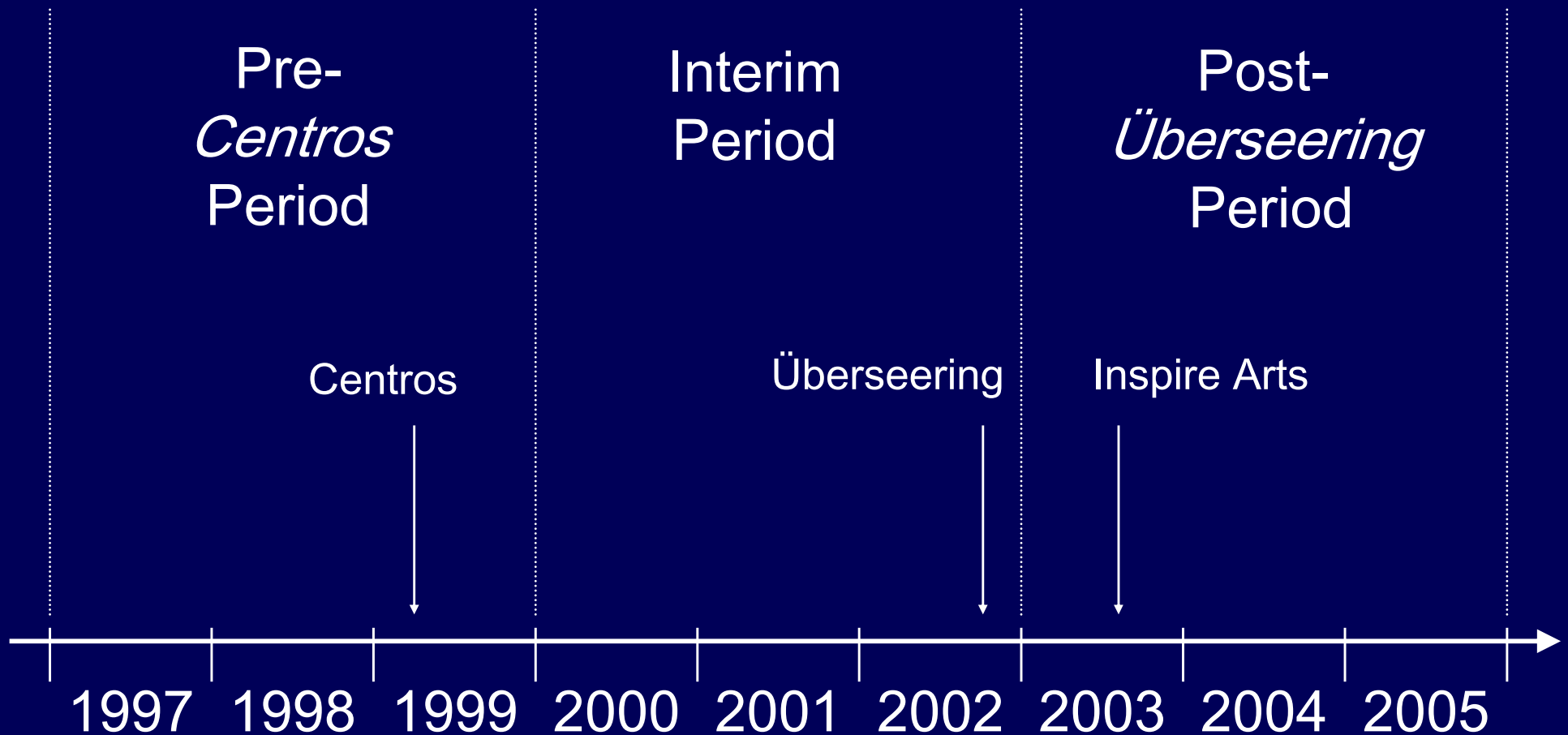
Conference in Helsinki on 5th October 2006

Panel on Better Regulation and Challenges of Drafting EU Company Law

Marco Becht

ECARES, Université Libre de Bruxelles and ECGI

Motivation : ECJ Decisions




Empirical Facts

- Incorporation Mobility
 - Largely confined to small Limited companies
 - Large post-Centros increase of incorporations in U.K. from other EU countries
 - Motivating factor for Ltd is lower cost
- Notable Plc Exception
 - Air Berlin Plc
 - Motivating factor seems to be evasion of *Mitbestimmung* rules

The U.K. Limited

Edition Drachenschmiede


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Dragonforge Limited

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Firmensitz

Dragonsforge Ltd.
69 Great Hampton Street
B18 6EW Birmingham
United Kingdom
Company No. 5681644

Lager - Versand - Telefonzentrale

Dragonsforge Ltd.
Eberhard-Finckh-Str. 9
72829 Engstingen

Tel.: 07129-9295-0
Fax: 07129-9295-29

UID: DE247076912

info@drachenschmiede.de

Company Seat

Warehouse & Logistics Centre

German VAT Number

Virtual Company Seats

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EINE LIMITED-GRÜNDUNG
IST DAS NORMALSTE
AUF DER WELT



Anschrift England:

Go Ahead Service Ltd.
69 Great Hampton Street
B18 6EW Birmingham

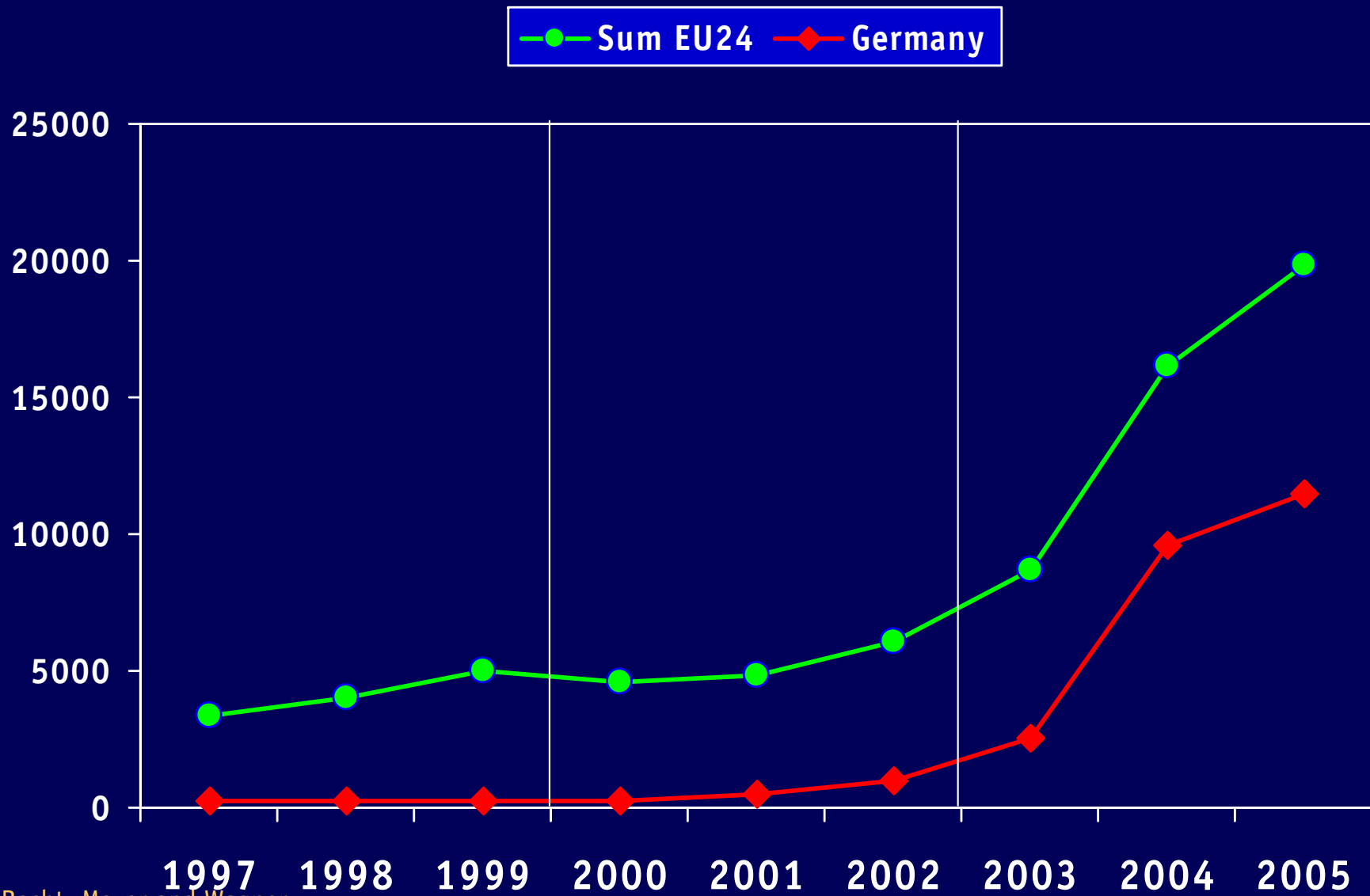
Registered in England and Wales
Company Nummer: 05217519

Repräsentanz Deutschland:

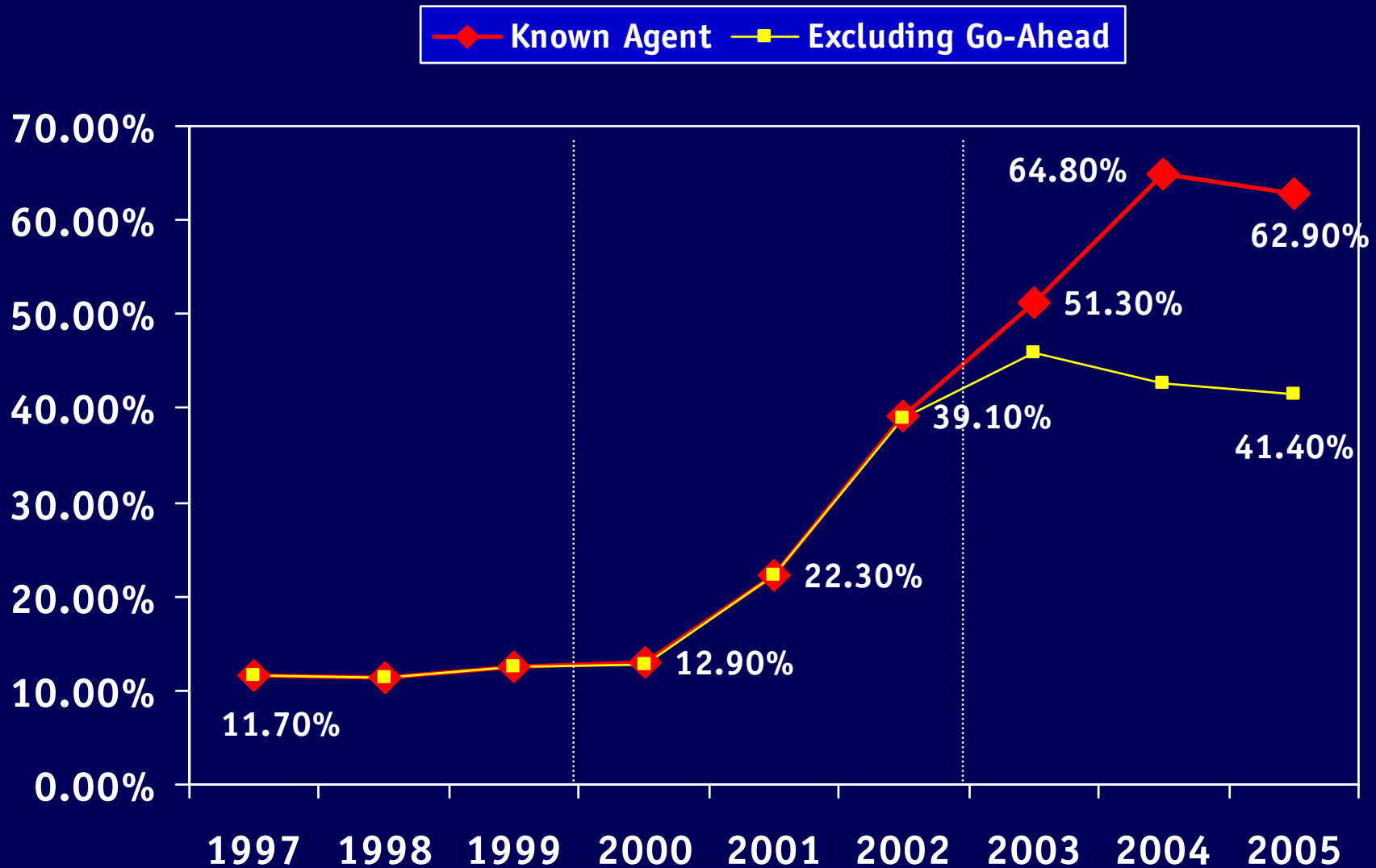
Go Ahead Service Ltd.
Nordenstadter Str. 38
D - 65207 Wiesbaden

8000+
German Limited companies
at this address

Foreign Limited Incorporations



Percentage of EU *Ltds* with Known Agent



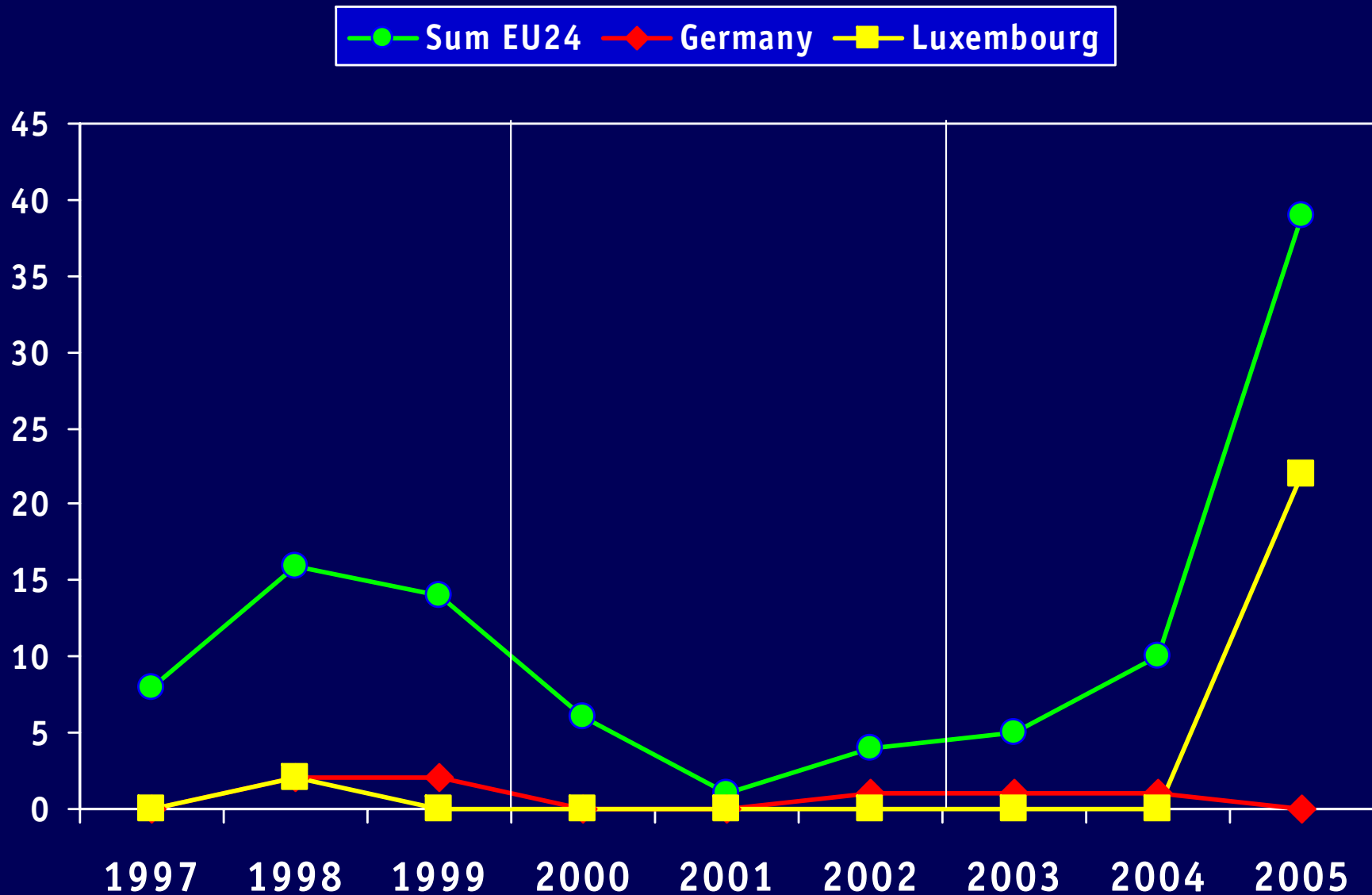
Minimum Capital and Setup Costs in EU Member States

Country	Name	Minimum capital in EUR	Typical setup costs in EUR
Austria	Gesellschaft mit beschränkter Haftung	35,000	3,500
Germany	Gesellschaft mit beschränkter Haftung	25,000	1,000
Belgium	Besloten vennootschap met beperkte aansprakelijkheid	18,550	980
Netherlands	Besloten vennootschap	18,000	1,750
Denmark	Anpaartsselskap	16,800	6,715
Luxembourg	Société à responsabilité limitée	12,500	2,300
Poland	Spółka z ograniczona odpowiedzialnoscia	12,460	650
...
UK	Private limited company	2	425

Is Less Regulation in Company Formation and Branching More?

The U.K. Plc

Foreign Plc Incorporations



Air Berlin Plc

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Air Berlin Plc – Reincorporation IPO

- 1991 : Air Berlin GmbH & Co. KG founded
- 2 December 2005 : Air Berlin Limited registered in UK
- 19 December 2005 : Limited re-registered to Plc
- 19 December 2005 : Plc opens a branch in Berlin
- 31 December 2005 : transfer of assets KG to Plc branch
- 27 April 2006
 - Offer for primary listing on official market of the Frankfurt Stock Exchange
 - Member of Deutsche Börse SDAX (prime standard) index
 - Trading overseen by the German BaFin
 - ISIN : GB00B128C026
 - Air Berlin Plc subject to U.K. company law
 - Prospectus authorised by the FSA under Prospectus Directive

Which Governance Code Applies?

“As the Company is incorporated in England and Wales but is not seeking a listing of the Shares in the UK it is not required as a matter of law or regulation to comply with UK corporate governance standards set out in the Combined Code.”

“Neither is it required to comply with German corporate governance standards.”

“The Company intends to voluntarily comply with the provisions of the Combined Code in all material respects from Admission.”

“However, the Company will not comply with certain provisions of the Combined Code as they are not required by German corporate governance standards and are not customary in the German market.”

Air Berlin Plc Admissions Prospectus, 27 April 2006, pg. 95

Does Air Berlin Plc leave the corporate governance of listed companies in the air, or is it a breath of fresh air?

Reference

Becht, Marco, Mayer, Colin and Wagner, Hannes F., "Where Do Firms Incorporate?" (September 2006). ECGI - Law Working Paper No. 70/2006 Available at SSRN: <http://ssrn.com/abstract=906066>

SLIM Proposal on Branching

“Disclosure exclusively takes place in the home state of the company and remains subject to the regulations of that state, which will also determine, pursuant or in addition to the directive which information should be disclosed;

In the host state, no additional filing should be required, third parties being able to retrieve the documentation from the electronic database in the home state;”

“conditional upon the availability of a Europe-wide company data dissemination network.”

A likely future scenario : the BRITE project

